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UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



JOURNAL OF THE SENATE.

Thursday, July 17, 2009.

Met according to adjournment at one o'clock P.M. (Ms. Menard in the Chair).

PAPERS FROM THE HOUSE.

Petitions were referred, in concurrence, as follows, to wit:

A petition (accompanied by bill, House, No. 1916) of Timothy J. Toomey, Jr. and others (with the approval of the city council) that the city of Cambridge be authorized to enter into agreements with Cambridge Energy Alliance for the provision of municipal energy advisory services;

A petition (accompanied by bill, House, No. 1918) of William G. Greene, Jr. and Kenneth J. Donnelly (by vote of the town) relative to establishing a special account for the town of Billerica water conservation fund;

A petition (accompanied by bill, House, No. 1919) of Paul Kujawski and Richard T. Moore (by vote of the town) relative to authorizing the town of Uxbridge to establish a cable peg access enterprise fund; and

A petition (accompanied by bill, House, No. 1920) of Allen J. McCarthy and Thomas P. Kennedy (by vote of the town) relative to establishing the office of treasurer-collector for the town of Whitman;

Severally to the committee on Municipalities and Regional Government.

A petition (accompanied by bill, House, No. 1917) of John H. Rogers (by vote of the town) relative to authorizing the appointment of retired police officers as special police officers in the town of Norwood;

To the committee on Public Service.

A petition (accompanied by bill, House, No. 1921) of Daniel E. Bosley (by vote of the town) relative to increasing the membership of the library board of trustees in the town of Williamstown;

To the committee on Tourism, Arts and Cultural Development.

Recess.

There being no objection, at one minute past one o'clock P.M., the Chair (Ms. Menard) declared a recess subject to the call of the Chair; and, at a half past one o'clock P.M., the Senate reassembled, the President in the Chair.

The President, members, guests and employees then recited the pledge of allegiance to the flag.

Communication.

The following communication was read and placed on file, to wit:

COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS SENATE
STATE HOUSE, BOSTON 02133-1053

16 July 2009.

William Welch, Clerk
Massachusetts State Senate
State House, Room 335
Boston, MA 02133

Dear Mr. Welch:

Today, July 16th, 2009, I was not present for the early portion of the Senate Session due to the fact that I was with my elderly mother, who was having medical issues. This resulted in missing two roll call votes. Had I been present for those votes regarding H.4129, "An Act making appropriations for the fiscal year 2010," and H.4140, "An Act relative to criminal history checks," I would have voted in the affirmative in both instances.

I request that this be duly noted in the Senate Journal. Thank you for your attention to this request.

Sincerely,
THOMAS P. KENNEDY,
Senator,
2nd Plymouth and Bristol.

On motion of Mr. Petruccelli, the above communication was ordered printed in the Journal of the Senate.

Orders of the Day.

The Orders of the Day were considered as follows:

Bills

Authorizing the city of Gardner to convey certain park land (House, No. 612); and
Authorizing the town of Hanover to establish an Other Post Employment Benefits Trust (House, No. 3819);
Were severally read a second time and ordered to a third reading.

Recess.

At one minute before two o'clock P.M., at the request of Mr. Tisei, for the purpose of a minority caucus, the President declared a recess; and, at twenty-three minutes before three o'clock P.M., the Senate reassembled, the President in the Chair.

Orders of the Day.

The Orders of the Day were further considered as follows:

The engrossed Bill establishing a Commonwealth Transportation Fund (see House, No. 4141, amended) (which originated in the House), having been certified by the Senate Clerk to be rightly and truly prepared for final passage,— **was laid before the Senate.**

The pending motion, previously moved by Mr. Montigny, to lay the matter on the table was considered; and it was negatived.

The engrossed Bill having been certified by the Senate Clerk to be rightly and truly prepared for final passage, was put upon its final passage; and, it being a bill providing for the gift, loan or pledge of the credit of the Commonwealth, in accordance with the provisions of Section I of Article LXII of the Amendments to the Constitution, the question on passing it to be enacted was determined by a call of the yeas and nays, at ten minutes before three o'clock P.M., as follows to wit (*yeas 24 — nays 4*) **[Yeas and Nays No. 93]:**

YEAS.

Berry, Frederick E. Joyce, Brian A.
Brewer, Stephen M. Kennedy, Thomas P.
Candaras, Gale D. McGee, Thomas M.
Chandler, Harriette L. Menard, Joan M.
Chang-Diaz, Sonia Montigny, Mark C.
Creem, Cynthia Stone Moore, Michael O.

Downing, Benjamin B., O'Leary, Robert A.
Eldridge, James B. Pacheco, Marc R.
Fargo, Susan C. Panagiotakos, Steven C.
Flanagan, Jennifer L. Petruccelli, Anthony
Galluccio, Anthony D. Spilka, Karen E.
Hart, John A., Jr. Tolman, Steven A.— 24.

NAYS.

Brown, Scott P. Tarr, Bruce E.
Hedlund, Robert L. Tisei, Richard R. — 4.

ABSENT OR NOT VOTING.

Baddour, Steven A. Morrissey, Michael W.
Buoniconti, Stephen J. Rosenberg, Stanley C.
Donnelly, Kenneth J. Timilty, James E.
Jehlen, Patricia D. Tucker, Susan C.
Knapik, Michael R. Walsh, Marian — 11.
Moore, Richard T.

The yeas and nays having been completed at eight minutes before three o'clock P.M., the bill was passed to be enacted, two thirds of the members present having agreed to pass the same, and it was signed by the President and laid before the Governor for his approbation.

The engrossed Bill authorizing the transfer of certain funds within the Trial Court (see House, No. 4148) [being the text of section 112 of the General Appropriation Bill (see House, No. 4129)] [for message, see attachment K of House, No. 4139],— **was considered, the main question being on rejection of the amendment recommended by the Governor. The pending motion, previously moved by Mr. Tisei, to lay the matter on the table was considered; and it was negatived. After remarks and pending the main question on rejection of the amendment recommended by the Governor, Mr. Tisei moved that the bill be laid on the table; and, in accordance with the provisions of Senate Rule 24, the consideration of the motion to lay on the table was postponed, without question, until the next session.**

PAPER FROM THE HOUSE.

Engrossed Bill Returned with Recommendation of Amendment.

A message from His Excellency the Governor, returning with recommendation of amendment the engrossed Bill providing for reporting dates for capital gains revenue and transferring certain funds (see House, No. 4142) [being the text contained in Section 22 of the General Appropriations Bill (see House, No. 4129)] [for message, see attachment E of House, No. 4139],— **came from the House with the endorsement that the House had amended the amendment as recommended by the Governor as follows:—**

By striking out all after the enacting clause and inserting in place thereof the following:

“SECTION 1. Chapter 29 of the General Laws is hereby amended by inserting after section 5F the following section:—
Section 5G. Notwithstanding any general or special law to the contrary, the department of revenue shall report by September 30 to the state comptroller, the executive office for administration and finance and the house and senate committees on ways and means tax revenues estimated to have been collected during the preceding fiscal year from capital gains income; provided, however, that beginning October 31 and quarterly thereafter the department of revenue shall certify to the state comptroller the amount of tax revenues estimated to have been collected during the preceding quarter from capital gains income; provided, further, that if the department of revenue certifies that the amount of tax revenues estimated to have been collected from capital gains income exceeds \$1,000,000,000 in any fiscal year the comptroller shall transfer quarterly any such amount that exceeds \$1,000,000,000 collected during that fiscal year to the Commonwealth Stabilization Fund established by section 2H; provided further, that said transfer shall be made before the certification of the consolidated net surplus for the previous fiscal year as provided in section 5C: and provided further, that 2 per cent of any amount transferred from the Commonwealth Stabilization Fund under this section shall then be transferred from the Commonwealth Stabilization Fund to the State Retiree Benefits Fund.”.
The message, as amended was read; and, under the provisions of Article LVI of the Amendments to the Constitution, the bill was before the Senate subject to amendment and re-enactment.
The rules were suspended, on motion of Mr. Tisei, and the Governor's amendment, as amended was considered forthwith.

Messrs. Panagiotakos and Montigny, Ms. Fargo and Mr. Tarr moved that the Senate concur in the House amendment with a further amendment by adding the following 4 sections:—

“SECTION 2. Subsection (b) of section 26 of chapter 304 of the acts of 2008 is hereby amended by adding the following 2

sentences:—

If the authority certifies to the secretary that it has received such notice, within 24 hours of such certification, the chairman or executive director of the authority and said secretary shall jointly certify, and affirm, in writing, to the chairpersons of the house and senate committees on ways and means, and the chairpersons of the house and senate committees on bonding, capital expenditures and state assets that, in their judgment, there exists no feasible alternative to a pledge of the commonwealth's full faith and credit pursuant to this act. Said chairman or executive director and said secretary shall jointly report to the chairpersons of the house and senate committees on ways and means, the chairpersons of the joint committee on transportation, and the chairpersons of the house and senate committees on bonding, capital expenditures and state assets all efforts undertaken to avoid the need for a full faith and credit guaranty of the commonwealth pursuant to this act.

SECTION 3. Said chapter 304 is hereby further amended by striking out section 29 and inserting in place thereof the following section:—

Section 29. The state treasurer and all quasi-public entities and independent authorities shall submit a report on their borrowing practices during fiscal years 1997 to 2009, inclusive, to the secretary of administration and finance, the state auditor, the chair of the finance advisory board established in section 97 of chapter 6 of the General Laws, the chairpersons of the house and senate committees on ways and means and the chairpersons of the house and senate committees on bonding, capital expenditures and state assets prior to September 4, 2009. The report shall include:—

- (1) all transactions entered into, including fixed-rate borrowing, during the 6 months immediately preceding the filing of the report;
- (2) a list of all transactions related to derivative financial products;
- (3) the terms and conditions of each derivative financial product transaction;
- (4) the parties involved in negotiating each derivative financial product transaction;
- (5) copies of all agreements entered into between the parties relative to derivative financial product transactions;
- (6) the financial impact of each such transaction including, but not limited to, the interest rates, fluctuation in interest rates and payments associated therewith; and
- (7) a written rationale for the determination to enter into any such transaction. The report shall be signed under oath by (i) the state treasurer or by the chief financial officer of the quasi-public entity or independent authority filing the report and (ii) the secretary of administration and finance. For the purposes of this section, 'derivative financial products' shall mean financial instruments with values derived from, or based upon, the value of other assets or on the level of an interest rate index including, but not limited to, a call option on a bond, an interest rate swaptions, caps, floors, collars, inverse floaters, auction rate securities or any other financial transaction of a similar nature. As of the effective date of this act, no quasi-public state entity or independent authority of the commonwealth shall be authorized to enter into any transaction involving a derivative financial product; provided, however that (i) a quasi-public state entity or independent authority of the commonwealth may enter into any transaction involving a derivative financial product if a request is made to the secretary of administration and finance, and upon receipt of the approval thereof by the governor and treasurer of the commonwealth if such transaction is subject to any level of commonwealth credit support; and (ii) a quasi-public state entity or independent authority of the commonwealth may enter into a transaction involving a derivative financial product if a request is made to the secretary of administration and finance and upon receipt of the approval thereof by the governor if such transaction is not subject to any level of commonwealth credit support.

SECTION 4. Pursuant to section 8 of chapter 12A of the General Laws, the inspector general shall prepare a report, to be submitted not later than September 4, 2009, to the chairpersons of the house and senate committee on ways and means and the chairpersons of the house and senate committee on bonding, capital expenditures and state assets. The report shall detail an investigation by the inspector general of the swap and swaption transactions between the Massachusetts Turnpike Authority and any financial lenders including, but not limited to, UBS, JP Morgan and Lehman Brothers during calendar years 1999 through 2007, inclusive.

SECTION 5. Sections 2 to 4, inclusive, shall take effect as of June 30, 2009."

After debate, the amendment was adopted (as corrected BTR).

The Governor's amendment, as amended, was then adopted, in concurrence.

Sent to the House for concurrence in the further amendment.

Order Adopted.

On motion of Mr. Berry,—

Ordered, That when the Senate adjourns today, it adjourn to meet again on Monday next at eleven o'clock A.M., and that the Clerk be directed to dispense with the printing of a calendar.

On motion of the same Senator, at three o'clock P.M., the Senate adjourned to meet again on Monday next at eleven o'clock A.M.