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UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



JOURNAL OF THE SENATE.

Tuesday, July 20, 2010.

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

Reports of Committees.

By Mr. Panagiotakos, for the committee on Ways and Means, that the Senate Bill relative to the installation of approved smoke detectors in certain residential buildings or structures (Senate, No. 2252),-- **ought to pass, with an amendment substituting a new draft with the same title (Senate, No. 2556).**

Referred, under Senate Rule 26, to the committee on Ethics and Rules.

By Mr. Richard T. Moore, for the committee on Health Care Financing, that the Senate Bill relative to long term care insurance claims (Senate, No. 309) [Estimated cost – more than \$100,000];

Read and, under Senate Rule 27, referred to the committee on Ways and Means.

By Mr. Richard T. Moore, for the committee on Health Care Financing, that the Senate Bill to establish standards for long term care insurance (Senate, No. 2476). – **ought to pass, with an amendment substituting a new draft with the same title (Senate, No. 2554) [Estimated cost – more than \$100,000];**

Read and, under Senate Rule 27, referred to the committee on Ways and Means with the amendment pending.

By Mr. Richard T. Moore, for the committee on Health Care Financing, that the Senate bills
Relative to group health insurance (Senate, No. 489) [Estimated cost - \$0]; and
Relative to psychotropic medications (Senate, No. 2509) [Estimated cost - \$0];

Severally ought to pass.

Severally read and, under Senate Rule 26, referred to the committee on Ethics and Rules.

Committees Discharged.

Mr. Berry, for the committees on Rules of the two branches, acting concurrently, reported, asking to be discharged from further consideration of the Senate Order relative to authorizing the joint committee on Public Service to make an investigation and study of certain current Senate documents relative to public service (Senate, No. 2550),-- **and recommending that the same be referred to the committee on Ethics and Rules.**

Under Senate Rule 36, the report was considered forthwith and accepted.

PAPERS FROM THE HOUSE

A message from His Excellency the Governor (under Section 8 of Article LXXXIX of the Amendments to the Constitution) recommending legislation relative to validating the actions taken at a certain town election in the town of Hopkinton (House, No. 4893),-- **was referred, in concurrence, to the committee on Election Laws.**

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

Petition (accompanied by bill, House, No. 4894) of William N. Brownsberger and Steven A. Tolman (by vote of the town) that the town of Belmont be authorized to grant liquor licenses for the sale of all alcoholic beverages;

Petition (accompanied by bill, House, No. 4895) of Colleen M. Garry and Susan C. Tucker (by vote of the town) for legislation to authorize the town of Dracut to issue an additional liquor license for the sale of wine and malt beverage not to be drunk on the premises; and

Petition (accompanied by bill, House, No. 4896) of Paul McMurty (by vote of the town) for legislation to authorize the town of Dedham to issue an additional license for the sale of all alcoholic beverage to be drunk on the premises;

Severally to the committee on Consumer Protection and Professional Licensure.

Petition (accompanied by House, No. 4897) of Robert L. Rice and Jennifer L. Flanagan (with the approval of the mayor and city council) for legislation authorizing the placement of a certain question on the state election ballot in the city of Gardner;

To the committee on Election Laws.

Petition (accompanied by House, No. 4898) of David P. Linsky and Richard J. Ross (by vote of the town) for legislation authorizing the town of Sherborn to use certain town forest land for the purpose of constructing, operating and maintaining a wireless telecommunications facility;

Petition (accompanied by House, No. 4899) of Karyn E. Polito and Michael O. Moore (by vote of the town) for legislation authorizing the town of Shrewsbury to create a special fund for school construction projects; and

Petition (accompanied by House, No. 4905) of Mary E. Grant (with the approval of the mayor and city council) relative to authorizing the city of Beverly to convey certain land;

Severally to the committee on Municipalities and Regional Government.

Petition (accompanied by House, No. 4900) of Linda Dean Campbell (with the approval of the mayor and city council) relative to the appointment of Christopher J. Lane as a police officer in the city of Methuen, notwithstanding the maximum age requirements;

To the committee on Public Service.

Petition (accompanied by House, No. 4901) of William N. Brownsberger and Steven A. Tolman (by vote of the town) for legislation authorizing the modification of the form of property tax billing in the town of Belmont;

To the committee on Revenue.

Notice was received from the House announcing the following appointment by the Minority Leader of the House of Representatives:

That Mr. Smola of Palmer had been appointed to serve on the special commission established (under Section 13 of Chapter 132 of the Acts of 2009) to study the feasibility and costs of establishing a functional magnetic resonance imaging and neuropsychological cognitive testing program for all military forces of the commonwealth prior to and upon return from deployment;

That Mr. Humason of Westfield had been appointed to the special commission established (under Section 162 of Chapter 131 of the Acts of 2010) to make an investigation and study relative to higher education in-state tuition retention;

That Mr. Stephen Capone of North Reading, the owner of Capone Iron Corporation in the town of Rowley, had been appointed to serve on the special commission established (under Section 167 of Chapter 131 of the Acts of 2010) to investigate and study the expenditure of funds received through the American Reinvestment and Recovery Act;

That Ms. Polito of Shrewsbury had been appointed to the special commission established (under Section 168 of Chapter 131 of the Acts of 2010) for the purpose of making an investigation and study relative to the feasibility of transferring personnel that are currently funded from the capital budget to the operating budget and transferring capital projects funded from the operating budget to the capital budget; and

That Mr. Barrows of Mansfield had been appointed to the advisory committee established (under Section 178 of Chapter 131 of the Acts of 2010) to study the comparative costs and benefits of different care delivery models for the Medicaid program including, but not limited to, all-managed care, a state-contracted chronic disease management program and patient-centered medical homes.

There being no objection, at one minute past one o'clock P.M., the Chair (Mr. Rosenberg) declared a recess subject to the call of the Chair; and, at a quarter past three 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.

PAPERS FROM THE HOUSE

Emergency Preambles Adopted.

An engrossed Bill establishing an organ and tissue donor registration fund (see Senate, No. 2515, amended), having been certified by the Senate Clerk to be rightly and truly prepared for final passage and containing an emergency preamble,-- **was laid**

before the Senate; and, a separate vote being taken in accordance with the requirements of Article LXVII of the Amendments to the Constitution, the preamble was adopted in concurrence, by a vote of 4 to 0.

The bill was signed by the President and sent to the House for enactment.

An engrossed Bill establishing a sick leave bank for John K. Ryan, an employee of the Office of the Inspector General (see House, No. 4866), having been certified by the Senate Clerk to be rightly and truly prepared for final passage and containing an emergency preamble,-- **was laid before the Senate; and, a separate vote being taken in accordance with the requirements of Article LXVII of the Amendments to the Constitution, the preamble was adopted in concurrence, by a vote of 4 to 0.**

The bill was signed by the President and sent to the House for enactment.

Engrossed Bills.

The following engrossed bills (the first of which originated in the Senate), having been certified by the Senate Clerk to be rightly and truly prepared for final passage, were severally passed to be enacted and were signed by the President and laid before the Governor for his approbation, to wit:

Authorizing the town of Wareham to issue 8 additional liquor licenses (see Senate, No. 2520, amended);

Relative to the determination of condominium common area interest (see House, No. 1235);

Relative to minimum age requirement for obtaining identification cards (see House, No. 4512);

Relative to time-share ownership (see House, No. 4803); and

Relative to municipal relief (see House, No. 4877).

Reports of Committees.

Mr. Berry, for the committee on Ethics and Rules, reported, that the following matter be placed in the Orders of the Day for the next session:

The Senate Bill to protect victims of unlicensed debt collection activity (Senate, No. 132).

There being no objection, the rules were suspended, on motion of Mr. Eldridge, and the bill was read a second time, ordered to a third reading, read a third time and passed to be engrossed, its title having been changed by the committee on Bills in the Third Reading to read as follows: "An Act protecting victims of unlicensed debt collection activity".

Sent to the House for concurrence.

Mr. Berry, for the committee on Ethics and Rules, reported, that the following matter be placed in the Orders of the Day for the next session:

The Senate Bill authorizing municipalities to petition for public involvement plans in cases of hazardous material sites (Senate, No. 418).

There being no objection, the rules were suspended, on motion of Mr. Morrissey, and the bill was read a second time, ordered to a third reading, read a third time and passed to be engrossed, its title having been changed by the committee on Bills in the Third Reading to read as follows: "An Act authorizing municipalities to petition for public involvement plans in hazardous material sites".

Sent to the House for concurrence.

Mr. Berry, for the committee on Ethics and Rules, reported, that the following matter be placed in the Orders of the Day for the next session:

The Senate Bill relative to tampering with water company meters (Senate, No. 1486).

There being no objection, the rules were suspended, on motion of Mr. Eldridge, and the bill was read a second time, ordered to a third reading, read a third time and passed to be engrossed.

Sent to the House for concurrence.

Mr. Berry, for the committee on Ethics and Rules, reported, that the following matter be placed in the Orders of the Day for the next session:

The House Bill relative to concurrent jurisdiction over the former Devens military base (House, No. 1996).

There being no objection, the rules were suspended, on motion of Mr. Eldridge, and the bill was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence.

Mr. Berry, for the committee on Ethics and Rules, reported, that the following matter be placed in the Orders of the Day for the next session:

The House Bill relative to Natural Heritage Commissions and Corridors in the Commonwealth (House, No. 4492) (the committee on Ethics and Rules recommending that the bill be amended in section 1, by inserting after the word "Areas", in line 5, the following words:- "designation by the United States Congress"; in said section 1, by striking out, in lines 7 to 10, inclusive, the words "as established in the Federal Omnibus Parks and Public Lands Management Act of 1996, division II, title V, section 504 of Public Law 104-133, and being in compliance with the federal Executive Office of Management and Budget's Circulars A-110, A-122, and A-133"; by striking out section 4 and inserting in place thereof the following section:-

"SECTION 4. Each state agency, department, board and commission: (1) shall consider Massachusetts' Heritage Areas when developing planning documents and processes; and (2) may partner with the managing entities of such areas on projects

concerning, but not limited to, environmental protection, heritage resource preservation, recreation, tourism and trail development.”;

By inserting before the enacting clause the following emergency preamble:-

“Whereas, The deferred operation of this act would tend to defeat its purposes, which is to recognize certain National Heritage Areas as entities in the service of the public good, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.”; and

by striking out the title and inserting in place thereof the following title:- “An Act relative to national heritage areas”.

There being no objection, the rules were suspended, on motion of Mr. Berry, and the bill was read a second time and amended, as recommended by the committee on Ethics and Rules.

After remarks, pending the question on ordering the bill to a third reading, Mr. Richard T. Moore moved that the matter be laid on the table; and, under the provisions of Senate Rule 24, the further consideration thereof was laid over until the next session.

Mr. Berry, for the committee on Ethics and Rules, reported, that the following matter be placed in the Orders of the Day for the next session:

The House Bill relative to nurse anesthetists (House, No. 4593).

There being no objection, the rules were suspended, on motion of Mr. Montigny, and the bill was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence.

By Mr. Panagiotakos, for the committee on Ways and Means, that the Senate Bill further regulating debt collection (Senate, No. 1712),-- **ought to pass, with an amendment substituting a new draft with the same title (Senate, No. 2557).**

The rules were suspended, on motion of Ms. Jehlen, and the bill was read a second time and was amended, as recommended by the committee on Ways and Means.

After remarks, the bill (Senate, No. 2557) was then ordered to a third reading, read a third time and passed to be engrossed.

Sent to the House for concurrence.

By Mr. Panagiotakos, that the Senate Bill relative to a lien for architects, engineers, land surveyors, and site professionals (Senate, No. 2512),-- **ought to pass, with an amendment in section 2 by striking, in line 51, the word “prime” and inserting in place thereof the following word:- “original”; and by striking out, in line 75, the word “prime”.**

There being no objection, the rules were suspended, on motion of Mr. Brewer, and the bill was read a second time and was amended, as recommended by the committee on Ways and Means.

The bill (Senate, No. 2512, amended) was then ordered to a third reading, read a third time and passed to be engrossed. Sent to the House for concurrence.

PAPER FROM THE HOUSE

The Senate Bill authorizing the Department of Fish and Game to acquire land of the town of Athol and to acquire a conservation restriction on lands of the town of Athol in exchange for grants of easements to the town of Athol (Senate, No. 2451),-- **came from the House passed to be engrossed, in concurrence, with an amendment striking out all after the enacting clause and inserting in place thereof the text of House document numbered 4756.**

The rules were suspended, on motion of Mr. Brewer, and the House amendment was considered forthwith.

Mr. Brewer presented a motion that the Senate concur with the House amendment with a further amendment, striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2555.

The motion was accepted; and the amendment was adopted.

Sent to the House for concurrence in the further amendment.

Orders of the Day.

The Orders of the Day were considered as follows:

The House Bill relative to qualified financial contracts (House, No. 4399),-- **was considered, the main question being on ordering the bill to a third reading.**

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

After remarks, pending the question on ordering the bill to a third reading, Mr. Montigny again moved that the matter be laid on the table; and, under the provisions of Senate Rule 24, the further consideration thereof was laid over until the next session.

The Senate Bill relative wage compliance and recordkeeping (Senate, No. 678),-- **was considered, the main question being on passing the bill to be engrossed.**

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

Messrs. Tisei, Tarr, Knapik, Hedlund and Ross moved that the bill be amended by inserting before section 1 the following section:-

“SECTION A1. Section 148B of chapter 149 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out subsection (a) and inserting in place thereof the following 2 subsections:-

(a) For the purposes of this chapter and chapter 151, an individual performing any service in the construction trades, except as authorized in this chapter, shall be considered to be an employee under this chapter and said chapter 151 unless:—

- (i) the individual is free from control and direction in connection with the performance of the service, both under his contract for the performance of service and in fact; and
- (ii) the service is performed outside the usual course of the business of the employer; and
- (iii) the individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.

(a 1/2) For the purpose of this chapter and chapter 151, an individual performing any service, except as authorized under this chapter and except as provided in subsection (a), shall be considered to be an employee under this chapter and said chapter 151 unless:—

- (1) the individual is free from control and direction in connection with the performance of the service, both under his contract for the performance of service and in fact; and
- (2) the service is performed outside the usual course of the business of the employer; or,
- (3) the individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.”

Pending the question on adoption of the amendment, Mr. McGee moved to amend the pending amendment (Tisei) by striking out the text and inserting in place thereof the following text:- By inserting before section 1 the following section:-

“SECTION 1A. Chapter 149 of the General Laws is hereby amended by inserting after section 147H the following section:-

Section 147I. (a) An individual whose work is performed solely in the individual’s place of residence shall be exempt from the requirements of clause (2) of subsection (a) of section 148B of chapter 149, but not clause (1) or clause (3) of said subsection (a) of said section 148B of said chapter 149. This section does not apply to other persons who work with or for the individual.

(b) The exception provided in subsection (a) shall not apply to an individual who has been coerced, threatened or intimidated into establishing an independent business nor shall it apply to individuals who telecommute or work remotely from home.

(c) Each individual seeking this exemption shall register with the state secretary and such registration shall be issued without a fee. The registration shall include, but not be limited to, the following information: (i) name of the individual seeking the exemption; (ii) the nature of the independently established business; (iii) the address of the residence at which the work is performed; and (iv) proof that the address listed is the applicant's legal residence. The state secretary shall issue regulations necessary to ensure registration under this section. The application for registration shall be typewritten, printed or in such other form as the state secretary shall prescribe. The application for registration shall be executed by the individual seeking the exemption. The registration shall be renewed every 3 years.”

After debate, on motion of Mr. McGee, a call of the yeas and nays was ordered on the adoption of the further amendment. After further remarks, and pending the question on adoption of the further amendment (McGee) to the pending amendment (Tisei) and pending the main question on passing the bill to be engrossed, on motion of Messrs. Tisei and Ross, under the provisions of Senate Rule 31, the amendments were ordered printed in the Calendar for the next session.

The House Bill protecting nursing home residents (House, No. 4637),-- was considered, the main question being on passing the bill to be engrossed.

Mr. Tarr moved that the bill be amended by inserting after the word “facilities”, in line 8, the following words:- “and the fiscal impact of section 25 of chapter 118G of the General Laws on those who pay with private funds for their long-term health care”. The amendment was *rejected*.

Tarr asked for unanimous consent to consider that no action had been taken on the amendment; but objection was made thereto by Mr. Richard T. Moore.

Mr. Tarr moved that the bill be amended by inserting after section 1 the following section:-
“Section 2. Section 25 of chapter 118G of the General Laws is hereby repealed.”

The President ruled that the amendment was beyond the limited scope of the bill; and the amendment was laid aside. After debate, the bill was passed to be engrossed, in concurrence.

PAPERS FROM THE HOUSE.

Engrossed Bills.

The following engrossed bills (the first of which originated in the Senate), having been certified by the Senate Clerk to be rightly and truly prepared for final passage, were severally passed to be enacted and were signed by the President and laid before the Governor for his approbation, to wit:

Establishing an organ and tissue donor registration fund (see Senate, No. 2515, amended); and

Establishing a sick leave bank for John K. Ryan, an employee of the Office of Inspector General (see House, No. 4866).

Order Adopted.

On motion of Mr. Berry,

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

Adjournment in Memory of John M. Arruda

The Senator from Bristol and Plymouth, Ms. Menard, requested that when the Senate adjourns today, it adjourn in memory of former Fall River Mayor John M. Arruda.

Mayor Arruda passed away on Saturday, July 3, 2010 at the age of 90.

Mayor Arruda served from 1958-1963. He was the first Portuguese American ever elected as mayor of Fall River.

He was the husband of the late Lorraine (Chouinard) Arruda, the son of the late Manuel M. and Mary (Costa Costello) Arruda, and the brother of the late Francis M., Manuel M., and Joseph M. Arruda, Agnes Sears, and Mary Gillian.

He is survived by his daughter, Janice Pottier, the wife of the late Dr. David W. Pottier of East Taunton, two grandchildren: Gregory Ridge Jr. and Cherie Soderbom; a sister: Emily Gaudreau; three step grandchildren: Taunton City Councilor David W. Pottier Jr., Joanna Woodward, and Daniel Pottier; and several nieces and nephews.

Accordingly, as a mark of respect to the memory of John M. Arruda, at twenty-three minutes before five o'clock P.M., on motion of Ms. Menard, the Senate adjourned to meet again tomorrow at eleven o'clock A.M.