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UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



JOURNAL OF THE SENATE.

Wednesday, July 31, 2013.

Met at twenty minutes before twelve o'clock A.M. (Mr. Petrucci in the Chair) (having been appointed by the President, under authority conferred by Senate Rule 4, to perform the duties of the Chair).

The Chair (Mr. Petrucci), members, guests and staff then recited the pledge of allegiance to the flag.

Distinguished Guests.

There being no objection, the Chair (Mr. Petrucci) handed the gavel to Mr. Timilty for the purpose of an introduction. Mr. Timilty then introduced, in the rear of the Chamber, the Walpole National Baseball Team. The team was recognized for winning the 2013 Massachusetts 11U State Championship.

They were accompanied by Coaches Bill Killeen, Bryan Jarvis, Paul Prata and Mike Magane. The Senate applauded their accomplishments and they withdrew from the Chamber.

Petition.

Ms. Flanagan presented a petition (accompanied by bill, Senate, No.1838) of Jennifer L. Flanagan and Dennis A. Rosa (with the approval of the mayor and city council) for legislation relative to retirement benefits for Matthew Swaine [Local approval received];

**Under Senate Rule 20, referred to the committee on Public Service.
Sent to the House for concurrence.**

Report of a Committee.

By Mr. Welch, for the committee on Health Care Financing, that the Senate Bill relative to newborn pulse oximetry screenings for congenital heart defects (Senate, No. 1008),--ought to pass; [Estimated cost-more than \$100,000]

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

Communication.

The Clerk read the following communication:

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

July 30, 2013

William F. Welch
Clerk of the Senate

Room 335, State House
Boston, MA 02133

Dear Mr. Clerk:

On Monday, July 1, 2013, I was unable to be present for Roll Call #99 relating to House Bill 3538. Had I been present, I would have voted in the affirmative. I was also unable to be present for Roll Call #100 relating to House Bill 3539. Had I been present, I would have voted in the affirmative.

I respectfully request that this letter be printed in the Senate Journal as part of the official record. Thank you for your assistance in this matter.

Saludos,
SONIA CHANG-DIAZ
Second Suffolk District

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

PAPER FROM THE HOUSE

The House Bill establishing a sales tax holiday in 2013 (printed as Senate, No. 175, amended),-- **was read.**

There being no objection, the rules were suspended, on motion of Mr. Donnelly, and the bill was read a second time.

Pending the question on ordering the bill to a third reading, Mr. Pacheco moved that the bill be amended by striking out section 1 and by inserting in place thereof the following new section: -

“SECTION 1. Notwithstanding any general or special law to the contrary, for the days of August 10, 2013 and August 11, 2013, an excise shall not be imposed upon nonbusiness sales at retail of energy-efficient product. For the purposes of this section, ‘energy-efficient product’ is defined as a product that has been designated as an Energy Star qualified product under the Energy Star program jointly operated by the United States Environmental Protection Agency and the United States Department of Energy. This section applies only to the following energy-efficient products:

- (1) an air conditioner the sales price of which does not exceed \$6,000;
- (2) a clothes washer;
- (3) a clothes drier
- (4) a ceiling fan;
- (5) a dehumidifier;
- (6) a dishwasher;
- (7) an incandescent or fluorescent lightbulb;
- (8) a programmable thermostat; and
- (9) a refrigerator the sales price of which does not exceed \$2,000.”;

By striking out, in line 10, the words “tangible personal property, as defined in section 1 of Chapter 64H of the General Laws” and inserting in place thereof the following words:- “an energy-efficient product”;

By striking out, in line 12, the words “tangible personal property” and inserting in place thereof the following words:- “an energy-efficient product”;

By striking lines 15, 16, and 17;

By striking out, in line 18, the words “tangible personal property” and inserting in place thereof the following words:- “an energy-efficient product”;

By striking out, in line 31, the words “tangible personal property” and inserting in place thereof the following words:- “an energy-efficient product.”; and by inserting at the end thereof the following new section:

“SECTION 7. The Executive Office of Energy and Environmental Affairs shall have the ability to designate further Energy Star qualified products as being eligible for this Energy Efficiency tax credit.”

The amendment was *rejected*.

Mr. Tarr moved that the bill be amended by adding the following section:-

“Section XX. Notwithstanding any general or special law or regulation to the contrary, nothing shall preclude a retailer from allowing a customer to purchase an item during the sales tax holiday if that customer has previously placed an order for said item, the purchase, sale and delivery of said item has not been finalized, and upon the customer’s own initiative has cancelled the order in prior to or on the date of the sales tax holiday. Penalties under section 73 of chapter 62C of the General Laws or any other penalties associated with “forward dating” relative to the sales tax holiday shall not be applicable to any situation in which a retailer permits a customer to cancel an order at the customer’s own initiative in anticipation of the sales tax holiday as provided for in this section.”

After remarks, the amendment was *rejected*.

Messrs. Tarr, Knapik and Ross moved that the bill be amended by adding the following section:-

“SECTION __. Chapter 64H of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting, after section 6, the following:-

Section 6A. The commissioner of revenue shall annually designate, by July 15 of each calendar year, a two-day weekend in August during which no excise shall be imposed upon non-business sales at retail in the commonwealth of tangible personal property, as defined in section 1 of this chapter, but for the purposes of this section, tangible personal property shall not include telecommunications, gas, steam, electricity, motor vehicles, boats, meals, or any single item whose price is in excess of \$2,500. For the days designated by the commissioner pursuant to the provisions of this section, a vendor in the commonwealth shall not add to the sales price or collect from any non-business purchaser an excise upon sales at retail of tangible personal property, as defined in section 1 of this chapter. The commissioner of revenue shall not require any vendor to collect and pay excise upon sales at retail of tangible personal property purchased on said designated days. Any excise erroneously or improperly collected during the designated days shall be remitted to the department of revenue. This section shall not apply to the sale of telecommunications, tobacco products subject to the excise imposed by chapter 64C of the General Laws, gas, steam, electricity, motor vehicles, motorboats, meals, or any single item whose price is in excess of \$2,500.

When choosing the designated days, the commissioner shall take into consideration the observance of any religious and secular days of observation occurring therein; provided further, that the commissioner shall designate such days so as to maximize the economic benefit to the commonwealth.

Reporting requirements imposed upon vendors of tangible personal property, by law or by regulation, including, but not limited to, the requirements for filing returns required by chapter 62C of the General Laws, shall remain in effect for sales for the days designated by the commissioner.

On or before December 31 of each year, the commissioner of revenue shall certify to the comptroller the amount of sales tax forgone, as well as new revenue raised from personal and corporate income taxes and other sources, because of this act. The commissioner shall issue a report, detailing by fund the amounts under general and special laws governing the distribution of revenues under this chapter which would have been deposited in each fund, without this act.

The commissioner of revenue shall issue instructions or forms, or promulgate rules or regulations, necessary for the implementation of this act.”

After remarks, the amendment was *rejected*.

Messrs. Tarr, Knapik and Ross moved that the bill be amended by adding the following new section:-

“SECTION __. Notwithstanding any general or special law to the contrary, for the days of October 18-23, 2013, an excise tax shall not be imposed upon meals purchased in restaurants, as those terms are defined in Section 6 of Chapter 64H of the General Laws, as appearing in the 2010 Official Edition.

Notwithstanding any general or special law to the contrary, for the days of October 19-24, 2012, a restaurant in the commonwealth shall not add to the sales price or collect from a customer an excise upon sales of meals. The commissioner of revenue shall not require any restaurant to collect and pay excise upon sales of meals purchased on October 18-23, 2013. An excise erroneously or improperly collected during the days of October 18-23, 2013 shall be remitted to the department of revenue.

Reporting requirements imposed upon restaurants by law or regulation, including, but not limited to, the requirements for filing returns required by chapter 62C of the General Laws, shall remain in effect for sales on the days of October 18-23, 2013.

On or before December 31, 2013, the commissioner of revenue shall certify to the comptroller the amount of sales tax forgone, as well as new revenue raised from person and corporate income taxes and other sources, pursuant to this section. The commissioner shall file a report with the joint committee on revenue and the house and senate committees on ways and means detailing by fund the amounts under general and special laws governing the distribution of revenues under Chapter 64H of the General Laws which would have been deposited in each fund, without this section.

The commissioner of revenue shall issue instructions or forms, or promulgate rules or regulations, necessary for the implementation of this section.

Eligible sales of meals purchased in restaurants are restricted to October 18-23, 2013.

The provisions of this section shall not be applicable to the local option meals excise tax under Section 1-6 of Chapter 64L of the General Laws, as appearing in the 2012 Official Edition, which shall remain in full force and effect on October 18-23, 2013.”

After remarks, the amendment was *rejected*.

The bill was then ordered to a third reading, read a third time and passed to be engrossed, in concurrence.

Communication.

The Clerk read the following communication:

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

July 31, 2013

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

Dear Senate Clerk,

Due to scheduling conflicts, I was unable to vote on certain items during yesterday's session. If I were present, I would have voted in the following manner.

I ask that my votes be recorded in the affirmative for H.3538, FY14 Budget veto overrides:

- Roll Call 160 – Item 2810-0100 (State Parks)
- Roll Call 161 – Item 4000-0700 (MA Health fee for service)
- Roll Call 162 – Item 4120-4005 (Living Independently)
- Roll Call 163 – Item 4510-0610 (Radiation Monitoring retained revenue)
- Roll Call 164 – Item 7004-0099 (Dept of Housing)
- Roll Call 165 – Item 7008-0900 (MA Travel & Tourism)
- Roll Call 166 – Item 7008-0900 (Community Grants)
- Roll Call 167 – Item 7053-1925 (School breakfast program)
- Roll Call 168 – Item 7100-0200 (Umass)
- Roll Call 169 – Item 8324-0000 (Dept. of Fire Services)
- Roll Call 170 – Item 8900-0001 (Dept of Correction)
- Roll Call 171 – Item 8910-8700 (Plymouth County Sheriff)

I ask that my votes be recorded in the affirmative for H.3839, FY13 Supplemental Budget veto overrides:

- Roll Call 172 – Item 7004-2027 (Community Investment Grants)
- Roll Call 173 – Section 46 (MA Travel & Tourism)
- Roll Call 174 – Section 47 (MA Travel & Tourism)
- Roll Call 175 -- Section 52 (DFS earmarks)
- Roll Call 176 – Section 53 (Dept. of Fire Services)
- Roll Call 177 – Section 70 (Dept. of Correction)
- Roll Call 178 – Item 8900-0001 (Dept. of Correction)
- Roll Call 179 – Section 89 (primary Care Hospitals)
- Roll Call 180 – Section 110 (Residency requirements)
- Roll Call 181 – Section 181 (DOC procurement)
- Roll Call 182 – House amendment (Judicial compensation)

If you have any further questions feel free to contact my office.

Sincerely,
LINDA DORCENA FORRY
State Senator

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

Recess.

There being no objection, at twenty-three minutes before one o'clock P.M., the Chair (Mr. Petrucci) declared a recess subject to the call of the Chair; and, at twenty-five minutes before two o'clock P.M., the Senate reassembled, Mr. Petrucci in the Chair.

PAPERS FROM THE HOUSE
Emergency Preambles Adopted.

An engrossed Bill establishing a certain sales tax holiday in 2013 (see House Bill, printed as Senate, No. 175, 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 2 to 0. The bill was signed by the Acting President (Mr. Petrucci) and sent to the House for enactment.**

An engrossed Bill relative to a hospital merger market impact review (see House, No. 3559, 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 2 to 0. The bill was signed by the Acting President (Mr. Petrucci) and sent to the House for enactment.**

An engrossed Bill to study the prevention of fraud in the EBT program (see House, No. 3556, 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 2 to 0.**
The bill was signed by the Acting President (Mr. Petruccelli) and sent to the House for enactment.

An engrossed Bill relative to sex offenders (see House, No. 3558, 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 2 to 0.**
The bill was signed by the Acting President (Mr. Petruccelli) and sent to the House for enactment.

An engrossed Bill relative to judicial compensation (see House, No. 3564, 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 2 to 0.**
The bill was signed by the Acting President (Mr. Petruccelli) 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 re-enacted and were signed by the Acting President (Mr. Petruccelli) and again laid before the Governor for his approbation, to wit:

Authorizing the town of Templeton to grant an additional license for the sale of all alcoholic beverages not to be drunk on the premises (see Senate, No. 1795); and

Establishing a certain sales tax holiday in 2013 (see House Bill, printed as Senate, No. 175, amended).

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

To study the prevention of fraud in the EBT program (see House, No. 3556, amended);

Relative to sex offenders (see House, No. 3558, amended);

Relative to a hospital merger market impact review (see House, No. 3559, amended); and

Relative to judicial compensation (see House, No. 3564, amended).

Order Adopted.

On motion of Tarr,--

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.

On motion of Mr. Tarr, at ten minutes before two o'clock P.M., the Senate adjourned to meet again tomorrow at eleven o'clock A.M.