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UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



JOURNAL OF THE SENATE.

Thursday, September 26, 2013.

Met at four minutes past twelve o'clock noon (Mr. Richard T. Moore in the Chair).

Distinguished Guests.

There being no objection, the President handed the gavel to Mr. Tarr for the purpose of an introduction. Mr. Tarr then introduced, in the rear of the Chamber, Vittorio Ricci of Boxford. Vittorio was diagnosed with Charcot-Marie-Tooth Disease (CMT), one of the most common inherited nerve disorders. He is currently a sophomore at Masconomet Regional High School and also participates and enjoys athletics. Vittorio has also raised \$39,000 for the CMT Association, to raise awareness and provide treatment to individuals with CMT. The Senate presented him with Resolutions on the Rostrum, he was applauded for his accomplishments and he withdrew from the Chamber. He was accompanied by his mother Jill Ricci and Robert Corrigan.

Reports of Committees.

By Ms. Lovely, for the committee on Mental Health and Substance Abuse, on petition, a Bill relative to the use of buprenorphine in opioid dependence treatment (Senate, No. 907);

By the same Senator, for the same committee, on petition, a Bill relative to the discharge of persons incompetent to stand trial (Senate, No. 918); and

By the same Senator, for the same committee, on petition, a Bill to improve access to child and adolescent mental health services (Senate, No. 920, changed in line 7 by inserting after the word "specialist," the words "a licensed marriage and family therapist"; in line 14 by inserting after the word "specialist," the words "a licensed marriage and family therapist"; in line 28 by inserting after the word "specialist," the words "a licensed marriage and family therapist"; and in line 35 by inserting after the word "specialist," the words "a licensed marriage and family therapist");

Severally referred, under Joint Rule 1E, to the committee on Health Care Financing.

By Mr. Brownsberger, for the committee on Public Service, on petition, a Bill relative to the adjustment of disability retirement benefits to Lynn Police Officer Gregory LeBlanc (Senate, No. 1765) [Local approval received];

By the same Senator, for the same committee, on petition, a Bill relative to the civil service eligibility list for police officers in the city of Quincy (Senate, No. 1781) [Local approval received];

By the same Senator, for the same committee, on petition, a Bill to exempt certain positions in the town of Millbury from the civil service laws (Senate, No. 1791) [Local approval received]; and

By the same Senator, for the same committee, on petition, a Bill relative to retirement benefits for Matthew Swaine (Senate, No. 1838) [Local approval received];

Severally read and, under Senate Rule 26, placed in the Orders of the Day for the next session.

There being no objection, at five minutes past twelve o'clock noon, the Chair (Mr. Richard T. Moore) declared a recess subject to the call of the Chair; and, at three minutes before one o'clock P.M., the Senate reassembled, the President in the Chair.

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

Resolutions.

The following resolutions (having been filed with the Clerk) were severally considered forthwith and adopted, as follows:-
Resolutions (filed by Mr. Eldridge) “congratulating Detective Steven B. Sturtevant on the occasion of his retirement from the town of Stow Police Department”;
Resolutions (filed by Ms. Jehlen and Mr. Richard T. Moore) “commending the Massachusetts Falls Prevention Coalition on its celebration of Falls Prevention Awareness Day”; and
Resolutions (filed by Mr. Rosenberg) “congratulating the University Museum of Contemporary Art at the University of Massachusetts Amherst on the opening of Du Bois in Our Time.”

PAPERS FROM THE HOUSE
Emergency Preambles Adopted.

An engrossed Bill establishing a sick leave bank for Jeanette Cruz, an employee of the Department of Unemployment Assistance (see Senate, No. 1852, 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 8 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 Marianne McVarish, an employee of the Department of Public Health (see Senate, No. 1862), 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 6 to 0.
The bill was signed by the President and sent to the House for enactment.

Engrossed Bill.

An engrossed Bill designating a certain traffic island in the town of Hingham as the Sergeant Boris Demko Memorial Island (see House, No. 3021) (which originated in the House), having been certified by the Senate Clerk to be rightly and truly prepared for final passage, was passed to be enacted and signed by the President and laid before the Governor for his approbation.

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

Petition (accompanied by bill, House, No. 3666) of Steven S. Howitt relative to the sewage disposal system inspection process,-- **under suspension of Joint Rule 12, to the committee on Environment, Natural Resources and Agriculture.**

Petition (accompanied by bill, House, No. 3667) of Mark J. Cusack, Steven M. Walsh and Jennifer E. Benson relative to the substitution of interchangeable biosimilars,-- **under suspension of Joint Rule 12, to the committee on Health Care Financing.**

Petition (accompanied by bill, House, No. 3668) of Thomas M. Stanley, Michael Barrett and John J. Lawn, Jr., for legislation to establish a sick leave bank for Robert K. Barry, an employee of the Executive Office of Health and Human Services,-- **under suspension of Joint Rule 12, to the committee on Public Service.**

Petition (accompanied by bill, House, No. 3669) of Ruth B. Balser and others (with the approval of the mayor and board of aldermen) for legislation to authorize the Commissioner of Capital Asset Management and Maintenance to convey certain land to the city of Newton,-- **under suspension of Joint Rule 12, to the committee on State Administration and Regulatory Oversight.**

Report of a Committee.

Mr. Rosenberg, 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 Resolve relative to Southern Middlesex County (Senate, No. 1477) (the committee on Ethics and Rules recommending that the bill be amended by substituting a new draft with the same title (Senate, No. 1870).

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

The resolve (Senate, No. 1870) was then ordered to a third reading, read a third time and passed to be engrossed. Sent to the House for concurrence.

Matter Taken Out of the Notice Section of the Calendar.

There being no objection, the following matter was taken out of the Notice Section of the Calendar and considered, as follows:
The House Bill authorizing the town of Hingham to change the use of certain parcels of land in the town (House, No. 3411),-- **was read a time and passed to be engrossed, in concurrence.**

Orders of the Day.

The Orders of the Day were considered, as follows:

Bills

Authorizing the issuance of a certain license for the retail sale of wine to be consumed on the premises in the town of Topsfield (Senate, No. 1790);

Authorizing the town of Nantucket to convey certain land to the Nantucket Land Bank Commission (House, No. 3314, changed);

Relative to a conservation restriction in the town of Stow (House, No. 3474);

Relative to the membership of the conservation commission of the town of Dedham (House, No. 3518);

Relative to the powers and duties of the Town Manager of the town of Hanover (House, No. 3543); and

Authorizing the town of Fairhaven to grant an additional license for the sale of wines and malt beverages to be drunk on the premises (House, No. 3603);

Were severally read a second time and ordered to a third reading.

The Senate Bill relative to the oversight of inspections (Senate, No. 1868),-- was read a third time.

Pending the question on passing the bill to be engrossed, Mr. Tarr moved that the bill be amended in section 3, by striking out, in line 9, the figure "2" and inserting in place thereof the following figure:- "3"; and in said section 3, by adding the following sentence:- "The chief of the engineering inspection division shall hold a Massachusetts first class engineer's license."

After debate, the amendment was adopted.

The bill (Senate, No. 1868, amended) was then passed to be engrossed.

Sent to the House for concurrence.

PAPERS FROM THE HOUSE.

A Bill repealing the computer and software services tax (House, No. 3662,-- on House, No. 3567, in part),-- **was read.**

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

After debate, and pending the question on ordering the bill to a third reading, Ms. Creem and Ms. Jehlen moved to amend the bill by inserting at the end thereof the following section:-

"SECTION __. Chapter 46 of the Acts of 2013 is hereby amended, in section 43, by removing the figure '24' and inserting in place thereof the following figure:- '29'."

After debate, the question on adoption of the amendment was determined by a call of the yeas and nays, at two minutes past two o'clock P.M., on motion of Mr. Hedlund, as follows, to wit (yeas 11 — nays 26) **[Yeas and Nays No. 187]:**

YEAS.

Barrett, Michael J.
Brownsberger, William N.
Chang-Diaz, Sonia
Clark, Katherine M.
Creem, Cynthia Stone
DiDomenico, Sal N.

Eldridge, James B.
Forry, Linda Dorcena
Jehlen, Patricia D.
McGee, Thomas M.
Spilka, Karen E. — **11.**

NAYS.

Brewer, Stephen M.
Chandler, Harriette L.
Donnelly, Kenneth J.
Donoghue, Eileen M.
Downing, Benjamin B.
Finegold, Barry R.
Flanagan, Jennifer L.
Hedlund, Robert L.
Joyce, Brian A.
Keenan, John F.
Kennedy, Thomas P.
Lovely, Joan B.
Montigny, Mark C.

Moore, Michael O.
Moore, Richard T.
O'Connor Ives, Kathleen
Pacheco, Marc R.
Petrucelli, Anthony
Rodrigues, Michael J.
Rosenberg, Stanley C.
Ross, Richard J.
Rush, Michael F.
Tarr, Bruce E.
Timilty, James E.
Welch, James T.
Wolf, Daniel A. — **26.**

ABSENT OR NOT VOTING.

Candaras, Gale D. — **1.**

The yeas and nays having been completed at five minute past two o'clock P.M., the amendment was *rejected*.

Ms. Clark and Ms. Jehlen moved to amend the bill by inserting after section 8 the following section:-

“SECTION XXX. Pursuant to section 2A of chapter 4 of General Laws, as most recently amended by section 77 of chapter 46 of the Acts of 2013, is hereby amended by adding at the end of subsection (viii), the following:- including recommendations on any statutory and or regulatory changes necessary to ensure ending tax avoidance through the use of offshore havens.”

The amendment was *rejected*.

Messrs. Tarr, Ross and Hedlund moved to amend the bill by inserting at the end thereof the following new sections:

“SECTION _____. Section 72 of chapter 46 of the acts of 2013 is hereby repealed.

SECTION _____. Notwithstanding any general or special law to the contrary, any person who, pursuant to the provisions of section 72 of chapter 46 of the acts of 2013, paid an additional excise of 50 mills per cigarette on all cigarettes and all unused adhesive and encrypted stamps upon which an excise of only 100½ mills has previously been paid may file applications for abatement in a form prescribed by the department of revenue; provided, however, that the department shall make abatement forms available within 30 days of the effective date of this act; provided further that the department shall refund the full amount of the abatement within 30 days of receipt of a completed abatement form from any person who paid an additional excise of 50 mills per cigarette on all cigarettes and all unused adhesive and encrypted stamps upon which an excise of only 100½ mills has previously been paid pursuant to section 72 of chapter 46 of the acts of 2013; and provided further, that all applications for abatement pursuant to this section shall be filed with the department no later than December 31, 2013.”

After debate, the amendment was *rejected*.

Messrs. Tarr, Hedlund and Ross moved to amend the bill by inserting at the end thereof the following new section:-

“SECTION _____. Notwithstanding any general or special law to the contrary, the director of the internal special audit unit, whose existence is legally required by section 9 of chapter 6C, shall conduct a comprehensive investigation of the financial impact of chapter 25 of the acts of 2009. The review shall include a review of total savings to date, anticipated future savings, and an analysis of how the savings compare to projected savings at the time of the passage of the act. The director shall publish his findings on the department’s website and submit an electronic copy of the report to the clerks of the house and the senate, the house and senate committees on ways and means, and the joint committee of transportation, no later than January 31, 2014.”

After remarks, the amendment was *rejected*.

Messrs. Tarr, Hedlund and Ross moved to amend the bill by inserting at the end thereof the following new section:-

“SECTION _____. Section 1 of chapter 64A of the General Laws as amended by Chapter 46 of the Acts of 2013 is hereby amended by striking out, the definition of ‘tax per gallon’ and inserting in place thereof the following:- ‘Tax per gallon,’ shall be 21 cents per gallon. For aviation fuel, ‘tax per gallon’ shall mean 7 ½ per cent of the average price, as determined by the commissioner, for each calendar quarter, computed to the nearest tenth of a cent per gallon; provided, however, that such tax shall not be less than 10 cents per gallon.”

After debate, the amendment was *rejected*.

Messrs. Tarr, Hedlund and Ross moved to amend the bill by inserting at the end thereof the following new section:-

“SECTION _____. Section 1 of chapter 64A of the General Laws as amended by Chapter 46 of the Acts of 2013 is hereby amended by striking out, in the definition of ‘tax per gallon’ the following words:- adjusted at the beginning of each calendar year, by the percentage, if any, by which the Consumer Price Index for the preceding year exceeds the Consumer Price Index for the calendar year that ends before such preceding year; provided, that the Consumer Price Index for any calendar year shall be as defined in section 1 of the Internal Revenue Code pursuant to 26 U.S.C. section 1; and provided further, that the tax shall not be less than 21.5 cents per gallon.”

After debate, the question on adoption of the amendment was determined by a call of the yeas and nays, at eleven minutes before three o'clock P.M., on motion of Mr. Tarr, as follows, to wit (yeas 9 — nays 28) **[Yeas and Nays No. 188]:**

YEAS.

Hedlund, Robert L.
Lovely, Joan B.
Montigny, Mark C.
O'Connor Ives, Kathleen
Pacheco, Marc R.

Ross, Richard J.
Rush, Michael F.
Tarr, Bruce E.
Timilty, James E. — **9.**

NAYS.

Barrett, Michael J.
Brewer, Stephen M.
Brownsberger, William N.
Chandler, Harriette L.

Forry, Linda Dorcena
Jehlen, Patricia D.
Joyce, Brian A.
Keenan, John F.

Chang-Diaz, Sonia
Clark, Katherine M.
Creem, Cynthia Stone
DiDomenico, Sal N.
Donnelly, Kenneth J.
Donoghue, Eileen M.
Downing, Benjamin B.
Eldridge, James B.
Finegold, Barry R.
Flanagan, Jennifer L.

Kennedy, Thomas P.
McGee, Thomas M.
Moore, Michael O.
Moore, Richard T.
Petrucelli, Anthony
Rodrigues, Michael J.
Rosenberg, Stanley C.
Spilka, Karen E.
Welch, James T.
Wolf, Daniel A. – **28.**

ABSENT OR NOT VOTING.

Candaras, Gale D. – **1.**

The yeas and nays having been completed at eight minutes before three o'clock P.M., the amendment was *rejected*.

Messrs. Tarr, Hedlund and Ross moved that the bill be amended by inserting at the end thereof the following new section:-
“SECTION __. The provisions of sections 43 and 44 of chapter 46 of the acts of 2013 shall not take effect until such time as the commissioner of the department of revenue and the secretary of housing and economic development have completed and submitted to the clerks of the house and senate and the members of the house and senate committees on ways and means a dynamic analysis of the economic impact of raising the gas tax and tying future increases to the Consumer Price Index.”
The amendment was *rejected*.

The bill was then ordered to a third reading and read a third time.

The question on passing the bill to be engrossed was determined by a call of the yeas and nays, at seven minutes before three o'clock P.M. on the motion of Mr. Brewer, as follows, to wit (*yeas 38 – nays 0*) [**Yeas and Nays No. 189**]:

YEAS.

Barrett, Michael J.
Brewer, Stephen M.
Brownsberger, William N.
Chandler, Harriette L.
Chang-Diaz, Sonia
Clark, Katherine M.
Creem, Cynthia Stone
DiDomenico, Sal N.
Donnelly, Kenneth J.
Donoghue, Eileen M.
Downing, Benjamin B.
Eldridge, James B.
Finegold, Barry R.
Flanagan, Jennifer L.
Forry, Linda Dorcena
Hedlund, Robert L.
Jehlen, Patricia D.
Joyce, Brian A.
Keenan, John F.

Kennedy, Thomas P.
Lovely, Joan B.
McGee, Thomas M.
Montigny, Mark C.
Moore, Michael O.
Moore, Richard T.
Murray, Therese
O'Connor Ives, Kathleen
Pacheco, Marc R.
Petrucelli, Anthony
Rodrigues, Michael J.
Rosenberg, Stanley C.
Ross, Richard J.
Rush, Michael F.
Spilka, Karen E.
Tarr, Bruce E.
Timilty, James E.
Welch, James T.
Wolf, Daniel A. – **38.**

NAYS – 0.

ABSENT OR NOT VOTING.

Candaras, Gale D. – **1.**

The yeas and nays having been completed at four minutes before three o'clock P.M., the bill was passed to be engrossed, in concurrence, its title having been changed by the committee on Bills in the Third Reading to read as follows: “An Act repealing the computer and software services taxes”.

The engrossed Bill amending the charter for the town of Randolph (see House, No. 3439, amended),-- came from the House with an amendment in line 11, by inserting after the word “Randolph” the following: “pursuant to chapter 138 of the General Laws”; by striking out, in line 12, the word “only”; and by striking out, in lines 24 and 25, the following: “1 of whom shall be a resident”

and inserting in place thereof the following words: "3 of whom shall be residents".

The rules were suspended, on motion of Mr. Joyce, and the House amendment was considered forthwith and adopted, in concurrence.

Moment of Silence.

At the request of the President, the members, guests and staff stood in a moment of silence and reflection to the memory of Albert F. Donnelly of Woburn.

Recess.

There being no objection, at four minutes past three o'clock P.M., the President declared a further recess subject to the call of the Chair; and, at five minutes past four o'clock P.M., the Senate reassembled, the President in the Chair.

PAPERS FROM THE HOUSE

Emergency Preamble Adopted.

An engrossed Bill repealing the computer and software services taxes (see House, No. 3662), 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 President and sent to the House for enactment.

Engrossed Bills.

The following engrossed bills (the first two 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 a sick leave bank for Jeanette Cruz, an employee of the Department of Unemployment Assistance (see Senate, No. 1852, amended);

Establishing a sick leave bank for Marianne McVarish, an employee of the Department of Public Health (see Senate, No. 1862);

Amending the charter for the town of Randolph (see House, No. 3439, amended); and

Repealing the computer and software services taxes (see House, No. 3662).

Order Adopted.

On motion of Mr. Tarr,--

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.

Adjourn In Memory of Albert F. Donnelly.

The Senator from Middlesex, Mr. Donnelly, moved that when the Senate adjourns today, it do so in memory of Albert F. Donnelly of Woburn.

Albert F. Donnelly of Woburn, was the beloved husband of Julie (McNeil) Donnelly and devoted father of Krystal J. and Michelle A. Donnelly, both of Woburn, and dear brother of Senator Kenneth J. Donnelly and his wife Judith of Arlington.

Al was an Air Force veteran and served as a member of the Woburn Police Department for 41 years. As a Patrolman working all over Woburn, on foot or in a cruiser, he was a true guardian of the city. For the last decade Al served as a Detective in the department and as the Woburn Police prosecutor, retiring in December 2011.

Al was a man of strong character, known for his sense of humor and adventure and his deep caring and compassion for everyone he came in contact with. He was a passionate Patriots fan, but his greatest passion was for his wife, Julie and daughters, Krystal and Michelle. He was dedicated to his family at home and his extended family at the Woburn Police Department.

Over the years Al has touched many lives. He served all with great love, dignity and respect. He will be sorely missed by all who knew him.

Albert Donnelly is also survived by his brother Paul Donnelly and his wife Sandy of Woburn, Russell Donnelly of Maine, John Donnelly and his wife Margaret of New Hampshire, and many loving nieces and nephews. Al was predeceased by his brother Stephen Donnelly.

Accordingly, as a mark of respect to the memory of Albert F. Donnelly, at sixteen minutes past four o'clock P.M., on motion of Ms. O'Connor Ives, the Senate adjourned to meet again on Monday next at eleven o'clock A.M.