

JOURNAL OF THE HOUSE.

Wednesday, March 9, 2005.

Met according to adjournment, at eleven o'clock A.M., with Mr. Petrolati of Ludlow in the Chair (having been appointed by the Speaker, under authority conferred by Rule 5, to perform the duties of the Chair).

Prayer was offered by the Reverend Robert F. Quinn, C.S.P., Chaplain of the House, as follows:

Prayer.

Eternal God, we believe that we have been created by You and endowed with both a temporal and eternal life. In Your goodness, help us to achieve the purpose and the destiny for which we have been created. As we go about fulfilling our daily responsibilities, personal and legislative, may we be patient in dealing with people and complex issues, honorable in making decisions and faithful to our principles, goals and religious beliefs. Help us to make our changing and diverse communities safe, prosperous and fully aware of the needs of all people, especially of people who cannot care for themselves. By our thoughtful, creative and courageous leadership, may we build hope and trust in the minds of the people who depend upon our reasonable choices in legislative matters.

Grant Your blessings to the Speaker, the members and employees of this House and their families. Amen.

Pledge of allegiance.

At the request of the Chair (Mr. Petrolati), the members, guests and employees joined with him in reciting the pledge of allegiance to the flag.

Silent Prayer.

Silent Prayer.

At the request of the Speaker, the members, guests and employees stood in a moment of silent prayer to the memory of Clement E. Walsh, a valued employee in the House Clerk's Office from 1950 to 1983, inclusive.

Messages from the Governor.

Rockland, validate acts.

A message from His Excellency the Governor (under the provisions of Section 8 of Article LXXXIX of the Amendments to the Constitution) recommending legislation relative to validating the actions taken at an annual town meeting and special town meeting of the town of Rockland (House, No. 999) was filed this day in the office of the Clerk.

The message was read; and it was referred, under Rule 30, with the accompanying draft of a bill, to the committee on Municipalities and Regional Government. Sent to the Senate for concurrence.

Amherst, Select Board.

A message from His Excellency the Governor (under the provisions of Section 8 of Article LXXXIX of the Amendments to the Constitution) recommending legislation relative to the filling of a vacancy on the Amherst Select Board (House, No. 1000) was filed this day in the office of the Clerk.

The message was read; and it was referred, under Rule 30, with the accompanying draft of a bill, to the committee on Municipalities and Regional Government. Sent to the Senate for concurrence.

Statement Concerning Representative Dempsey of Haverhill.

A statement of Mr. Rogers of Norwood concerning Mr. Dempsey of Haverhill was spread upon the records of the House, as follows:

MR. SPEAKER: I would like to call to the attention of the House the fact that one of our colleagues, Representative Dempsey of Haverhill, will not be present in the House Chamber for today's sitting due to personal business outside of the State House. Any roll calls that he may miss today is due entirely to the reason stated.

Statement concerning Representative Dempsey of Haverhill.

Statement Concerning Representative Kafka of Stoughton.

A statement of Mr. Rogers of Norwood concerning Mr. Kafka of Stoughton was spread upon the records of the House, as follows:

MR. SPEAKER: I would like to call to the attention of the House the fact that one of our colleagues, Representative Kafka of Stoughton, was not present in the House Chamber for today's sitting due to a long-standing family commitment. Had he been present, he would have voted in the affirmative on Roll Call Nos. 7, 8 and 9 and in the negative on Roll Call Nos. 10 and 11.

Statement concerning Representative Kafka of Stoughton.

Statement of Representative Naughton of Clinton.

A statement of Mr. Naughton of Clinton was spread upon the records of the House, as follows:

MR. SPEAKER: I would like to call to the attention of the House the fact I will not be present in the House Chamber for the remainder of the Month of March due to my serving on active duty with the United States Army. Any roll calls that I may miss will be due entirely to the reason stated.

Statement of Representative Naughton of Clinton.

Statement Concerning Representative St. Fleur of Boston.

A statement of Mr. Rogers of Norwood concerning Ms. St. Fleur of Boston was spread upon the records of the House, as follows:

MR. SPEAKER: I would like to call to the attention of the House the fact that one of our colleagues, Representative St. Fleur of Boston, was not present in the House Chamber for today's sitting due to a previously scheduled commitment to meet with members of the Massachusetts Congressional delegation in Washington, D.C. Had she been present, she would have voted in the affirmative on Roll Call Nos. 7, 8 and 9 and in the negative on Roll Call Nos. 10 and 11.

Statement concerning Representative St. Fleur of Boston.

Resolutions.

The following resolutions (filed with the Clerk) were referred, under Rule 85, to the committee on Rules:

Resolutions (filed by Mr. Fagan of Taunton) congratulating Gerald Puccini on the occasion of his retirement; and

Gerald Puccini.

Resolutions (filed by Mr. Murphy of Burlington) honoring Thomas J. Larkin of Bedford, Massachusetts;

Thomas J. Larkin.

Mr. Petrolati of Ludlow, for the committee on Rules, reported, in each instance, that the resolutions ought to be adopted. Under suspension of the rules, in each instance, on motion of Mr. O'Flaherty of Chelsea, the resolutions (reported by the committee on Bills in the Third Reading to be correctly drawn) were considered forthwith; and they were adopted.

Paper from the Senate.

A petition of Bruce E. Tarr and Bradley H. Jones, Jr., for legislation to establish a sick leave bank for James E. Vesey, an employee of the Boston Municipal Court, came from the Senate referred, under suspension of Joint Rule 12, to the Senate committee on Senate Ethics and Rules.

The House then concurred with the Senate in the suspension of said rule; and the petition (accompanied by bill, Senate, No. 29) was referred to the Senate committee on Senate Ethics and Rules.

Recess.

At five minutes after eleven o'clock A.M., on motion of Mr. O'Flaherty of Chelsea (Mr. Petrolati of Ludlow being in the Chair), the House recessed until one o'clock; and at twelve minutes after one o'clock the House was called to order with the Mrs. Harkins of Needham in the Chair.

Reports of a Committee.

Mr. DeLeo of Winthrop, for the committee on Ways and Means, on a message from His Excellency the Governor (for message, see House, No. 41), returning with his disapproval of items 1599-4123, 1599-4124 and 1599-4125 of section 2A and section 32 contained in the engrossed Bill making appropriations for the fiscal year 2005 to provide for supplementing certain existing appropriations and for certain other activities and projects (see House, No. 2010, amended), reported, in part, in each instance, that items 1599-4123 and 1599-4124 (contained in section 2A) and section 32 stand (as passed by the General Court).

Under suspension of the rules, on motion of Mr. O'Flaherty of Chelsea, item 1599-4123 (contained in section 2A), which had been vetoed by the Governor, was considered, as follows:

"1599-4123 For a reserve for the payment of a portion of the salary adjustments and other economic items provided for in various collective bargaining agreements negotiated between the board of trustees of the University of Massachusetts and: the Massachusetts Society of Professors/Faculty Staff Union/MTA/NEA; the Professional Staff Union, Local 509, Service Employees' International Union, AFL-CIO/CLC; the University Staff Association/Massachusetts Teachers Association/NEA; the International Brotherhood of Police Officers, Local 432, Units A and B; the International Brotherhood of Teamsters, Local 25 (2 units); the University of Massachu-

James Vesey, sick leave bank.

Recess.

Supplemental Appropriations Bill, disapprovals.

sets and the International Brotherhood of Police Officers, Local 399; the American Federation of State, County and Municipal Employees, AFL-CIO, Council 93, Local 507; the National Association of Government Employees, Local 245; the American Federation of Teachers, Local 1895, AFL-CIO, Faculty Federation; the American Federation of Teachers, Local 1895, AFL-CIO, Educational Services; International Association of Police Officers, Local 399; the Massachusetts Society of Professors/Lowell; the American Federation of State, County and Municipal Employees, AFL-CIO, Council 93, Local 1776; the Graduate Employee Organization, Local 2322, UAW; the Service Employees' International Union, Local 509, Unit B; the Service Employees' International Union, Local 254, AFL-CIO, CLC, Clerical-Technical Unit; the Service Employees' International Union, Local 254, AFL-CIO, CLC, Professional Mid-Management Unit; the National Association of Government Employees; the Graduate Employee Organization, Local 1596, UAW; and the Graduate Employee Organization Boston, Local 1596, UAW; provided, that the payments shall fund the fiscal year 2004 payments associated with salary adjustments and other economic items provided for in the collective bargaining agreements; provided further, that, not later than 30 days from the effective date of this act, employees covered by the terms of the collective bargaining agreements in this item shall be paid a lump sum amount equal to the difference between: (a) the salary specified in the relevant agreement; and (b) the salary each received for the period from July 6, 2003 to December 31, 2003; provided further, that employees covered by the collective bargaining agreements in this item shall, subject to appropriation in fiscal year 2005 and thereafter, continue to be paid salaries in effect for fiscal 2004 until the parties to the collective bargaining agreements reach agreement or lawful impasse in negotiations for successor agreements; provided further, that the president of the University of Massachusetts shall expend these funds for such salary adjustments and other economic items in accordance with this item and the terms of the collective bargaining agreements listed in this item; provided further, that funds appropriated in this item shall be transferred by the comptroller to the University based upon a schedule submitted by the president of the University of Massachusetts; provided further, that any requirement that the employer shall submit to the general court a request for an appropriation necessary to fund cost items in a collective bargaining agreement shall not apply to the funding for

Supplemental Appropriations Bill, disapprovals.

salary adjustments and other economic items set forth in this item for the collective bargaining agreements in this item, notwithstanding chapter 150E of the General Laws, including subsection (c) of section 7 of said chapter 150E or any other general or special law to the contrary nor the expiration of any collective bargaining agreement and any contractual requirements relative to allocation of appropriations which would interfere with or impede the payment of salary adjustments and other economic items provided for in this item for the collective bargaining agreements listed in this item and shall not apply to the payment of such salary adjustments and other economic items, notwithstanding the expiration of any collective bargaining agreement; provided further, that notwithstanding said chapter 150E or any other general or special law to the contrary, appropriation or expenditure of funds in this item shall not constitute or create an obligation for the commonwealth or any institution of public higher education to provide any other salary adjustments or economic benefits associated with any fiscal year prior to or other than fiscal year 2004, as otherwise provided in the collective bargaining agreements 21,651,754”.

Higher education salaries item 1599-4123 stands, yea and nay No. 7.

The question on passing said item, notwithstanding the objections of the Governor, was determined by yeas and nays, as required by the Chapter I, Section I, Article II of the Constitution; and on the roll call 148 members voted in the affirmative and 0 in the negative.

[See Yea and Nay No. 7 in Supplement.]

[Mr. Canessa of New Bedford answered “Present” in response to his name.]

Therefore item 1599-4123 was passed, notwithstanding the objections of the Governor (more than two-thirds of the members present and voting having voted in the affirmative). Sent to the Senate for its action.

Under suspension of the rules, on motion of Miss Reinstein of Revere, item 1599-4124 (contained in section 2A), which had been vetoed by the Governor, was considered, as follows:

“1599-4124 For a reserve for the payment of a portion of the salary adjustments and other economic items provided for in various collective bargaining agreements negotiated between the board of higher education and: the Association of Professional Administrators; and the American Federation of State, County and Municipal Employees, Council 93, Local 1067, AFL-CIO; provided, that the payments shall fund the fiscal year 2004 payments associated with salary adjustments and other economic items provided for in such collective agreements; provided further, that no later than 30 days from the effective

tive date of this act employees covered by the collective bargaining agreements listed in this item shall be paid a lump sum amount equal to the difference between (a) the salary specified in the relevant agreement; and (b) the salary each received for the period from July 6, 2003 through December 31, 2003; provided further, that employees covered by the collective bargaining agreements in this item shall, subject to appropriation in fiscal year 2005 and thereafter, continue to be paid salaries in effect for fiscal 2004 until the parties to the collective bargaining agreements reach agreement or other lawful impasse in negotiations for successor agreements; provided further, that the chancellor of higher education shall expend these funds for such salary adjustments and other economic items in accordance with this item and the terms of the collective bargaining agreements in this item; provided further, that funds appropriated in this item shall be transferred by the comptroller to the board of higher education, based upon a schedule submitted by the chancellor of higher education; provided further, that any requirement that the employer shall submit to the general court a request for an appropriation necessary to fund cost items in a collective bargaining agreement shall not apply to the funding for salary adjustments set forth in this item for the collective bargaining agreements in this item, notwithstanding chapter 150E of the General Laws, including subsection (c) of section 7 of said chapter 150E, or any other general or special law to the contrary or the expiration of any collective bargaining agreement and any contractual requirements relative to allocation of appropriations which would interfere with or impede the payment of salary adjustments and other economic items provided for in this item for the collective bargaining agreements listed in this item and shall not apply to the payment of such salary adjustments and other economic items, notwithstanding the expiration of any collective bargaining agreement; provided further, that notwithstanding said chapter 150E or any other general or special law to the contrary, appropriation or expenditure of funds in this item shall not constitute or create an obligation for the commonwealth or any institution of public higher education to provide any other salary adjustments or economic benefits associated with any fiscal year prior to or other than fiscal year 2004, as otherwise provided in the collective bargaining agreements 8,291,573”.

The question on passing said item, notwithstanding the objections of the Governor, was determined by yeas and nays, as required by Higher education salaries

item 1599-4124 stands, yea and nay No. 8.

the Chapter I, Section I, Article II of the Constitution; and on the roll call 148 members voted in the affirmative and 0 in the negative.

[See Yea and Nay No. 8 in Supplement.]

[Mr. Canessa of New Bedford answered "Present" in response to his name.]

Therefore item 1599-4124 was passed, notwithstanding the objections of the Governor (more than two-thirds of the members present and voting having voted in the affirmative). Sent to the Senate for its action.

Under suspension of the rules, on motion of Ms. Spiliotis of Peabody, section 32, which had been vetoed by the Governor, was considered, as follows:

"SECTION 32. Employees covered by the terms of the collective bargaining agreements in items 1599-4123 and 1599-4124 of section 2A who, after July 1, 2003, retired or otherwise terminated employment, or the beneficiary of such an employee who died after July 1, 2003, shall be paid, not later than 30 days after the effective date of this act, a lump sum amount equal to the difference between: (a) the salary specified in the relevant agreement; and (b) the salary each received for the time they were employed during the period July 6, 2003 to June 30, 2004; provided, however, that notwithstanding chapter 32 of the General Laws, the amount of the retirement allowance paid under said chapter 32 to an employee who prior to retirement was covered by the terms of the collective bargaining agreements in said items 1599-4123 and 1599-4124 of said section 2A and who retired after July 6, 2003, shall be calculated as though the employee's regular compensation for any period of employment from July 6, 2003 to June 30, 2004 had been received by the employee in accordance with such agreement and appropriate retirement deductions withheld. Appropriate adjustments shall be made to an employee's retirement allowance, including payments retroactive to the effective date of retirement."

Higher education salaries section 32 stands, yea and nay No. 9.

After debate on the question on passing said section, notwithstanding the objections of the Governor, the sense of the House was determined by yeas and nays, as required by the Chapter I, Section I, Article II of the Constitution; and on the roll call 148 members voted in the affirmative and 0 in the negative.

[See Yea and Nay No. 9 in Supplement.]

[Mr. Canessa of New Bedford answered "Present" in response to his name.]

Therefore section 32 was passed, notwithstanding the objections of the Governor (more than two-thirds of the members present and voting having voted in the affirmative). Sent to the Senate for its action.

Orders of the Day.

Offenders, ankle bracelets.

The engrossed Bill relative to the use of tamper free ankle bracelets for the tracking of certain offenders (see House, No. 43), being a printed copy of Section 14A contained in the engrossed Bill making appropriations for the fiscal year 2005 to provide for supplementing certain existing appropriations and for certain other activi-

ties and projects (House, No. 2010, amended), which had been returned by His Excellency the Governor with recommendation of amendment (for message, see Attachment A of House, No. 42), was considered.

The committee on Bills in the Third Reading reported recommending that the amendment recommended by the Governor be considered in the following form:

By striking out all after the enacting clause and inserting in place thereof the text contained in said Attachment A of said House, No. 42 (as perfected by said committee); and by inserting before the enacting clause an emergency preamble.

The report was accepted.

The amendment recommended by the Governor then was adopted. Sent to the Senate for its action.

The engrossed Bill relative to abstinence education project funds (see House, No. 44), being a printed copy of Section 28A contained in the engrossed Bill making appropriations for the fiscal year 2005 to provide for supplementing certain existing appropriations and for certain other activities and projects (House, No. 2010, amended), which had been returned by His Excellency the Governor with recommendation of amendment (for message, see Attachment B of House, No. 42), was considered.

Abstinence education project funds.

The committee on Bills in the Third Reading reported recommending that the amendment recommended by the Governor be considered in the following form:

By striking out all after the enacting clause and inserting in place thereof the text contained in said Attachment B of said House, No. 42 (as perfected by said committee); and by inserting before the enacting clause an emergency preamble.

The report was accepted.

After debate on the question on adoption of the amendment recommended by the Governor, Mr. Jones of North Reading moved that further consideration thereof be postponed until Wednesday, March 23 and specially assigned to the hour of one o'clock P.M.

After debate on the motion to postpone, the sense of the House was taken by yeas and nays, at the request of the same member; and on the roll call 22 members voted in the affirmative and 127 in the negative.

Motion to postpone negatived, yea and nay No. 10.

[See Yea and Nay No. 10 in Supplement.]

Therefore the motion to postpone was negatived.

On the question on adoption of the amendment recommended by the Governor, the sense of the House was taken by yeas and nays, at the request of Mr. O'Flaherty of Chelsea; and on the roll call 44 members voted in the affirmative and 105 in the negative.

Amendment rejected, yea and nay No. 11.

[See Yea and Nay No. 11 in Supplement.]

Therefore the amendment recommended by the Governor was rejected.

Mr. Golden of Lowell then moved that the bill be amended by striking out all after the enacting clause and inserting in place thereof the following:

Supplemental
Appropriations
Bill,
disapprovals.

“SECTION 1. Section 140 of chapter 352 of the acts of 2004 is hereby repealed.

SECTION 2. This act shall take effect as of February 24, 2005.”;

By striking out the title and inserting in place thereof the following title: “An Act relative to the abstinence education project of the Department of Public Health.”; and by inserting before the enacting clause the following emergency preamble:

“Whereas, The deferred operation of this act would tend to defeat its purpose, which is to direct forthwith the use of certain funds of the department of public health, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.”

The amendments were adopted. Sent to the Senate for its action.

Recess.

Recess.

At fourteen minutes after four o'clock P.M., the Chair (Mrs. Harkins of Needham) declared a recess subject to the call of the Chair; and at twenty-eight minutes before five o'clock the House was called to order with Mrs. Harkins in the Chair.

Emergency Measures.

Sean
Glennon,
sick leave
bank.

The engrossed Bill establishing a sick leave bank for Sean Glennon, an employee of the Trial Court of the Commonwealth (see House, No. 138), having been certified by the Clerk to be rightly and truly prepared for final passage, was considered, the question being on adopting the emergency preamble.

A separate vote was taken, as required by the provisions of Article XLVIII (as amended by Article LXVII) of the Amendments to the Constitution; and the preamble was adopted, by a vote of 51 to 0. Sent to the Senate for concurrence.

Bill
enacted.

Subsequently, the Senate having concurred in adoption of the emergency preamble, the bill (which originated in the House) was passed to be enacted; and it was signed by the acting Speaker and sent to the Senate.

Offenders,
ankle
bracelets.

The engrossed Bill relative to the use of tamper free ankle bracelets for the tracking of certain offenders (see House, No. 43, amended), having been certified by the Clerk to be rightly and truly prepared for final passage, was considered, the question being on adopting the emergency preamble.

A separate vote was taken, as required by the provisions of Article XLVIII (as amended by Article LXVII) of the Amendments to the Constitution; and the preamble was adopted, by a vote of 42 to 0. Sent to the Senate for concurrence.

Order.

Next
sitting.

On motion of Mr. DiMasi of Boston,—
Ordered, That when the House adjourns today, it adjourn to meet tomorrow at eleven o'clock A.M.

Adjournment in Memory of Frank A. Antonelli.

Mr. Miceli of Wilmington then moved that when the House adjourns, it do so in respect to the memory of Frank A. Antonelli, a member of the House from Tewksbury in 1973 and 1974; and the motion prevailed.

Accordingly, at twenty-one minutes before five o'clock P.M., on motion of Mr. Binienda of Worcester (Mrs. Harkins of Needham being in the Chair), the House adjourned, to meet tomorrow at eleven o'clock A.M., in an Informal Session.