

JOURNAL OF THE HOUSE.

Thursday, May 22, 2008.

Met according to adjournment, at eleven o'clock A.M., with Mr. Donato of Medford 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:

God, Our Creator, we believe that You and Your sometimes mysterious ways give meaning to our daily lives and activities. Your always-available assistance enables us to cope, more easily, with the day's opportunities, challenges and problems. On Monday, we will observe and celebrate Memorial Day, a day to remember and to pray for the men and women who died in the service of this nation. May we, today, be thankful for the freedoms and blessings which we enjoy as a result of the personal sacrifices of our veterans and their families. Teach us to work together in building a society in which the rights, religious beliefs and values of all are recognized and respected. Help us to continue to be an example around the world of a nation in which all live together in peace and unity.

Prayer.

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

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

Pledge of allegiance.

Statement Concerning Representative Kennedy of Brockton.

A statement of Mr. Rogers of Norwood concerning Mr. Kennedy of Brockton, 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 Kennedy of Brockton, will not be present in the House Chamber for today's sitting due to his recent surgery. Any roll calls that he may miss today will be due entirely to the reason stated.

Statement concerning Representative Kennedy of Brockton.

Statement of Representative Stanley of Waltham.

A statement of Mr. Stanley of Waltham 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 I will not be present in the House Chamber for a portion of today's sitting due to a previously scheduled medical appointment. Any roll calls that I may miss today will be due entirely to the reason stated.

Statement of Representative Stanley of Waltham.

Resolutions.

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

Federations of
Gujarati
Association.

Resolutions (filed by Messrs. DiMasi of Boston and Golden of Lowell) congratulating the Federations of Gujarati Association in North America;

Norma
Shapiro.

Resolutions (filed by Mr. Rushing of Boston) congratulating Norma Shapiro on the occasion of the presentation of the Roger Baldwin Award;

Nancy
Legan.

Resolutions (filed by Mr. Kennedy of Brockton) congratulating Nancy Legan on the occasion of her retirement as principal of the Lawrence W. Pingree Primary School and for her thirty-four years of service to the Commonwealth as a public school educator and administrator;

Roy H.
Duquette.

Resolutions (filed by Mr. Kocot of Northampton) honoring Father Roy H. Duquette on the golden anniversary of his priestly ordination; and

John
Creavin.

Resolutions (filed by Mr. Vallee of Franklin) honoring Mr. John Creavin on his retirement from the Massachusetts Bay Transportation Authority after twenty-three years of service;

Mr. Scaccia of Boston, 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. Driscoll of Braintree, the resolutions (reported by the committee on Bills in the Third Reading to be correctly drawn) were considered forthwith; and they were adopted.

Petitions.

Petitions severally were presented and referred as follows:

Lincoln, health
insurance.

By Mr. Conroy of Wayland, joint petition (accompanied by bill, House, No. 4775) of Thomas P. Conroy and Susan C. Fargo (by vote of the town) that the town of Lincoln be authorized to establish a post-employment health insurance trust fund for contribution to health insurance premiums for retired employees of said town;

Fall River,
fire chief.

By Mr. Rodrigues of Westport, joint petition (accompanied by bill, House, No. 4776) of Joan M. Menard and others (with the approval of the mayor and city council) that the mayor of the city of Fall River be authorized to appoint the fire chief and the board of fire commissioners of said city; and

Hudson,
police
captain.

By Mrs. Walrath of Stow, joint petition (accompanied by bill, House, No. 4777) of Patricia A. Walrath and Pamela P. Resor (by vote of the town) relative to exempting the position of police captain in the town of Hudson from the provisions of civil service law;

Severally to the committee on Public Service.

Severally sent to the Senate for concurrence.

Paper from the Senate.

North Carver
water
district.

The engrossed Bill establishing the North Carver water district (see Senate, No. 2308), which had been returned to the Senate by His Excellency the Governor with recommendation of amendments (for message, see Senate, No. 2483), came from said branch with the endorsement that it had adopted said amendments in the following form (as approved by the Senate committee on Bills in the Third Reading):

In section 1, in lines 19 and 20, by inserting after the word "federal", in each instance, the words "or state";

In section 2, in line 1, by inserting after the word "created" the words "within the town of Carver, a body politic and corporate and political subdivision to be known as";

In section 3, in line 5, by striking out the word "not";

In section 4, in paragraph (f), by striking out the last sentence and inserting in place thereof the following three sentences: "If an owner fails to comply with an order of the commission relating to any such structure within a reasonable time to be fixed in the order, the commission may discontinue and remove the tracks, conduits, pipes, wires, poles or other property, and may relocate them, and the cost of the discontinuance, removal or relocation shall be repaid to the commission by the owner. No discontinuance, removal or relocation shall entitle the owner of the affected property to any damages on account thereof, except for reimbursement of costs as provided in this section. This section shall not apply to facilities on property of the commonwealth under the control of the department of highways or the department of conservation and recreation or installed under licenses or permits granted by those departments, except with the department's approval."; and

In section 5, in paragraph (a), by adding the following four sentences: "In order to provide for the collection and enforcement of any charges for fees, rates and other charges, the commission shall have the benefit, without further acceptance of sections 42A to 42F, inclusive, of chapter 40 of the General Laws or filing of any certificate relating thereto, of liens for unpaid fees, rates, rents, assessments and other charges as provided in sections 42A and 42B of said chapter 40 to the extent applicable and consistent with this act. The commission shall certify to the town tax collector any fee, rate or charge for which a lien has arisen, and the assessors shall add them to the property tax assessed on the property to which it relates when the annual assessment of town property taxes is made. The town tax collector shall act as collector for the district and collect the rate, fee or charge as provided in section 42D of said chapter 40. The collector or town treasurer shall pay over to the district any amounts collected on account of such rates, fees or charges.";

By striking out paragraph (d) and inserting in place thereof the following paragraph:

"(d) The district may make special assessments under sections 42G, 42H, 42I and 42K of chapter 40 of the General Laws by vote of the commission. The commission shall certify any district special assessment or betterment to the town assessors, and the assessors shall commit them to the town tax collector as provided in chapter 80 of the General Laws. The town tax collector shall act as collector for the district and collect any betterments or special assessments as provided in chapter 80. The collector shall include on municipal lien certificates of the town any district water rates, fees or charges that are liens, and shall issue certificates under section 12 of said chapter 80 to dissolve liens for special assessments or betterments of the district when such assessments or betterments have been paid in full or abated."; and

North Carver

water
district.

By striking out paragraph (h).

Under suspension of Rule 35, on motion of Ms. Gifford of Wareham, the amendments (reported by the committee on Bills in the Third Reading to be correctly drawn) were considered forthwith; and they were adopted, in concurrence.

Reports of Committees.

Anthony F.
Zanette,
sick leave.

By Mr. Scaccia of Boston, for the committee on Rules and the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the joint petition of Geoffrey D. Hall and Susan C. Fargo for legislation to establish a sick leave bank for Anthony F. Zanette, an employee of the University of Massachusetts Medical School. Under suspension of the rules, on motion of Mr. Linsky of Natick, the report was considered forthwith. Joint Rule 12 was suspended; and the petition (accompanied by bill) was referred to the committee on Public Service. Sent to the Senate for concurrence.

By Mr. Scaccia of Boston, for the committees on Rules of the two branches, acting concurrently, asking to be discharged from further consideration

Housing
projects.

Of the Bill establishing a special task force to study smart growth housing projects (House, No. 162);

Job
creation.

Of the Resolve supporting economic opportunities in the Commonwealth (House, No. 1870);

State
websites,
advertising.

Of the Resolve establishing a special commission to conduct an investigation and study relative to permitting advertising on state websites (House, No. 3253);

International
agreements.

Of the Bill providing for the creation of a special commission relative to the impact on the Commonwealth of Massachusetts of the World Trade Organization and similar international agreements (House, No. 4705); and

Early
education.

Of the Bill relative to early education and care (House, No. 4706);

And recommending that the same severally be referred to the House committee on Rules.

Under Rule 42, the reports severally were considered forthwith; and they were accepted. Severally sent to the Senate for concurrence in the discharge of the committee.

Westport, land.

By Mr. Flynn of Bridgewater, for the committee on Bonding, Capital Expenditures and State Assets, on House, No. 4664, a Bill relative to authorizing the directing the Commissioner of Capital Asset Management and Maintenance to convey certain land in the town of Westport (House, No. 4778).

Deerfield, land.

By the same member, for the same committee, on House, No. 4669, a Bill releasing certain land in the town of Deerfield from the operation of an agricultural preservation (House, No. 4779).

Sunderland,
land.

By the same member, for the same committee, on House, No. 4670, a Bill providing for a partial release of certain land in Sunderland from the operation of an agricultural preservation restriction (House, No. 4780).

Somerville,
easements.

By the same member, for the same committee, on House, No. 4671, a Bill authorizing the Commissioner of Capital Asset Management and Maintenance to grant easements in the city of Somerville (House, No. 4781).

Senior
centers.

By the same member, for the same committee, on House, No. 4723, a Bill establishing a grant program for senior citizens centers (House, No. 4782) [Representative Provost of Somerville dissenting].

Film industry,
tax credits.

By Mr. Binienda of Worcester, for the committee on Revenue, on House, No. 4444, a Bill relative to the motion picture industry (House, No. 4784) [Senator O'Leary, and Representatives Rush of Boston, D'Amico of Seekonk and Barrows of Mansfield dissenting].

Severally read; and referred, under Rule 33, to the committee on Ways and Means.

District
improvement
financing.

By Mr. Walsh of Lynn, for the committee on Community Development and Small Business, on a petition, a Bill relative to district improvement financing (printed as Senate, No. 131).

Milk,
coupons.

By Mr. Smizik of Brookline, for the committee on Environment, Natural Resources and Agriculture, on a petition, a Bill relative to coupon use for the purchase of milk (House, No. 780).

Rivers,
protection.

By the same member, for the same committee, on a petition, a Bill providing protection for the rivers in the Commonwealth (House, No. 3852).

Mercury
management.

By the same member, for the same committee, on House, No. 796, a Bill relative to mercury management (House, No. 4773).

Warehousing.

By Mr. O'Flaherty of Chelsea, for the committee on Judiciary, on a petition, a Bill clarifying warehousing (House, No. 1488).

Hypodermic
syringes.

By the same member, for the same committee, on a petition, a Bill relative to public safety officers and safe hypodermic syringes (House, No. 1526, changed in line 10 by striking out the words "the arresting police officer(s)" and inserting in place thereof the words "another person").

Animal
fighting,
penalty.

By the same member, for the same committee, on a petition, a Bill relating to spectating at or creating depictions of animal fighting or cruelty (House, No. 1527).

Animal
fighting.

By the same member, for the same committee, on a petition, a Bill relative to the penalties for aiding or being present at an exhibition of fighting animals (House, No. 1529).

Breast feeding
in public.

By the same member, for the same committee, on House, Nos. 1439 and 1568, a Bill relative to nursing mothers (House, No. 1568).

Superior Court,
settlement.

By the same member, for the same committee, on a petition, a Bill granting discretion to the Superior Court to allocate certain settlement proceeds (House, No. 1622).

Liability waivers.

By the same member, for the same committee, on Senate, No. 874 and House, No. 1625, a Bill to prohibit the use of certain liability waivers as against public policy (House, No. 1625).

Homestead
Act.

By the same member, for the same committee, on a petition, a Bill relative to the Homestead Act (House, No. 1675).

Notaries
public.

By the same member, for the same committee, on House, No. 1642, a Bill regulating notaries public to protect consumers from fraud and other abuses (House, No. 4774).

Sharon,
easement.

Gary Tuck,
sick leave.

By Mr. Pedone of Worcester, for the committee on Municipalities and Regional Government, on a message from His Excellency the Governor, a Bill relative to the granting of an easement by the town of Sharon (printed in House, No. 4738).

By Mr. Kaufman of Lexington, for the committee on Public Service, on a petition, a Bill establishing a sick leave bank for Gary Tuck, an employee of the Department of Revenue (House, No. 4754).

Severally read; and referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

Bills
re-enacted.

Engrossed Bills.

Engrossed Bills

Further regulating the disclosure of certain financial information to division of medical assistance exempting certain bank fees (see House, No. 975, amended); and

Authorizing the city of Methuen to lease a portion of a certain building to the Methuen Municipal Employees Federal Credit Union (see House, No. 4325, amended);

(Which severally originated in the House);

Severally having been certified by the Clerk to be rightly and truly prepared for final passage, were passed to be re-enacted, in their amended form; and they were signed by the acting Speaker and sent to the Senate.

Harwich,
real
property.

Orders of the Day.

The engrossed Bill authorizing the town of Harwich to acquire certain real property (see House, No. 4257), which had been returned to the House by His Excellency the Governor with recommendation of amendment (for message, see House, No. 4551) was considered.

The amendment recommended by the Governor then was adopted in the following form (as approved by the committee on Bills in the Third Reading):

In section 1 by striking out the second sentence and inserting in place thereof the following sentence: "The parcel is shown on Assessors Map as No. 48 parcel T1-3."

Sent to the Senate for concurrence.

Third reading bill
amended.

The House Bill authorizing the town of Provincetown to grant a certain easement (House, No. 4015) was read a third time.

The committee on Bills in the Third Reading reported recommending that the bill be amended by striking out section 1 and inserting in place thereof the following section:

"SECTION 1. The town of Provincetown has acquired a certain parcel as park, recreation and conservation land known as the former railroad right of way and running from Howland street to the Truro town line. In order to continue to allow access to a single family residence known as 320 Read Bradford street in the town of Provincetown, the town, acting by and through its board of selectmen, may grant a permanent easement for the purposes of access to the property known as 320 Rear Bradford street in said town and shown as 'Parcel 1 Area = 1.34± Acres' on a plan of land entitled 'Plan of

Land in Provincetown as Surveyed for Philip C. Malicoat et ux' dated November 1972 prepared by W.G. Slade Surveyor and recorded with the Barnstable county registry of deeds in Book 263, Page 58.

The easement in the park, recreation and conservation parcel is described as follows:

An easement, sixteen feet in width, bounded and described as follows:

Northerly by land of the grantor, a distance of one thousand eight hundred twenty-two and 08/100 (1,822.08) feet;

Easterly by Snail Road, a distance of sixteen and no/100 (16.00) feet;

Southerly by other land of the grantor, a distance of one thousand eight hundred seventeen and 75/100 (1,817.75) feet; and

Westerly by other land of the grantor, a distance of sixteen and no/100 (16.00) feet.

Said easement is shown on a plan entitled 'Plan of Land in Provincetown Showing a Proposed Easement Made for Conrad Malicoat' dated July 11, 2007 by Slade Associates, Inc. Said plan shall be recorded at the Barnstable county registry of deeds.

This easement in the town of Provincetown shall provide access only to the existing residence at 320 Rear Bradford street and shall not provide access to any other parcel or use."

The amendment was adopted; and the bill (House, No. 4015, amended) was passed to be engrossed. Sent to the Senate for concurrence.

Third
reading
bills.

Senate bills

Exempting Timothy R. Grabarz and Thomas E. Cady from the maximum age requirement for appointment as a police officer in the town of Raynham (Senate, No. 1621); and

Further regulating the group insurance program (Senate, No. 2297);

Severally reported by the committee on Bills in the Third Reading to be correctly drawn, were read a third time; and they were passed to be engrossed, in concurrence.

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House bills

Increasing certain retirement benefits (House, No. 2594) (its title having been changed by the committee on Bills in the Third Reading);

Relative to election in the city of Everett (House, No. 4097);

Relative to the conservation commission of the town of West Stockbridge (House, No. 4100);

Authorizing Daniel Wesinger to take the civil service examination for firefighter in the town of Arlington (House, No. 4123) (its title having been changed by the committee on Bills in the Third Reading);

Authorizing the board of assessors of Braintree to grant tax abatements to certain military personnel (House, No. 4240);

Relative to firearms licensing in the town of Orange (House, No. 4278) (its title having been changed by the committee on Bills in the Third Reading);

Relative to preliminary elections in the city of Newton (House, No. 4397);

Third
reading
bills.

Authorizing the town of Arlington to establish a special account for the maintenance of its bodies of water (printed in House, No. 4471) (its title having been changed by the committee on Bills in the Third Reading);

Establishing a special fund in the town of Millis (House, No. 4544);

Validating the acts and proceedings to the 2007 spring annual town meeting and 2007 fall annual town meeting to the town of Natick (printed in House, No. 4623);

Authorizing the city of Worcester to provide certain retirement and medical benefits to firefighter Mark S. Stomski (House, No. 4711); and

Establishing a sick leave bank for Samuel Pill, an employee of the Trial Court (House, No. 4722);

Severally reported by the committee on Bills in the Third Reading to be correctly drawn, were read a third time; and they were passed to be engrossed. Severally sent to the Senate for concurrence.

Senate bills

Regulating volunteer denistry (Senate, No. 1323);

Permitting the reinstatement of Roger B. Cataldo to the police department of the town of Southwick (Senate, No. 1529, amended);

Authorizing the town of Milton to issue one additional license for the sale of all alcoholic beverages to be drunk on the premises of a certain restaurant (Senate, No. 2485);

Authorizing the town of Sandwich to grant an additional license for the sale of all alcoholic beverages not to be drunk on the premises (Senate, No. 2524);

Restricting the authority of the Holyoke Power & Electric Company and the Holyoke Water Power Company (Senate, No. 2554);

Further regulating the Essex Regional Retirement System (Senate, No. 2635); and

Converting the Liquor Liability Joint Underwriting Association into the Hospitality Mutual Insurance Company (Senate, No. 2668); and

House bills

To improve long term care career ladder grant program (House, No. 613);

Relative to services offered in assisted living facilities (House, No. 621);

Relating to Division of Insurance maintenance assessments (House, No. 1006);

Relating to liability insurance (House, No. 1007);

Relating to fire insurance (House, No. 1011);

Relative to affiliate transfers (House, No. 1026);

Relative to policies of insurance (House, No. 1050);

Relative to the delivery of loss information to an insured from commercial insurers (House, No. 1087);

Relative to group life insurance (House, No. 1094);

Relative to volunteer dentistry (House, No. 2268);

Relative to charges associated with condominiums in tax title (House, No. 2990);

Relative to the use of out of state driver's licenses as identification (House, No. 3555, changed);

Relative to red and blue flashing, rotating or oscillating lights (House, No. 3615);

Authorizing the city of Fall River retirement board to increase the pension payable to Dennis O'Neil (House, No. 3980);

Authorizing the late filing of a tax abatement application for the owners of Three Fuller Place in Cambridge (House, No. 4226);

Relative to real property tax deferrals in the town of Lexington (House, No. 4262);

Relative to an intermunicipal agreement and betterment assessments in the town of Lunenburg (House, No. 4543);

Authorizing the sale of certain land by the city of Haverhill in the town of Boxford (House, No. 4599);

Establishing a board of water and sewer commissioners in the town of Plainville (House, No. 4685);

Designating a certain bridge in the town of Sheffield (House, No. 4703);

Recognizing the profession of interior designers to bid on state contracts (House, No. 4731);

Establishing a sick leave bank for Jesse Goguen (House, No. 4736);

Reducing the minimum seating capacity of certain restaurants in the town of Reading (House, No. 4737);

Establishing a sick leave bank for James Coveney, an employee of the Trial Court (House, No. 4741, changed); and

Relative to the Route 3A corridor in the town of Weymouth (House, No. 4917);

Severally were read a second time; and they were ordered to a third reading.

Children.

The House Bill further protecting children (House, No. 3870) was read a second time.

Pending the question on ordering the bill to a third reading, it was recommitted to the committee on Judiciary, on motion of Mr. O'Flaherty of Chelsea.

Recess.

Recess.

At twenty-six minutes before twelve o'clock noon, on motion of Ms. Rogeness of Longmeadow (Mr. Donato of Medford being in the Chair), the House recessed until the hour of one o'clock P.M.; and at eight minutes after one o'clock the House was called to order with the Speaker in the Chair.

Brockton, housing land.

Engrossed Bill — Land Taking.

The engrossed Bill authorizing the city of Brockton to convey certain park land to the Brockton Housing Authority (see House, No. 4164, amended) (which originated in the House), having been certified by the Clerk to be rightly and truly prepared for final passage, was put upon its final passage.

Bill enacted (land taking), yea and nay No. 367.

On the question on passing the bill to be enacted, the sense of the House was taken by yeas and nays (this being a bill providing for the taking of land or other easements used for conservation purposes, etc., as defined by Article XCVII of the Amendments to the Constitution); and on the roll call (Mr. Donato of Medford being in the Chair) 152 members voted in the affirmative and 0 in the negative.

[See Yea and Nay No. 367 in Supplement.]

Therefore the bill was passed to be enacted; and it was signed by the acting Speaker and sent to the Senate.

Oceans.

Paper from the Senate.

A report of the committee of conference on the disagreeing votes of the two branches with reference to the House amendments (striking out all after the enacting clause and inserting in place thereof the text contained in House document numbered 4527, amended; and striking out the title and inserting in place thereof a new title) to the Senate Bill relative to oceans (Senate, No. 2346, amended) (for report, see Senate, No. 2699), came from the Senate with the endorsement that it had been accepted by that branch.

Under suspension of the rules, on motion of Mr. Smizik of Brookline, the report (having been reported by the committee on Bills in the Third Reading to be correctly drawn) was considered forthwith.

Pending the question on acceptance of the report, in concurrence, further consideration thereof was postponed, on further motion of the same member, until after the noon recess.

Subsequently, the noon recess having terminated, the report was further considered.

After debate on the question on acceptance of the report, in concurrence, the sense of the House was taken by yeas and nays, at the request of Mr. Smizik; and on the roll call 154 members voted in the affirmative and 1 in the negative.

[See Yea and Nay No. 368 in Supplement.]

Therefore the report of the committee of conference (Senate, No. 2699) was accepted, in concurrence.

Conference committee report accepted, yea and nay No. 368.

Patient safety.

Orders of the Day.

The House Bill relative to patient safety (House, No. 2059) was read a second time.

The amendment previously recommended by the committee on Health Care Financing,— that the bill be amended by substitution of a bill with the same title (House, No. 4714),— was considered.

Pending the question on adoption of the amendment, Ms. Peisch of Wellesley moved to amend the proposed substitute bill in section 6, in lines 101 and 147, by inserting after the word “department”, in each instance, the words “in consultation with the relevant hospital accreditation organizations”; in section 6, in line 139, and in section 15, in line 1, by inserting after the word “health”, in each instance, the words “in consultation with the relevant hospital accreditation organizations.”.

The further amendments were rejected.

Ms. Canavan of Brockton then moved to amend the bill by striking out section 6 and inserting in place thereof the following section: “SECTION 6. Chapter 111 of the General Laws is hereby amended by adding the following 7 sections:—

Section 220. As used in sections 220 to 227, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:

‘Adjustment of standards’, the adjustment of nurse’s patient assignment standards in accordance with patient acuity according to, or in addition to, direct-care registered nurse staffing levels determined by the nurse manager, or his designee, using the patient acuity system developed by the department and any alternative patient acuity system utilized by hospitals, if said system is certified by the department.

‘Acuity’, the intensity of nursing care required to meet the needs of a patient; higher acuity usually requires longer and more frequent nurse visits and more supplies and equipment.

‘Assignment’, the provision of care to a particular patient for which a direct-care registered nurse has responsibility within his scope of practice, notwithstanding the provisions of any general or special law to the contrary.

‘Assist’, patient care that a direct-care registered nurse may provide beyond his patient assignments if the tasks performed are specific and time-limited.

‘Board’, the board of registration in nursing

‘Circulator’, a direct-care registered nurse devoted to tracking key activities in the operating room.

‘Department’, the department of public health.

‘Direct-care registered nurse’, a registered nurse who has accepted direct responsibility and accountability to carry out medical regimens, nursing or other bedside care for patients.

‘Facility’, a hospital licensed under section 51, the teaching hospital of the University of Massachusetts medical school, any licensed private or state-owned and state-operated general acute care hospital, an acute psychiatric hospital, an acute care specialty hospital, or any acute care unit within a state-operated facility as defined in 105 CMR 100.020. As used in sections 220 to 227, inclusive, this definition is not intended to include rehabilitation facilities or long-term acute care facilities.

‘Float nurse’, a direct-care registered nurse that has demonstrated competence in any clinical area that he may be requested to work and is not assigned to a particular unit in a facility.

‘Health Care Workforce’, personnel that have an effect upon the delivery of quality care to patients, including but not limited to, licensed practical nurses, unlicensed assistive personnel and/or other service, maintenance, clerical, professional and/or technical workers and other health care workers.

‘Nurse’s patient limit’, the maximum number of patients to be assigned to each direct-care registered nurse at 1 time on a particular unit.

‘Mandatory overtime’, any employer request with respect to overtime, which, if refused or declined by the employee, may result in an

Patient safety.

adverse employment consequence to the employee. The term overtime with respect to an employee, means any hours that exceed the predetermined number of hours that the employer and employee have agreed that the employee would work during the shift or week involved.

'Monitor in moderate sedation cases', a direct-care registered nurse devoted to continuously monitoring his patient's vital statistics and other critical symptoms.

'Nonassigned registered nurse', includes, but not limited to, any nurse administrator, nurse supervisor, nurse manager, or charge nurse that maintains his registered nurse licensing certification but is not assigned to a patient for direct care duties.

'Nurse manager', the registered nurse, or his designee, whose tasks include but are not limited to assigning registered nurses to specific patients by evaluating the level of experience, training, education of the direct-care nurse and the specific acuity levels of the patient.

'Nurse's patient assignment standard', the optimal number of patients to be assigned to each direct-care registered nurse at one time on a particular unit.

'Nursing care', care which falls within the scope of practice as defined in section 80B of chapter 112 or otherwise encompassed within recognized professional standards of nursing practice, including assessment, nursing diagnosis, planning, intervention, evaluation and patient advocacy.

'Overwhelming patient influx', an unpredictable or unavoidable occurrence at unscheduled or unpredictable intervals that causes a substantial increase in the number of patients requiring emergent and immediate medical interventions and care, a declared national or state emergency, or the activation of the health care facility disaster diversion plan to protect the public health or safety.

'Patient acuity system', a measurement system that is based on scientific data and compares the registered nurse staffing level in each nursing department or unit against actual patient nursing care requirements of each patient, taking into consideration the health care workforce on duty and available for work appropriate to their level of training and/or education, in order to predict registered nursing direct-care requirements for individual patients based on severity of patient illness. Said system shall be both practical and effective in terms of hospital implementation.

'Teaching hospital', a facility as defined in section 51 that meets the teaching facility definition of the American Association of Medical Colleges.

'Temporary nursing service agencies', as defined in section 72Y, as regulated by the department, also known as the nursing care pool.

Section 221. The department shall reevaluate the numbers that comprise the nurse's patient assignment standards and nurse's patient limits and the patient acuity system in the evaluation period and then every 3 years thereafter taking into consideration evolving technology or changing treatment protocols and care practices and other relevant clinical factors.

Section 222. (a) The department shall develop nurse's patient assignment standards which will be an ideal number of patients assigned to a direct-care registered nurse that will promote equal, high-quality, and safe patient care at all facilities. The standards shall form the basis of nurse staffing plans as set forth in section 224. The department shall use at least the following information to develop nurse's patient assignment standards for all facilities:

(1) Massachusetts specific data, including, but not limited to, the role of registered nurses in the commonwealth by type of unit, the current staffing plans of facilities, the relative experience and education of registered nurses, the variability of facilities, and the needs of the patient population;

(2) fluctuating patient acuity levels;

(3) variations among facilities and patient care units;

(4) scientific data related to patient outcomes, a rigorous analysis of clinical data related to patient outcomes and valid nationally recognized scientific evidence on patient care, facility medical error rates, and health care quality measures;

(5) availability of technology;

(6) treatment modalities within behavioral health facilities; and

(7) public testimony from the public and experts in the field.

(b) The nurse's patient assignment standards may be adjustable and flexed, as determined by the department, to take into consideration factors, including but not limited to, varying patient acuity, time of day and registered nurse experience. The number of patients assigned to each direct-care registered nurse shall not be averaged. The nurse's patient assignment standards shall not refer to a total number of patients and a total number of direct-care registered nurses on a unit and shall not be factored over a period of time.

(c) The department shall develop nurse's patient limits which represent the maximum number of patients to be safely assigned to each direct-care registered nurse at one time on a particular unit. The number of patients assigned to each direct-care registered nurse shall not be averaged and each limit shall pertain to only one direct-care registered nurse. Nurse's patient limits shall not refer to a total number of patients and a total number of direct-care registered nurses on a unit and shall not be factored over a period of time. A facility's failure to adhere to these nurse's patient limits shall result in non-compliance with this section and be subject to the enforcement procedures outlined herein and section 227.

(d) If the commissioner finds that, for any unit, it is not possible for the department to arrive at a rationally based limit utilizing available scientific data, he shall report to the clerks of the senate and the house of representatives who shall forward the same to the speaker of the house of representatives, the president of the senate, the chairs of the joint committee on public health, the joint committee on state administration and regulatory oversight, the commissioner of the division of health care financing and policy, and the nursing advisory board as defined in section 16H of chapter 6A, the reasons for the department's failure to arrive at a rationally based limit and the data necessary for the department to determine a limit by the next review period.

(e) The setting of nurse's patient assignment standards and nurse's patient limits for registered nurses shall not result in the understaffing or reductions in staffing levels of the health care workforce. The availability of the health care workforce enables registered nurses to focus on the nursing care functions that only registered nurses, by law, are permitted to perform and thereby helps to ensure adequate staffing levels.

(f) Nurse's patient assignment standards and nurse's patient limits shall be determined for the following departments, units or types of nursing care:— intensive care units; critical care units; neo-natal intensive care; burn units; step-down/intermediate care; operating rooms, (a) not to include a registered nurse working as a circulator (b) to be determined for registered nurse working as a monitor in moderate sedation cases; post-anesthesia care with the patient remaining under anesthesia; post-anesthesia care with the patient in a post-anesthesia state; emergency department overall; emergency critical care, provided that the triage, radio or other specialty registered nurse is not included; emergency trauma; labor and delivery with separate standards for (i) a patient in active labor, (ii) patients, or couplets, in immediate postpartum, and (iii) patients, or couplets, in postpartum; intermediate care nurseries; well-baby nurseries; pediatric units; psychiatric units; medical and surgical; telemetry; observational/out-patient treatment; transitional care; acute inpatient rehabilitation; specialty care unit; and any other units or types of care determined necessary by the department.

(g) The department shall jointly, with the department of mental health, develop nurse's patient assignment standards and nurse's patient limits in acute psychiatric care units. These standards and limits shall not interfere with the licensing standards of the Department of Mental Health.

(h) Nothing in this section shall exempt a facility that identifies a unit by a name or term other than those used in this section, from complying with the nurse's patient assignment standards and nurse's patient limits and other provisions established in this section for care specific to the types of units listed.

Section 223. (a) The department shall develop a patient acuity system, as defined in section one of this act. The department may also certify patient acuity systems developed or utilized by facilities. Said systems must include the standardized criteria determined by the department. The patient acuity shall be used by facilities to:—

- (1) assess the acuity of individual patients and assign a value, within a numerical scale, to each individual patient;
- (2) establish a methodology for aggregating patient acuity;
- (3) monitor and address the fluctuating level of acuity of each patient; and
- (4) supplement the nurse's patient assignments and indicate the need for adjustment of direct-care registered nurse staffing as patient acuity changes.

(5) Assess the need for health care workforce staff to ensure nurses' focus on the delivery of patient care.

(b) The patient acuity system designed by the department or other patient acuity system used by a facility and certified by the depart-

ment shall be used in determining adjustments in the number of direct-care registered nurses due to the following factors:—

- (1) the need for specialized equipment and technology;
- (2) the intensity of nursing interventions required and the complexity of clinical nursing judgment needed to design, implement and evaluate the patient's nursing care plan consistent with professional standards of care;
- (3) the amount of nursing care needed, both in number of direct-care registered nurses and skill mix of members of the health care workforce necessary to the delivery of quality patient care required on a daily basis for each patient in a nursing department or unit, the proximity of patients, the proximity and availability of other resources, and facility design;
- (4) appropriate terms and language that are readily used and understood by direct-care registered nurses; and
- (5) patient care services provided by registered nurses and the health care workforce.

(c) The patient acuity system shall include a method by which facilities may adjust a nurse's patient assignments within the limits determined by the department as follows:—

(1) A nurse manager or his designee shall adjust the patient assignments according to the patient acuity system whenever he determines the need.

(2) A nurse manager or his designee shall adjust the patient assignments when the department developed or department certified patient acuity system indicates a change in acuity of any particular patient to the extent that it triggers an alert mechanism tied to the aggregate patient acuity.

(3) A nurse manager or his designee shall be responsible for reassigning patients to be in compliance with the patient acuity system. The nurse manager may rearrange patient assignments within the direct-care registered nurses already under his management and may also utilize an available float nurse.

(4) At any time, any registered nurse can assess the accuracy of the patient acuity system as applied to a patient in his care.

Nothing contained in this section shall supersede or replace any requirements otherwise mandated by law, regulation or collective bargaining contract so long as the facility meets the requirements determined by the department.

Section 224. As a condition of licensing by the department each facility shall submit annually to the department a prospective staffing plan with a written certification that the staffing plan is sufficient to provide adequate and appropriate delivery of health care services to patients for the ensuing year. A staffing plan shall:—

- (1) incorporate information regarding the amount of licensed beds and critical technical equipment associated with each bed in the entire facility;
- (2) adhere to the nurse's patient assignment standards;
- (3) employ the department developed or facility developed or any alternative patient acuity system developed or utilized by a facility and certified by the department when addressing fluctuations in patient acuity levels that may require adjustments in registered nurse staffing levels as determined by the department;

(4) provide for orientation of registered nursing staff to assigned clinical practice areas, including temporary assignments;

(5) include other unit or department activity such as discharges, transfers and admissions, and administrative and support tasks that are expected to be done by direct-care registered nurses in addition to direct nursing care;

(6) include written reports of the facility's patient aggregate outcome data; and

(7) incorporate the assessment criteria used to validate the acuity system relied upon in the plan.

(8) include services provided by the health care workforce necessary to the delivery of quality patient care.

As a condition of licensing, each facility shall submit annually to the department an audit of the preceding year's staffing plan. The audit shall compare the staffing plan with measurements of actual staffing as well as measurements of actual acuity for all units within the facility assessed through the patient acuity system.

Section 225. (a) At the beginning of his shift, a direct-care registered nurse will be assigned to a certain patient or patients by his nurse manager who shall use his professional judgment in so assigning provided that the number of patients so assigned shall not exceed the nurse's patient limit associated with his unit.

(b) A nonassigned registered nurse may be included in the counting of the nurse to patient assignment standards only when that nonassigned registered nurse is providing direct care. When a nonassigned registered nurse is engaged in activities other than direct patient care, that nurse shall not be included in the counting of the nurse to patient assignments. Only a non-assigned registered nurse, who has demonstrated current competence to the facility to provide the level of care specific to the unit to which the patient is admitted, may relieve a direct-care registered nurse from said unit during breaks, meals, and other routine and expected absences.

(c) Nothing in this section shall prohibit a direct-care registered nurse from assisting with specific tasks within the scope of his practice for a patient assigned to another nurse.

(d) Each facility shall plan for routine fluctuations in patient census. In the event of an overwhelming patient influx, said facility must demonstrate that prompt efforts were made to maintain required staffing levels during said influx and that mandated limits were reestablished as soon as possible and no longer than a total of 48 hours after termination of said event unless approved by the department.

(e) For the purposes of complying with the requirements, except in cases of federal or state government declared public emergencies, a facility-wide emergency, no facility may employ mandatory overtime.

Section 226. (a) No facility shall directly assign any unlicensed personnel to perform nondelegatable licensed nurse functions to replace care delivered by a licensed registered nurse. Unlicensed personnel are prohibited from performing functions which require the clinical assessment, judgment and skill of a licensed registered nurse. Such functions shall include, but not be limited to:—

(1) nursing activities which require nursing assessment and judgment during implementation;

(2) physical, psychological, and social assessment which requires nursing judgment, intervention, referral or follow-up;

(3) formulation of the plan of nursing care and evaluation of the patient's response to the care provided;

(4) administration of medications,

(5) health teaching and health counseling.

(b) For purposes of compliance with this section, no registered nurse shall be assigned to a unit or a clinical area within a facility unless said registered nurse has an appropriate orientation in said clinical area sufficient to provide competent nursing care and has demonstrated current competency levels through accredited institutions and other continuing education providers.

Section 227. (a) If a facility can reasonably demonstrate to the department, with sufficient documentation as determined by the appropriate entity, the attorney general or the division of health care finance and policy, extreme financial hardship as a consequence of meeting the requirements set forth in this section, then the facility may apply to the department for a waiver of up to 9 months.

(b) As a condition of licensing, a facility required to have a staffing plan under this section shall make available daily on each unit the written nurse staffing plan to reflect the nurse's patient assignment standard and the nurse's patient limit as a means of consumer information and protection.

(c) The department shall enforce the following paragraphs (1) to (6), inclusive, as follows:—

(1) If the department determines that there is an apparent pattern of failure by a facility to maintain or adhere to nurse's patient limits in accordance with sections 220 to 226, inclusive, any such facility may be subject to an inquiry by the department to determine the causes of the apparent pattern. If after such inquiry, the department determines that an official investigation is appropriate and after issuance of a formal written notification to the facility, the department may conduct an investigation. Upon completion of the investigation and a finding of noncompliance, the department shall give formal written notification to the facility as to the manner in which the facility failed to comply with sections 220-226. Facilities shall be granted due process during the investigation which shall include the following:—

(a) notice shall be granted to facilities that are noncompliant with sections 220-226;

(b) facilities shall be afforded the opportunity to submit to the department, through written clarification, justifications for failure to comply with sections 220-226, if so determined by said department, including, but not limited to, patient outcome data, and other resources and personnel available to support the registered nurse and patients in the unit provided however that facilities shall bear the burden proof for any and all justification submitted to the department.

(c) based upon such justifications, the department may determine any corrective measures to be taken, if any. Such measures may include:—

- (i) an official notice of failure to comply;
 - (ii) the imposition of additional reporting and monitoring requirements;
 - (iii) revocation of said facility's license or registration; and
 - (iv) the closing of the particular unit that is noncompliant.
- (2) Failure to comply with limit nurse staffing requirements shall be considered prima facie evidence of noncompliance with this section.

(3) Failure to comply with the provisions of this section is actionable.

(4) Should the department issue an official notice of failure to comply as set forth in paragraph (1) of subsection (c) and subclause (i) of clause (c) of said paragraph (1) following submission to and adjudication by the department of justifications for failure to comply submitted by a facility pursuant to clause (b) of paragraph (1) of said subsection (c) to a facility found in noncompliance with limits, the facility must prominently post its notice within each noncompliant unit. Copies of the notice shall be posted by the facility immediately upon receipt and maintained for 14 consecutive days in conspicuous places including all places where notices to employees are customarily posted. The department will post said notices on its website immediately after a finding of noncompliance. The notice shall remain on the department's website for 14 consecutive days or until such noncompliance is rectified, whichever is greater.

(5) If a facility is repeatedly found in noncompliance based on a pattern of failure to comply as determined by the department, the commissioner may fine the facility an amount not more than \$3,000 for each finding of noncompliance.

(6) Any facility may appeal any measure or fine sought to be enforced by the department hereunder to the division of administrative law appeals and any such measure or fine shall not be so enforced by said department until final adjudication by said division.

(7) The department is authorized to promulgate rules and regulations necessary to enforce this section."; and

In section 10, in the first sentence, by inserting after the words "the Massachusetts Nurses Association" the following: ", 1199SEIU".

After remarks the further amendments were adopted.

Mr. Jones of North Reading and other members of the House then moved to amend the proposed substitute bill by adding the following section:

"SECTION 18. Notwithstanding any general or special law to the contrary, the provisions of this act shall not take effect until such time as the Division of Health Care Financing and Policy has conducted a cost study of the potential impact of imposing mandatory registered nurse staffing ratios on hospitals in Massachusetts. The study shall include an analysis of the costs posed to the state, including the impact on Medicaid, Commonwealth Care programs, Commonwealth Choice programs, the Group Insurance Commission, and state hospitals, including Department of Mental Health facilities and Department of Public Health facilities. The study shall also include analysis of the costs imposed on each hospital, the impact on other health care providers such as, but not limited to, extended care facil-

ities, home health care providers, and assisted living facilities. The study shall calculate the impact of mandatory registered nurse staffing ratios on health insurance premiums in Massachusetts, including the total monetary increase that will be required and an average cost per insured residents. The Division shall file the report with the House and Senate Committees on Ways and Means, the Joint Committee on Health Care Financing and the clerks of the House and the Senate."

After debate on the question on adoption of the further amendment, the sense of the House was taken by yeas and nays, at the request of Mr. Peterson of Grafton; and on the roll call (Mr. Petrolati of Ludlow being in the Chair) 39 members voted in the affirmative and 116 in the negative.

[See Ye and Nay No. 369 in Supplement.]

Therefore the further amendment was rejected.

Mr. Casey of Winchester then moved to amend the proposed substitute bill by adding the following section:

"SECTION 18. Notwithstanding any general or special law to the contrary, the Executive Office of Health and Human Service and its subcontractors, carriers defined under Chapter 176O of the general laws and any subcontractors, all health insurance plans that contract with the Commonwealth Connector, and all health insurance plans that contract with the Group Insurance Commission, shall reimburse its contracted health care providers for any increase in labor costs attributable to the implementation of this act; provided further that such reimbursement shall be in addition to the payment rates established under all contracts entered into or renewed on or after the effective date of this act."

After debate on the question on adoption of the further amendment, the sense of the House was taken by yeas and nays, at the request of the same member; and on the roll call (Mr. Donato of Medford being in the Chair) 27 members voted in the affirmative and 128 in the negative.

[See Ye and Nay No. 370 in Supplement.]

Therefore the further amendment was rejected.

The amendment recommended by the committee on Health Care Financing, as amended, then was adopted.

On the question on ordering the substituted bill, as amended, to a third reading, the sense of the House was taken by yeas and nays, at the request of Mr. Walsh of Boston; and on the roll call 119 members voted in the affirmative and 35 in the negative.

[See Ye and Nay No. 371 in Supplement.]

[Mr. Scaccia of Boston answered "Present" in response to his name.]

Therefore the substituted bill (House, No. 4714, amended) was ordered to a third reading.

Subsequently a statement of Representative Quinn of Dartmouth was made, as follows:

MR. SPEAKER: I would like to call to the attention of the House the fact that on the previous roll call it was my intention to vote in the affirmative. However, I now find that, for some inexplicable reason, I was recorded in the negative.

Further amendment rejected, ye and nay No. 369.

Further amendment rejected, ye and nay No. 370.

Bill ordered to a third reading, ye and nay No. 371.

Statement of Representative Quinn of Dartmouth.

Patient safety.

Subsequently, under suspension of the rules, on motion of Mrs. Canavan of Brockton, the bill was read a third time.

The committee on Bills in the Third Reading reported asking to be discharged from further consideration of the bill; and the report was accepted.

Pending the question on passing the bill to be engrossed, the same member moved to amend it by substitution of a bill with the same title (House, No. 4783), which was read.

The amendment was adopted.

After remarks the substituted bill was passed to be engrossed. Sent to the Senate for concurrence.

The House Bill relative to the registration of podiatrists (House, No. 2269) was read a second time.

Pending the question on ordering the bill to a third reading, Mrs. Walrath of Stow moved that it be amended by substitution of a bill with the same title (House, No. 4785), which was read.

The amendment was adopted; and the substituted bill was ordered to a third reading.

Recess.

At ten minutes before four o'clock P.M., on motion of Mr. Jones of North Reading (Mr. Donato of Medford being in the Chair), the House recessed until a quarter after four o'clock; and at twenty-five minutes after four o'clock the House was called to order with Mrs. Harkins of Needham in the Chair.

Emergency Measure.

The engrossed Bill financing the production and preservation of housing for low and moderate income residents (see House, No. 4594), 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 7 to 0. Sent to the Senate for concurrence.

Subsequently, the Senate having concurred in adoption of the emergency preamble, the bill (which originated in the House) was put upon its final passage.

On the question on passing the bill to be enacted, the sense of the House was taken by yeas and nays (this being a "loan" bill as defined by Section 3 of Article LXII of the Amendments to the Constitution); and on the roll call 153 members voted in the affirmative and 0 in the negative.

[See Yea and Nay No. 372 in Supplement.]

Therefore the bill was passed to be enacted; and it was signed by the acting Speaker and sent to the Senate.

Reports of Committees.

By Mr. DeLeo of Winthrop, for the committee on Ways and Means, that the Bill protecting military service members (House, No. 4508) ought to pass. Referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

Mr. Donato of Medford, for said committee, reported that the matter be scheduled for consideration by the House.

Under suspension of Rule 7A, on motion of Mr. Mariano of Quincy, the bill was read a second time forthwith.

After debate on the question on ordering the bill to a third reading, the sense of the House was taken by yeas and nays, at the request of the same member; and on the roll call 153 members voted in the affirmative and 0 in the negative.

[See Yea and Nay No. 373 in Supplement.]

Therefore the bill was ordered to a third reading.

Subsequently, under suspension of the rules, on further motion of Mr. Mariano, the bill (having been reported by the committee on Bills in the Third Reading to be correctly drawn) was read a third time; and it was passed to be engrossed, its title having been changed by said committee to read: "An Act protecting certain military personnel from deceptive practices.". Sent to the Senate for concurrence.

Engrossed Bills.

Engrossed bills

Relative to oceans (see Senate, No. 2699) (which originated in the Senate); and

To promote the safety of victims of violence (see House, No. 4348) (which originated in the House);

Severally having been certified by the Clerk to be rightly and truly prepared for final passage, were passed to be enacted; and they were signed by the acting Speaker and sent to the Senate.

Orders.

The following order (filed by Mr. O'Flaherty of Chelsea) was referred, under Joint Rule 30, to the committees on Rules of the two branches, acting concurrently:

Ordered, That, notwithstanding the provisions of Joint Rule 10, the committee on the Judiciary be granted until Thursday, June 12, 2008, the time within which to report on current House documents numbered 500, 1304, 1308, 1311, 1313, 1317, 1318, 1325, 1331, 1332, 1333, 1334, 1335, 1337, 1383, 1388, 1389, 1479, 1532, 1547, 1662, 1672, 1688, 1700, 1718, 1720, 1746, 1749, 1751, 3054, 3738, 3865, 3875, 3876, 3877, 3991 and 4476.

Mr. Scaccia of Boston, for the committees on Rules, then reported that the order ought to be adopted. Under suspension of the rules, on motion of Mr. O'Flaherty, the order was considered forthwith; and it was adopted. Sent to the Senate for concurrence.

Podiatrists,
registration.

Recess.

Housing,
finance.

Bill enacted
(state loan),
yea and nay
No. 372.

Military, preda-
tory
insurance.

Bill ordered
to a third
reading,
yea and nay
No. 373.

Bills
enacted.

Judiciary
committee,
extension of
time for
reporting.

Next
sitting.

On motion of Mr. DiMasi of Boston,—

Ordered, That when the House adjourns today, it adjourn to meet on Tuesday next at eleven o'clock A.M.

Accordingly, without further consideration of the remaining matters in the Orders of the Day, at twenty-nine minutes before six o'clock P.M., on motion of Ms. Rogeness of Longmeadow (Mr. Donato of Medford being in the Chair), the House adjourned, to meet on Tuesday next at eleven o'clock A.M., in an Informal Session.