

JOURNAL OF THE HOUSE.

Wednesday, June 15, 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.

Gracious God, today as we organize our legislative and personal agenda and priorities, we pray for Your gift of wisdom, a clear comprehension of today's issues and the intellectual and moral courage to make right choices. We depend upon Your help in coping with evaluating correctly the vast amount of information and data which comes to our attention each day. Inspire us to be fully aware of the impact and consequences of our decisions today and in the years ahead. May the well being and the human and spiritual needs of all people in our communities, especially the children and senior adults, remain the focus of our attention and concern. Guide our efforts to remain faithful to our ideals, spiritual and human values and our personal faith commitments.

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.

Messages from the Governor.

Seekonk, expenditures.

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 authorizing certain expenditures by the town of Seekonk (House, No. 4164) was filed in the office of the Clerk on Tuesday, June 14.

The message was read; and it was referred, on motion of Mr. Travis of Rehoboth, with the accompanying draft of a bill, to the committee on Rules.

Mr. Scaccia of Boston, for the committee on Rules, then reported on the foregoing message, a Bill authorizing certain expenditures by the town of Seekonk (printed in House, No. 4164), which was read.

Under suspension of the rules, on motion of the same member, the bill was read a second time forthwith; and it was ordered to a third reading.

Subsequently, under suspension of the rules, on further motion of Mr. Travis, 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. Sent to the Senate for concurrence.

A message from His Excellency the Governor recommending legislation relative to amending the taxation of capital gains (House, No. 4165) was filed in the office of the Clerk on Friday, June 10.

Capital gains, taxation.

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

A message from His Excellency the Governor submitting requests for appropriations (under Section 7 of Chapter 150E of the General Laws) to fund certain collective bargaining agreements (House, No. 4166) was filed in the office of the Clerk on Tuesday, June 14.

Collective bargaining agreements, funding.

The message was read; and it was referred, under Rule 30, with the accompanying draft of a bill, to the committee on Ways and Means.

Appointments to Special Commissions.

The Speaker announced the appointments to Special Commissions, as follows:

That Representative Straus of Mattapoisett had been appointed to the Special Commission established (under Section 28 of Chapter 28 of the Acts of 1996) for the purposes of developing scientific and socioeconomic research for the purposes of facilitating the recovery of the Commonwealth's commercial fishing industry; and

Fishing industry.

That Representative Verga of Gloucester had been appointed to the Special Commission established (under Chapter 355 of the Acts of 2004) to make an investigation and study of the discrimination of veterans in employment.

Veterans, employment discrimination.

Statement Concerning Representative Driscoll of Braintree.

A statement of Mr. Rogers of Norwood concerning Mr. Driscoll of Braintree 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 Driscoll of Braintree, will not be present in the House Chamber for today's sitting due to being at home caring for his wife, Lauren, and their newborn son, Sean Carney Driscoll. Any roll calls that he may miss today is due entirely to the reason stated.

Statement concerning Representative Driscoll of Braintree.

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 the fact that he is a patient in the hospital. Any roll calls that he may miss today and the next several days is due entirely to the reason stated.

Statement concerning Representative Kennedy of Brockton.

Statement Concerning Representative Peisch of Wellesley.

A statement of Mrs. Harkins of Needham concerning Mrs. Peisch of Wellesley was spread upon the records of the House, as follows:

Statement concerning Representative Peisch of Wellesley.

MR. SPEAKER: I would like to call to the attention of the House the fact that one of our colleagues, Representative Peisch of Wellesley, could not be present in the House Chamber for today's sitting due to a long standing family commitment. If she had been present for the taking of roll call numbers 70, 71, 75, 76 and 77 she would have voted in the affirmative, in each instance. She would have been recorded in the negative on roll call number 74. Any roll calls that she may miss today is due entirely to the reason stated.

Mrs. Harkins then moved that the statement made by her be spread upon the records of the House; and the motion prevailed.

Statement Concerning Representative Spellane of Worcester.

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

Statement concerning Representative Spellane of Worcester.

MR. SPEAKER: I would like to call to the attention of the House the fact that one of our colleagues, Representative Spellane of Worcester, will not be present in the House Chamber for today's sitting due to a previously scheduled family commitment at home. Any roll calls that he may miss today will be due entirely to the reason stated.

Guests of the House.

Mr. Walsh of Boston then took the Chair and introduced heavy-weight boxer, Kevin McBride. Kevin recently fought and beat the former Heavyweight Champion of the World, Mike Tyson.

Kevin McBride.

During the session, the Chair (Mr. Petrolati of Ludlow) declared a brief recess and introduced the Honorable John Woods, Ambassador of the New Zealand Embassy in Washington, D.C. Ambassador Woods, who was accompanied by Consul for New England, Simon C. Lemming, and Sean Berriman, Business Relations Officer, then addressed the House briefly.

Ambassador John Woods.

The esteemed gentlemen were the guests of the Speaker.

Resolutions.

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

Elizabeth W. Klepeis.

Resolutions (filed by Mr. Jones of North Reading) congratulating Elizabeth (Beth) W. Klepeis on the occasion of her retirement;

Carlisle, bicentennial.

Resolutions (filed by Ms. Atkins of Concord) congratulating the town of Carlisle on the occasion of its bicentennial;

Relay for Life Day.

Resolutions (filed by Messrs. Atsalis of Barnstable and Turner of Dennis) observing June 17, 2005 as Relay for Life Day in Massachusetts;

Andrew Bassett.

Resolutions (filed by Ms. Flanagan of Leominster) congratulating Andrew Bassett on receiving the Eagle Award of the Boy Scouts of America;

Jean Baker Miller.

Resolutions (filed by Representatives Khan of Newton and Smizik of Brookline) commending Jean Baker Miller;

St. Brendan anniversary.

Resolutions (filed by Mr. Murphy of Burlington and other members of the House) congratulating the St. Brendan Society on its centennial anniversary;

Resolutions (filed by Messrs. O'Brien of Kingston, Straus of Mattapoisett and Canessa of New Bedford) congratulating Marjorie Judd on the occasion of her retirement as director of the Middleborough Public Library;

Marjorie Judd.

Resolutions (filed by Mr. Ross of Wrentham) on the occasion of the one hundredth anniversary of the incorporation of the town of Plainville;

Plainville, incorporation.

Resolutions (filed by Mr. Stanley of Waltham) congratulating David Christopher Iodice on receiving the Eagle Award of the Boy Scouts of America;

David Christopher Iodice.

Resolutions (filed by Messrs. Stanley of Waltham, Murphy of Lowell and Costello of Newburyport) honoring Dr. Garry Murphy, Superintendent of the Triton Regional School District on the occasion of his retirement celebration June 17, 2005;

Garry Murphy.

Resolutions (filed by Mr. Vallee of Franklin) congratulating the Benjamin Franklin Classical Charter School Band on receiving the gold medal award at the Great East Festival; and

Benjamin Franklin School Band.

Resolutions (filed by Mr. Vallee of Franklin) congratulating the Benjamin Franklin Classical Charter School Chorus on receiving the gold medal award at the Great East Festival;

Benjamin Franklin School Chorus.

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. Linsky of Natick, the resolutions (reported by the committee on Bills in the Third Reading to be correctly drawn) were considered forthwith; and they were adopted.

Petition.

Mr. Canessa of New Bedford presented a petition (subject to Joint Rule 12) of Stephen R. Canessa and Joan M. Menard for legislation to authorize the Department of Correction to establish a sick leave bank for James Bowlby, an employee of said department; and the same was referred, under Rule 24, to the committee on Rules.

James Bowlby, sick leave bank.

Mr. Scaccia of Boston, for the committee on Rules and the committees on Rules of the two branches, acting concurrently, then reported recommending that Joint Rule 12 be suspended. Under suspension of the rules, on motion of Mr. Stanley of Waltham, 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.

Papers from the Senate.

A report of the committee on the Judiciary, asking to be discharged from further consideration of the petition (accompanied by bill, Senate, No. 928) of Cynthia S. Creem and Steven A. Tolman for legislation to protect employee wages, and recommending that the same be referred to the committee on Labor and Workforce Development,— accepted by the Senate, was considered forthwith, under Rule 42; and it was accepted, in concurrence.

Employee wages, protect.

Petitions were referred, in concurrence, as follows:
 Petition (accompanied by bill, Senate, No. 2087) of Richard T. Moore and Jennifer M. Callahan (by vote of the town) for legislation to authorize the town of Bellingham to grant an additional license for the sale of all alcoholic beverages to be drunk on the premises. To the committee on Consumer Protection and Professional Licensure.

Bellingham, liquor license.

Petition (accompanied by bill, Senate, No. 2088) of Susan C. Tucker, Barbara A. L'Italien and Barry R. Finegold (by vote of the town) to provide a sewer easement in the town of Andover. To the committee on Municipalities and Regional Government.

Andover, sewer easement.

Reports of Committees.

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 following petitions:

Check cashers, licensing.

Petition (accompanied by bill) of Philip Travis and Robert L. Hedlund for legislation to further regulate the licensing of check cashers for the safety and security of customers. To the committee on Consumer Protection and Professional Licensure.

Petition (accompanied by bill) of Emile J. Goguen relative to the annual street listing of voters in the Commonwealth. To the committee on Election Laws.

Voters, street listings.

Petition (accompanied by bill) of Lewis G. Evangelidis for legislation to increase the penalties for breaking and entering dwellings during the daytime with intent to commit a felony;

Breaking and entering.

Petition (accompanied by bill) of Lewis G. Evangelidis relative to criminal offender records of certain minors;

Minors, criminal records.

Petition (accompanied by bill) of Kevin J. Murphy and others relative to certain findings by clerk magistrates and justices; and

Citations, issuance.

Petition (accompanied by resolutions) of Philip Travis and others for adoption of resolutions by the General Court requesting the Governor (with the approval of the Council) to remove from office Margaret H. Marshall, Chief Justice of the Supreme Judicial Court;

Justice Margaret Marshall.

Severally to the committee on the Judiciary.

Petition (accompanied by bill) of Lewis G. Evangelidis relative to benefits for dependents of recipients of workers' compensation;

Workers compensation.

Petition (accompanied by bill) of Lewis G. Evangelidis relative to the continuation of workers' compensation benefits; and

Workers compensation.

Petition (accompanied by bill) of Lewis G. Evangelidis relative to health insurance claims of injured employees under the workers' compensation law;

Employees, health insurance.

Severally to the committee on Labor and Workforce Development.

Petition (accompanied by bill) of Emile J. Goguen and Jeffrey Davis Perry relative to the appointment of certain directors to the Massachusetts Sheriffs' Association. To the committee on Municipalities and Regional Government.

Sheriff s Association.

Petition (accompanied by bill) of Antonio F. D. Cabral for legislation to further regulate the licensing of private detectives; and

Private detectives.

Petition (accompanied by bill) of David Rich relative to inspections of automatic sprinkler systems;

Sprinklers, inspection.

Severally to the committee on Public Safety and Homeland Security.

Petition (accompanied by bill) of J. Mark Treadup relative to creditable service for uncompensated elected officials;

Elected officials.

Petition (accompanied by bill) of Emile J. Goguen for legislation to establish the economically targeted investment authority to generate returns on investments of public pension funds;

Counties, retirement.

Petition (accompanied by bill) of A. Stephen Tobin and others relative to the election of retirement options by public employees;

Retirement options.

Petition (accompanied by bill) of Leonard F. X. Beaton that the State Retirement Board be directed to grant certain creditable service to said Leonard F. X. Beaton; and

Leonard F. X. Beaton.

Petition (accompanied by bill) of Linda Miller that the Teachers' Retirement Board be directed to reimburse Linda Miller, a former teacher in the town of Southborough, for excess payments paid into the retirement system;

Southborough, Linda Miller.

Severally to the committee on Public Service.

Petition (accompanied by bill) of Dianne Wilkerson and Emile J. Goguen relative to increasing services or supplies in certain contracts with vendors by public agencies. To the committee on State Administration and Regulatory Oversight.

Uniform procurement.

Petition (accompanied by bill) of Robert Duffy relative to protecting displaced disabled veterans. To the committee on Veterans and Federal Affairs.

Disabled veterans.

Under suspension of the rules, on motion of Mr. Stanley of Waltham, the reports were considered forthwith. Joint Rule 12 then was suspended, in each instance. Severally sent to the Senate for concurrence.

By Mr. Donato of Medford, for the committee on Steering, Policy and Scheduling, that the Senate Bill partially releasing a non-development covenant restriction on certain land in the town of Granby and authorizing certain agreements for the Daly Memorial Rink in Brighton (Senate, No. 2038, amended) be scheduled for consideration by the House.

Granby, covenant release.

Under suspension of Rule 7A, on motion of Mr. Flynn of Bridgewater, the bill was read a second time forthwith; and it was ordered to a third reading.

Subsequently, under suspension of the rules, on motion of Mr. Honan of Boston, 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.

The bill then was passed to be engrossed. Sent to the Senate for concurrence.

Engrossed Bills.

Engrossed bills

Designating a portion of state highway route 122 as a scenic road (see Senate, No. 1881, changed) (which originated in the Senate); and

Bills enacted.

Authorizing William F. Felton to receive workers' compensation benefits without offset against his retirement allowance (see House, No. 4058) (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.

Engrossed Bills — Land Takings.

Holbrook,
easements.

The engrossed Bill authorizing certain easements in the town of Holbrook for construction and maintenance of a water main (see Senate, No. 2077, amended) (which originated in the Senate), 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. 70.

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 152 members voted in the affirmative and 0 in the negative.

[See Yea and Nay No. 70 in Supplement.]

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

Shrewsbury,
land.

The engrossed Bill authorizing the conveyance of a certain parcel of land in the town of Shrewsbury (see House, No. 2794) (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. 71.

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 153 members voted in the affirmative and 0 in the negative.

[See Yea and Nay No. 71 in Supplement.]

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

Orders of the Day.

House bills

Second
reading
bills.

Establishing the Massachusetts principal and income act (House, No. 760);

Designating the Attleboro District Courthouse as the James H. Sullivan Courthouse (House, No. 842);

Amending an act relative to the water commissioners of the town of Spencer (House, No. 3229);

Authorizing Spencer to lease certain property (House, No. 3230);

Establishing a voting precinct in the city of Peabody (House, No. 3415);

Relative to the reporting of revenue for the service of civil process by constables (House, No. 3576);

Relative to the establishment of reserve funds for compensated absences in cities and towns (House, No. 3584);

Relative to open-air parking lots (House, No. 3594);

Relative to the health insurance of active and retired employees of the city of Melrose (House, No. 4064); and

Authorizing the town of Milton to appropriate money for retroactive wage adjustments (House, No. 4114);

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

House reports

Of the committee on Municipalities and Regional Government, ought NOT to pass, on the petition (accompanied by bill, House, No. 3559) of Demetrius J. Atsalis relative to the transfer of certain funds of the Barnstable Fire District; and

House
reports.

Of the same committee, ought NOT to pass, on the petition (accompanied by bill, House, No. 3946) of Susan Williams Gifford for legislation to provide for the appointment of a clerk-treasurer for the Onset Fire District;

Severally were accepted.

Recess.

At twenty minutes before twelve o'clock noon, on motion of Mr. Rushing of Boston (Mr. Petrolati of Ludlow being in the Chair), the House recessed until one o'clock P.M.; and at twenty-nine minutes after one o'clock the House was called to order with Mrs. Harkins of Needham in the Chair.

Recess.

Reports of Committees.

By Mr. Binienda of Worcester, for the committee on Revenue, on House, No. 2606, a Bill to update and improve certain tax provisions of the Commonwealth (House, No. 4163). Read; and referred, under Rule 33, to the committee on Ways and Means.

Tax
provisions,
regulate.

Mr. DeLeo of Winthrop, for the committee on Ways and Means, then reported that the bill ought to pass. Referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

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

Under suspension of the rules, on motion of Mr. Binienda of Worcester, the bill was read a second time forthwith.

Pending the question on ordering the bill to a third reading, Mr. Peterson of Grafton raised a point of order that the bill was improperly before the House because the committee on Ways and Means had not included a fiscal note on the committee report, as required under Rule 33.

In answer to the point of order, the Chair (Mrs. Harkins of Needham) stated that it was not within the province of the Chair to inquire into the internal workings of committees, therefore the point of order was not well taken.

Point
of
order.

The bill then was ordered to a third reading.

Under suspension of the rules, on motion of Mr. Binienda, the bill (having been reported by the committee on Bills in the Third Reading to be correctly drawn) was read a third time, its title having been changed by said committee to read: An Act relative to the tax laws of the Commonwealth.

Quorum. Pending the question on passing the bill to be engrossed (Mr. Petrolati of Ludlow being in the Chair), Mr. Jones of North Reading asked for a count of the House to ascertain if a quorum was present. The Chair (Mr. Petrolati), having determined that a quorum was not in attendance, then directed the Sergeant-at-Arms to secure the presence of a quorum.

Quorum, yea and nay No. 72. Subsequently a roll call was taken for the purpose of ascertaining the presence of a quorum; and on the roll call 150 members were recorded as being in attendance.

[See Yea and Nay No. 72 in Supplement.]

Therefore a quorum was present.

Recess. At three o'clock P.M., on on motion of Mr. Jones of North Reading (Mr. Petrolati of Ludlow being in the Chair), the House recessed until half past three o'clock P.M.; and at thirteen minutes before four o'clock the House was called to order with Mrs. Harkins of Needham in the Chair.

Mr. Patrick of Falmouth then moved that the bill be amended by adding at the end thereof the text contained in House document numbered 4167.

Quorum. Pending the question on adoption of the amendment, the same member asked for a count of the House to ascertain if a quorum was present. The Chair (Mrs. Harkins of Needham), having determined that a quorum was not in attendance, then directed the Sergeant-at-Arms to secure the presence of a quorum.

Quorum, yea and nay No. 73. Subsequently a roll call was taken for the purpose of ascertaining the presence of a quorum; and on the roll call 146 members were recorded as being in attendance.

[See Yea and Nay No. 73 in Supplement.]

Therefore a quorum was present.

Amendment rejected, yea and nay No. 74. After debate on the question on adoption of the amendment, the sense of the House was taken by yeas and nays, at the request of Mr. Patrick; and on the roll call 45 members voted in the affirmative and 109 in the negative.

[See Yea and Nay No. 74 in Supplement.]

Therefore the amendment was rejected.

Mr. Marzilli of Arlington then moved that the bill be amended by striking out section 41 (as printed); and the amendment was adopted.

The same member then moved that the bill be amended by striking out section 58 (as printed). The amendment was adopted.

Mr. Marzilli then moved that the bill be amended by adding at the end thereof the text contained in House document numbered 4168; and after debate the amendment was adopted.

Mr. Fallon of Malden then moved that the bill be amended in section 19 by adding at the end thereof the following "but, with respect to real property and fixtures, such lien shall be valid against any mortgagee, pledgee, purchaser or judgment creditor unless the notice to be recorded pursuant to subsection (b)(1) of this section includes therein the names of the persons in whom the record title to the real property or fixtures stands at the time of recording such notice." The amendment was adopted.

Mr. Marzilli of Arlington then moved that the bill be amended by striking out section 42 (as printed). The amendment was adopted.

Mr. Jones of North Reading and other members of the House then moved that the bill be amended by striking out section 57 (as printed) and inserting in place thereof the following [A] three sections:

"SECTION 56. Section 413 of chapter 149 of the acts of 2004 is hereby repealed.

SECTION 56A. Section 414 of chapter 149 of the acts of 2004 is hereby amended by striking out the words "January 1, 2002" and inserting in place thereof the following words:— January 1, 2003.

SECTION 56B. Notwithstanding the first sentence of the first paragraph of section 37 of chapter 62C of the General Laws, a person for whom the assessment of a tax is changed as a result of the enactment of section 2 of this act, whether or not such tax has been paid in whole or in part, may apply in writing to the commissioner, on a form approved by him, for an abatement thereof within 3 years from the last day for filing the return for such tax, without regard to any extension of time, or within 2 years from the effective date of this act, whichever is later; provided, however, that where the commissioner and the taxpayer have agreed to extend the period for assessment of a tax pursuant to section 27 of said chapter 62C, the period for abatement or for abating such tax shall not expire prior to the expiration period within which an assessment may be made pursuant to such agreement or any extension thereof."

Pending the question on adoption of the amendment, Mr. Peterson of Grafton moved that it be amended by striking out the text contained in the amendment [at "A"] and inserting in place thereof the following:

"four sections:

SECTION 56. Section 413 of chapter 149 of the acts of 2004 is hereby repealed.

SECTION 56A. Section 414 of chapter 149 of the acts of 2004 is hereby repealed.

SECTION 56B. Notwithstanding section 32 of chapter 186 of the acts of 2002 and sections 21 and 22 of chapter 364 of the acts of 2002, the following provisions of the General Laws shall be effective for tax years beginning on or after January 1, 2003:

(1) the second paragraph of subsection (m) of section 1 of chapter 62 of the General Laws, as appearing in section 2 of chapter 186 of the acts of 2002;

(2) paragraph (3) of subsection (b) of section 2 of said chapter 62, as appearing in section 6 of said chapter 186;

(3) the introductory clause, paragraph (1), paragraph (3), and paragraph (4) of subsection (c) of said section 2 of said chapter 62, as appearing in section 4 of chapter 364 of the acts of 2002;

(4) paragraph (2) of said subsection (c) of said section 2 of said chapter 62, as appearing in section 5 of said chapter 364;

(5) subsection (e) of said section 2 of said chapter 62, as appearing in section 7 of said chapter 364; and

(6) subsection (c) of section 4 of said chapter 62, as appearing in section 14 of chapter 186 of the acts of 2002.

SECTION 56C. Notwithstanding the first sentence of the first paragraph of section 37 of chapter 62C of the General Laws, a person for whom the assessment of a tax is changed as a result of the

Amendment rejected, yea and nay No. 74.

enactment of section 2 of this act, whether or not such tax has been paid in whole or in part, may apply in writing to the commissioner, on a form approved by him, for an abatement thereof within 3 years from the last day for filing the return for such tax, without regard to any extension of time, or within 2 years from the effective date of this act, whichever is later; provided, however, that where the commissioner and the taxpayer have agreed to extend the period for assessment or a tax pursuant to section 27 of said chapter 62C, the period for abatement or for abating such tax shall not expire prior to the expiration period within which an assessment may be made pursuant to such agreement or any extension thereof.”

Point of order.

After debate on the question on adoption of the further amendment, Ms. Candaras of Wilbraham raised a point of order that the further amendment was improperly before the House for the reason that it did not contain a fiscal note.

The Chair (Mrs. Harkins of Needham) stated that the point of order was not well taken.

Further amendment rejected, yea and nay No. 75.

After further 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. Jones of North Reading; and on the roll call 45 members voted in the affirmative and 107 in the negative.

[See Yea and Nay No. 75 in Supplement.]

[Mr. Perry of Sandwich answered “Present” in response to his name.]

Therefore the further amendment was rejected.

The amendment offered by Mr. Jones, et als, then also was rejected.

Mr. Binienda of Worcester then moved that the bill be amended by striking out section 10 (as printed); and the amendment was adopted.

The same member then moved that the bill be amended by striking out section 17 (as printed). The amendment was adopted.

Mr. Binienda then moved that the bill be amended by inserting after section 17 (as printed) the following section:

“SECTION 15A. Section 43 of chapter 62C of the General Laws, as so appearing, is hereby amended by striking out, in line 3, the words ‘fifty dollars’ and inserting in place thereof the following:—\$100.”

The amendment was adopted.

The same member then moved that the bill be amended in section 57 (as printed) by striking out, in lines 14 to 18, inclusive, the sentence contained therein and inserting in place thereof the following sentence: “The commissioner of the department of revenue shall establish rules and regulations to accept such payments in installments.”

The amendment was adopted.

Mr. Jones of North Reading and other members of the House then moved that the bill be amended by adding at the end thereof the following section:

“SECTION 79. (a) There is hereby set up and established on the books of the commonwealth a separate fund to be known as the Retroactive Long Term Capital Gains Revenue Fund of 2005 (‘the fund’). The fund shall consist of the amounts specified in and

collected pursuant to section 57 of this act which, notwithstanding any general or special law or provision of this act to the contrary, shall be deposited into the fund by the commissioner of revenue upon receipt.

(b) Not later than September 30, 2005, December 31, 2006, March 31, 2006 and June 30, 2006, the treasurer shall distribute 50 percent of the then balance of the fund to the cities and towns of the commonwealth as a supplemental, nonrecurring local aid payment according to the lottery distribution formula, and shall distribute the remaining balance of the fund to the municipal and regional school districts of the commonwealth as a supplemental, nonrecurring school aid payment to be apportioned ratably according to the number of students enrolled in each district.

(c) The fund shall cease to exist on July, 2006. Any revenue collected by the commonwealth pursuant to section 57 of this act on or after July 1, 2006 shall be deposited into the general fund.”

Mr. Binienda of Worcester thereupon raised a point of order that the amendment offered by Mr. Jones, et als, was improperly before the House for the reason that it was beyond the scope of the bill currently before the House.

Point of order.

The Chair (Mrs. Harkins of Needham) stated that the point of order was well taken; and the amendment was laid aside accordingly.

Mr. Jones thereupon doubted the ruling of the Chair; and the appeal was seconded by Mr. Peterson of Grafton.

The question was then put: “Shall the decision of the Chair stand of the judgment of the House?”

After debate on the appeal from the decision of the Chair, the sense of the House was taken by yeas and nays, at the request of Mr. Peterson; and on the roll call 132 members voted in the affirmative and 20 in the negative.

Decision of Chair sustained, yea and nay

[See Yea and Nay No. 76 in Supplement.]

Therefore the decision of the Chair was sustained.

On the question on passing the bill, as amended, to be engrossed, the sense of the House was taken by yeas and nays, at the request of Mr. Jones of North Reading; and on the roll call 131 members voted in the affirmative and 19 in the negative.

Bill passed to be engrossed, yea and nay

[See Yea and Nay No. 77 in Supplement.]

[Mr. Perry of Sandwich answered “Present” in response to his name.]

Therefore the bill was passed to be engrossed. Mr. Miceli of Wilmington moved that this vote be reconsidered, and, there being no objection, the motion to reconsider was considered forthwith; and it was negated. The bill (House, No. 4169, printed as amended) then was sent the Senate for concurrence.

Subsequently a statement of Ms. Malia of Boston was spread upon the records of the House, as follows:

MR. SPEAKER: During the taking of the above yeas and nays, I was absent from the House Chamber on official business in another part of the State House and was not notified that a roll call was in progress. Had I been present when the vote was taken, I would have voted in the affirmative.

Statement of Representative Malia of Boston.

Order.

On motion of Mr. DiMasi of Boston,—

Next
sitting.

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

At twenty minutes after six o'clock P.M., on motion of Mr. Donato of Medford (Mr. Petrolati of Ludlow being in the Chair), the House adjourned, to meet tomorrow at eleven o'clock A.M., in an Informal Session.