

JOURNAL OF THE HOUSE.

Wednesday, June 23, 2004.

Met according to adjournment, at eleven o'clock A.M., with Mrs. Walrath of Stow 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, we look to You for guidance as we take up the items on today's legislative calendar. Our personal and legislative goals, today and everyday, are to make thoughtful decisions, to respond to the needs and reasonable expectations of the people who depend upon our sound judgements and to promote the benefits of serving the common good. Inspire us to be creative, enthusiastic and optimistic in evaluating each day's challenges and opportunities. Teach us, in our diverse society, to disagree on issues and policies, and to respect the views and insights of others. May we remain faithful to our own human and spiritual values, philosophical principles and religious beliefs.

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 (Mrs. Walrath), the members, guests and employees joined with her in reciting the pledge of allegiance to the flag.

Statement Concerning Representative Kujawski of Webster.

A statement of Mr. DiMasi of Boston concerning Mr. Kujawski of Webster was spread upon the records of the House, as follows:

Statement concerning Representative Kujawski of Webster.

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

Petitions.

Petitions severally were presented and referred as follows:

Northampton, park land.

By Mr. Kocot of Northampton, petition (accompanied by bill, House, No. 4885) of Peter V. Kocot and Stanley C. Rosenberg (with the approval of the mayor and city council) that the city of Northampton be authorized to convey a certain parcel of land to the Commonwealth to be used for highway purposes;

Lawrence, charter.

By Mr. Lantigua of Lawrence, petition (accompanied by bill, House, No. 4886) of William Lantigua, Barry R. Finegold, David M. Torrisi, Susan C. Tucker, Michael J. Sullivan (mayor) and others (with the approval of the city council) relative to the filling of a vacancy on the school committee in the city of Lawrence;

By Mr. Murphy of Burlington, petition (accompanied by bill, House, No. 4887) of Charles A. Murphy (by vote of the town) that the town of Burlington be authorized to charge a fee for the procurement of certain electronic records in the clerk's office of said town;

Burlington, records fees.

By Mr. Pignatelli of Lenox, petition (accompanied by bill, House, No. 4888) of William Smitty Pignatelli and Andrea F. Nuciforo, Jr., (by vote of the town) for legislation to establish a sewer district in the town of Egremont; and

Egremont, sewer district.

By Mr. Verga of Gloucester, petition (accompanied by bill, House, No. 4889) of Anthony J. Verga and Bruce E. Tarr (with the approval of the mayor and city council) relative to certain sewer betterments in the city of Gloucester;

Gloucester, sewer betterments.

Severally to the committee on Local Affairs and Regional Government.

By Mr. Vallee of Franklin, petition (accompanied by bill, House, No. 4890) of James E. Vallee, David P. Magnani and Scott P. Brown (with the approval of the town council) that the town of Franklin be authorized to establish a employment health insurance trust fund for retired employees of said town. To the committee on Public Service.

Health insurance, Franklin.

Severally sent to the Senate for concurrence.

Petitions severally were presented and referred as follows:

By Mr. Asselin of Springfield (by request), petition (subject to Joint Rule 12) of Peter Broaca for legislation to further regulate the teaching of physical education in the public schools of the Commonwealth.

Schools, physical education.

By Mr. Binienda of Worcester, petition (subject to Joint Rule 12) of Timothy P. Murray (mayor), Michael V. O'Brien (city manager), John J. Binienda and other members of the General Court (with the approval of the city council) relative to the penalty for illegally dumping refuse or materials in the city of Worcester.

Worcester, illegal dumping.

By Mr. Bosley of North Adams, petition (subject to Joint Rule 12) of Daniel E. Bosley relative to creditable service for certain teachers under the public employees retirement law.

School teachers, service.

By Mr. Demakis of Boston, petition (subject to Joint Rule 12) of Paul C. Demakis for legislation to provide motor vehicle excise tax exemptions for certain disabled persons.

Disabled, tax exemptions.

By Mr. Donato of Medford, petition (subject to Joint Rule 12) of Paul J. Donato, Timothy J. Toomey, Jr., Vincent P. Ciampa, Patricia D. Jehlen and J. James Marzilli, Jr., for legislation to provide for reimbursement by the Commonwealth to the cities of Medford and Somerville for traffic safety costs during the Democratic National Convention being held in the city of Boston.

Medford and Somerville traffic.

By Mr. Driscoll of Braintree, petition (subject to Joint Rule 12) of Joseph R. Driscoll that certain adoptive parents be made eligible for paid maternity leave.

Maternity leave.

By Mr. Greene of Billerica, petition (subject to Joint Rule 12) of William G. Greene, Jr., and Robert A. Havern (by vote of the town) relative to the safe placement of newborns and infants in the town of Billerica.

Billerica, newborns placement.

Middlesex Canal Commission.

By Mr. Miceli of Wilmington, petition (subject to Joint Rule 12) of James R. Miceli and other members of the General Court relative to the membership of the Middlesex Canal Commission.

Somerville, Draw 7 Park.

By Mr. Toomey of Cambridge, petition (subject to Joint Rule 12) of Timothy J. Toomey, Jr., that the Department of Conservation and Recreation be directed to dedicate a portion of Draw 7 Park in the city of Somerville in memory of Patrick L. Sullivan.

Severally, under Rule 24, to the committee on Rules.

Papers from the Senate.

Lenox, taxes

A Bill relative to the town of Lenox and the reimbursement of local room occupancy taxes (Senate, No. 2344) (on Senate, No. 2180), passed to be engrossed by the Senate, was read; and it was referred, under Rule 33, to the committee on Ways and Means.

Erroneous convictions.

The House Bill relative to the compensation for certain erroneous convictions (House, No. 4255) came from the Senate with the endorsement that said branch had insisted on its amendment (in which the House had non-concurred).

Committee of conference.

The bill bore the further endorsement that the Senate had concurred with the House in the appointment of a committee of conference on the disagreeing votes of the two branches; and that Senators Wilkerson, Resor and Hedlund had been joined as the committee on the part of the Senate.

Congress, vacancies.

A Bill relative to special elections to fill vacancies for Senator and Representative in Congress (Senate, No. 2404) (reported from the committee on Election Laws, under the provisions of Joint Rule 3A) [Senators Shannon and Brown; and Representatives Peisch of Wellesley and George of Yarmouth dissenting], passed to be engrossed by the Senate, was read; and it was referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

Fagota Tupe, sick leave bank.

A petition of Michael W. Morrissey and Bruce J. Ayers for legislation to establish a sick leave bank for Fagota Tupe, an employee of the Department of Correction, came from the Senate referred, under suspension of Joint Rule 12, to the committee on Public Service.

The House then concurred with the Senate in the suspension of said rule; and the petition (accompanied by bill, Senate, No. 2405) was referred, in concurrence, to the committee on Public Service.

Reports of Committees.

By Mr. Kujawski of Webster, for the committee on Steering, Policy and Scheduling, asking to be discharged from further consideration

Peter E. Warren.

Of the Bill authorizing the town of Harvard to employ Peter E. Warren as fire chief for two years after his sixty-fifth birthday (Senate, No. 1930);

Dog officers. Zoning.

Of the Bill relative to dogs (House, No. 306); and
Of the Bill relative to zoning (House, No. 961);
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.

By Mr. Flynn of Bridgewater, for the committee on Ways and Means, that the Bill to make permanent the temporary easement granted the Bridgewater Knights of Columbus by the Armory Commission (House, No. 4268) ought to pass. Referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

Bridgewater, easement.

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

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

By Mr. Scaccia of Boston, for the committee on Rules, that the Bill to improve fire safety in the Commonwealth (House, No. 4550) ought to pass with an amendment in section 10, in lines 39 to 42, by striking out the words "establishing a prohibition on the use of all foam plastics while establishing the proper use of fire-resistant acoustic materials in all places of public assembly" and inserting in place thereof the words "notwithstanding any general or special law to the contrary, the Board of Fire Prevention Regulations, established under the provisions of section 4 of chapter 22D of the General Laws shall promulgate rules and regulations including but not limited to the following:— establish standards, based on current technology and science, on the proper use of fire resistant acoustic materials in all places of public assembly". Referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

Fire safety.

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

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

The amendment recommended by the committee on Rules then was adopted; and the bill (House, No. 4550, amended) was ordered to a third reading.

By Mr. Kujawski of Webster, for the committee on Steering, Policy and Scheduling, that the following House bills be scheduled for consideration by the House:

Authorizing the town of Yarmouth to make certain conveyances of wellfield land (House, No. 4706, changed) [Local Approval Received]; and

Yarmouth, wellfield land.

Authorizing the town of Yarmouth to lay out a public way over certain wellfield land (House, No. 4707) [Local Approval Received];

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Under suspension of Rule 7A, in each instance, on motion of Mr. Lepper of Attleboro, the bill was read a second time forthwith; and it was ordered to a third reading.

By Mr. Kujawski of Webster, for the committee on Steering, Policy and Scheduling, that the House Bill relative to group marketing plans (House, No. 4808) be scheduled for consideration by the House.

Group marketing plans.

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

By Mr. Straus of Mattapoisett, for the committee on Election Laws, on Senate, Nos. 341 and 363 and House, Nos. 129, 335, 882, 884, 1264, 1265, 2781 and 2946, an Order relative to authorizing the

Voting and election, study.

committee on Election Laws to make an investigation and study of certain Senate and House documents concerning voting and elections (House, No. 4883).

Reports of Committees.

Open
meeting
law,
study.

By Mr. Hall of Westford, for the committee on State Administration, on Senate, No. 1645 and House, Nos. 451, 618, 1209, 1589, 1940, 2154, 2889, 3239, 3240, 3446, 3592, 3593, 3897, 4113 and 4442 an Order relative to authorizing the committee on State Administration to make an investigation and study of certain Senate and House documents concerning the open meeting law and the conflict of interest law (House, No. 4884).

Severally referred, under Joint Rule 29, to the committees on Rules of the two branches, acting concurrently.

Subsequently Mr. Scaccia of Boston, for said committees, reported, in each instance, asking to be discharged from further consideration of the orders; 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.

Emergency Measure.

Webster,
land.

The engrossed Bill authorizing the Division of Capital Asset Management and Maintenance to convey certain land to the town of Webster (see House, No. 4711, amended), having been certified by the Clerk to be rightly and truly prepared for final passage, was considered, the question being on adopting the emergency preamble.

A separate vote was taken, as required by the provisions of Article XLVIII (as amended by Article LXVII) of the Amendments to the Constitution; and the preamble was adopted, by a vote of 9 to 0. Sent to the Senate for concurrence.

Recess.

Recess.

At ten minutes after eleven o'clock A.M., on motion of Mr. Larkin of Pittsfield (Mrs. Walrath of Stow being in the Chair), the House recessed until one o'clock P.M.; and at that time the House was called to order with Mr. DiMasi of Boston in the Chair.

Orders of the Day.

Third
reading
bill.

The Speaker being in the Chair,— The Senate Bill relative to retirees' group health insurance premium contributions in the city of Waltham (Senate, No. 2001), 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, in concurrence.

House bills

Third
reading
bills.

Relative to the school department in the town of Fairhaven (House, No. 4401, changed) (its title having been changed by the committee on Bills in the Third Reading);

Allowing students with cystic fibrosis to self administer enzyme supplements (House, No. 4409) (its title having been changed by the committee on Bills in the Third Reading);

Relative to the investment laws of life insurance companies (House, No. 4413); and

Authorizing the town of Hamilton to convey certain land (House, No. 4449);

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

Relative to the public disclosure of ownership of a cemetery corporation (Senate, No. 478, amended); and

Relative to the shellfish wardens training program (Senate, No. 1238); and

House bills

Establishing uniform enforcement provisions and making other changes applicable to certain licensees under the jurisdiction of the Division of Banks (House, No. 14);

Relative to the Environmental Trust (House, No. 395);

Relative to the appointment of a guardian ad litem to institute contempt proceedings involving the care, custody or maintenance of minor children (House, No. 729);

Relative to the appointment of a guardian ad litem to investigate the facts of any proceeding involving the care, custody or maintenance of minor children and domestic relations matters (House, No. 730);

To promote fair contract provisions (House, No. 1383);

Relative to the budget of the Up-Island Regional School District of Martha's Vineyard (House, No. 1455);

Relative to money laundering (House, No. 2742);

Further regulating reporting requirements of constables (House, No. 4038, changed);

Authorizing the town of Brookline to fix reasonable fees for permits granted by the chief of its fire department (House, No. 4403);

Relative to workers' compensation (House, No. 4459); and

Authorizing the town of Swansea to issue an additional license for the sale of all alcoholic beverages not to be drunk on the premises (House, No. 4742);

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

The Senate Bill authorizing the commissioner of Capital Asset Management and Maintenance to convey easements for the transmission of natural gas over lands formerly under the control of the county of Essex in the town of Middleton and the cities of Peabody and Salem to Maritimes & Northeast Pipeline, L.L.C. (Senate, No. 1678, amended) was read a second time.

Second reading
Bill amended.

The amendment previously recommended by the committee on Ways and Means,— that the bill be amended in section 1, in line 8, by striking out the words "Town of North Andover" and inserting in place thereof the words "Town of Middleton",— was adopted.

The bill (Senate, No. 1678, amended) then was ordered to a third reading.

Employee classification.

The House Bill to prevent the fraudulent misclassification of employees (House, No. 4460) was read a second time.

Pending the question on ordering the bill to a third reading, Mr. Jones of North Reading and other members of the House moved that it be amended in section 1, in lines 10 and 11, by striking out the paragraph contained therein and inserting in place thereof the following paragraph:

“(b) such service is performed either outside the usual course of the business for which the service is performed or is performed outside of all the places of business of the enterprise for which the service is performed; and”

The amendment was adopted; and the bill (House, No. 4460, amended) was ordered to a third reading.

Weapons, regulate.

The Senate Bill further regulating certain weapons (Senate, No. 2367), 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, in concurrence.

Mortgage lending.

The House Bill prohibiting certain practices in home mortgage lending (House, No. 4880) (its title having been changed by the committee on Bills in the Third Reading), reported by said committee to be correctly drawn, was read a third time; and it was passed to be engrossed. Sent to the Senate for concurrence.

Minors, employment hours.

Mr. DiMasi of Boston being in the Chair,— The House Bill regulating hours of employment in movie theaters and food stores for persons under the age of eighteen (House, No. 4158) (its title having been changed by the committee on Bills in the Third Reading), reported by said committee to be correctly drawn, was read a third time.

Pending the question on passing the bill to be engrossed, Mr. Rodrigues of Westport moved that it be amended by substitution of a Bill relative to child labor (House, No. 4891), which was read.

Pending the question on adoption of the amendment, Mr. Larkin of Pittsfield moved that the proposed substitute bill be amended in section 2 by striking out the first two sentences contained therein and inserting in place thereof the following:

“Chapter 149, as appearing in the 2002 Official Edition, is hereby amended by striking out section 66 and inserting in place thereof the following section:—

Section 66. No person shall employ a boy or girl under eighteen or permit such boy or girl to work in, about or in connection with any establishment or occupation before six o’clock in the morning, or after ten o’clock in the evening; provided, that boys or girls under eighteen may be employed as operators in regular service telephone exchanges or telegraph offices until, but not after, eleven o’clock in the evening; and provided further, that minors ages sixteen and seventeen may be employed until 11:00 p.m. on any night other than a night preceding a regularly scheduled school day. The department of labor may, pursuant to Article XX of Part the First of the Constitution of the Commonwealth, for racetracks, suspend the application

or operation of the provision of this section which prohibits minors ages sixteen and seventeen from being employed later than 11:00 p.m. on any night other than a night preceding a regularly scheduled school day. The department of labor may exercise such authority upon finding, after opportunity to be heard as been given to interested parties, that an emergency exists or that conditions of hardship in the racetrack industry, branch of the racetrack industry or individual racetrack that require or justify the suspension of any such law, rule or regulation. Any such suspension by the department of labor shall prescribe, and may be granted or limited to, the particular departments, operations or occupations within the racetrack industry, branch of the racetrack industry or individual racetrack.”; and in said section by striking out the last sentence contained therein and inserting in place thereof the following two sentences: “For the purposes of this section, the requirement of direct and immediate supervision may be satisfied by the presence of a person twenty-one years of age or older acting in a supervisory capacity, who is situated in the workplace and is reasonably accessible to the minor employee. No employer may require any full-time secondary school student who has reached the age of majority to work later than the hours set forth herein without a written waiver signed by the student and the superintendent or designated official of the school the student is attending.”.

Pending the question on adoption of the further amendments, Ms. Balseer of Newton asked for a count of the House to ascertain if a quorum was present. The Chair (Mr. DiMasi of Boston), having determined that a quorum was not in attendance, then directed the Sergeant-at-Arms to secure the presence of a quorum.

Subsequently a roll call was taken for the purpose of ascertaining the presence of a quorum; and on the roll call 152 members were recorded as being in attendance.

[See Yea and Nay No. 662 in Supplement.]

Therefore a quorum was present.

After debate on the question on adoption of the further amendments, the sense of the House was taken by yeas and nays, at the request of Mr. Larkin; and on the roll call 69 members voted in the affirmative and 86 in the negative.

[See Yea and Nay No. 663 in Supplement.]

Therefore the further amendments were rejected.

Mr. Larkin of Pittsfield then moved that the proposed substitute bill be amended in proposed section 2 by striking out the last sentence and inserting in place thereof the following sentence: “For the purposes of this section, the requirement of direct and immediate supervision may be satisfied by the presence of a person twenty-one years of age or older acting in a supervisory capacity, who is situated in the workplace and is reasonably accessible to the minor employee.”.

After debate the further amendment was rejected.

Mr. Larkin of Pittsfield then moved that the proposed substitute bill be amended in section 2 by inserting at the end thereof the following sentence: “No employer may require any full-time secondary school student who has reached the age of majority to work

Quorum.

Quorum, yeas and nays No. 662.

Further amendments rejected, yeas and nays No. 663.

later than the hours set forth herein without a written waiver signed by the student and the superintendent or designated official of the school the student is attending.”

After debate the further amendment was adopted.

The amendment offered by Mr. Rodrigues of Westport, as amended, then also was adopted.

On the question on passing the substituted bill, as amended, the sense of the House was taken by yeas and nays, at the request of Mr. O’Flaherty of Chelsea; and on the roll call 145 members voted in the affirmative and 10 in the negative.

[See Ye and Nay No. 664 in Supplement.]

Therefore the bill (House, No. 4891, printed as amended) was passed to be engrossed. Sent to the Senate for concurrence.

The House Bill relative to the underground cable reimbursement schedule (House, No. 1857) was considered.

Pending the question on passing the bill to be engrossed, Mr. Bosley of North Adams moved that it be amended by substitution of a bill with the same title (House, No. 4892), which was read.

Pending the question on adoption of the amendment, Mr. Bosley and other members of the House moved that the proposed substitute bill be amended by striking out section 7 and inserting in place thereof the following section:

“SECTION 7. Section 22MM of said chapter 166, as so appearing, is hereby amended by striking out, in lines 6 and 7, the words ‘twenty-two D, provided said utility is not in violation of the provisions of said ordinance or by-law and provided further said’ and inserting in place thereof the following words:— twenty-two D. However, a distribution company, as defined in section 1 of chapter 164, shall so impose and collect a surcharge of 7 per cent of retail delivery revenues, plus interest at the rate set by the department, for customer security deposits except in those municipalities that prior to the effective date of this act have enacted an ordinance or by-law under section 22D establishing a 2 per cent surcharge or where construction is in progress or already completed, unless the city or town otherwise agrees to the 7 per cent surcharge by adopting an ordinance or by-law under section 22D. Any surcharge under this section shall apply only if the distribution company is not in violation of the ordinance or bylaw and if the ordinance or by-law has been in effect for a period of at least one year.”

The further amendment was adopted.

The amendment, as amended, then also was adopted; and the substituted bill (House, No. 4892, printed as amended) was passed to be engrossed. Sent to the Senate for concurrence.

The House Bill to require the use of safety helmets for persons under the age of sixteen while operating bicycles, in-line skates, scooters, and skateboards (House, No. 1920) was read a second time.

The amendment previously recommended by the committee on Rules,— that the bill be amended by adding at the end thereof the following section:

“SECTION 4. This law shall prohibit cities and towns from adopting any by-law or ordinance to alter this law in any way and shall preempt all current by-laws or ordinances which differ with this law.”— was adopted.

The bill (House, No. 1920, amended) then was ordered to a third reading.

The House Bill relative to the composition of the Massachusetts Water Resources Authority board of directors (House, No. 2844) was read a second time; and it was ordered to a third reading.

Order.

On motion of Mr. Finneran of Boston,—

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

Accordingly, without further consideration of the remaining matters in the Orders of the Day, at thirteen minutes after three o’clock P.M., on motion of Mrs. Harkins of Needham (Mr. DiMasi of Boston being in the Chair), the House adjourned, to meet tomorrow at eleven o’clock A.M., in an Informal Session.

Bill passed to be engrossed, yea and nay No. 664.

Underground cable reimbursement schedule.

Skate boards, helmet use.

M W R A board, composition.

Next sitting.