

JOURNAL OF THE HOUSE.

Thursday, September 22, 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:

Gracious God, we pray for the wisdom, the courage and the creativity to address, in a thoughtful manner, the often complex, legislative and public policy issues of these uncertain and difficult times. The hurricanes on our nation's southern coast, recent and pending, have made us more aware of our unity as a people and our need to respond quickly to disasters and events which effect people and their families. We do keep in our prayers the victims of these disastrous events. May we have the vision, the maturity and the knowledge to cope with and respond to any and all challenges of all disasters so that we may continue to enjoy a peaceful and prosperous future in which the dignity of each person is respected.

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. Petrolati of Ludlow), the members, guests and employees joined with him in reciting the pledge of allegiance to the flag.

Pledge of
allegiance.

Message from the Governor.

A message from His Excellency the Governor recommending legislation relative to reforming education (House, No. 4375) was filed this day in the office of the Clerk.

Education
reform.

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

Statement of Representative Kaufman of Lexington.

A statement of Mr. Kaufman of Lexington 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 be unable to be present in the House Chamber for the remainder of today's sitting due to previously scheduled official business in my district. Any roll calls that I may miss today will be due entirely to the reason stated.

Statement of
Representative
Kaufman of
Lexington.

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 hospitalization. Any roll calls that he may miss today will be due entirely to the reason stated.

Statement
concerning
Representative
Kennedy of
Brockton.

Resolutions.

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

Robert J. Biggins. Resolutions (filed by Messrs. Nyman of Hanover and Webster of Hanson) congratulating Robert J. Biggins;

Nancy Louise Horrall. Resolutions (filed by Mrs. Paulsen of Belmont) on the retirement of Nancy Louise Horrall;

John P. Kearney. Resolutions (filed by Mrs. Paulsen of Belmont) on the retirement of John P. Kearney;

Dianne Marston. Resolutions (filed by Mrs. Paulsen of Belmont) on the retirement of Dianne Marston;

Susan Rosenberg. Resolutions (filed by Mrs. Paulsen of Belmont) on the retirement of Susan Rosenberg;

Bacon Free Library. Resolutions (filed by Representatives Peisch of Wellesley and Linsky of Natick) celebrating the one hundred twenty-fifth anniversary of the Bacon Free Library;

Steve Slyne. Resolutions (filed by Mr. Rush of Boston) honoring Steve Slyne upon his retirement; and

Thomas J. Daley. Resolutions (filed by Mr. Verga of Gloucester and other members of the House) on the retirement of Thomas J. Daley;

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

Therman Toon.

Resolutions (filed with the Clerk by Ms. Fox of Boston and other members of the House) honoring the life of Therman Toon, were referred, under Rule 85, to the committee on Rules.

Mr. Scaccia of Boston, for the committee on Rules, then reported that the resolutions ought to be adopted. Under suspension of the rules, on motion of Mr. Peterson of Grafton, the resolutions (reported by the committee on Bills in the Third Reading to be correctly drawn) were considered forthwith; and they were adopted.

Petitions.

The following petitions (having been returned by the State Secretary, under the provisions of Chapter 3 of the General Laws, with memoranda relative thereto) were referred, under Rule 24, as follows:

Northern Berkshire, industrial development.

By Mr. Bosley of North Adams, petition (accompanied by bill, House, No. 4376) of Daniel E. Bosley for legislation to make certain changes in the organization and operation of the Northern Berkshire Industrial Park and Development Corporation. To the committee on Economic Development and Emerging Technologies.

Deerfield Senior Housing Corporation.

By Mr. Kulik of Worthington, petition (accompanied by bill, House, No. 4377) of Stanley C. Rosenberg and Stephen Kulik for legislation to establish a senior housing corporation for the town of Deerfield. To the committee on Housing.

Severally sent to the Senate for concurrence.

Petitions severally were presented and referred as follows:

By Mr. Knuuttila of Gardner, petition (accompanied by bill, House, No. 4372) of Brian Knuuttila and Robert A. Antonioni (with the approval of the mayor and city council) that the city of Gardner be authorized to grant an additional license for the sale of alcoholic beverages to the Moon Hill Brewing Company, Inc., d/b/a Gardner Ale House. To the committee on Consumer Protection and Professional Licensure.

Gardner, Ale House.

By Mr. Peterson of Grafton, petition (accompanied by bill, House, No. 4373) of George N. Peterson, Jr., and Edward M. Augustus, Jr. (by vote of the town) for legislation to restrict certain employees of the town of Upton from serving as a member of the board of selectmen of said town. To the committee on Election Laws.

Upton, board of selectmen.

Severally sent to the Senate for concurrence.

Petitions severally were presented and referred as follows:

By Mr. Correia of Fall River, petition (subject to Joint Rule 12) of Robert Correia and others relative to the installation of automatic sprinkler systems in certain buildings and the establishment of fire safety programs.

Fire safety, sprinklers.

By Mr. Falzone of Saugus, petition (subject to Joint Rule 12) of Mark V. Falzone for legislation to establish a sick leave bank for Marion Dawicki, an employee of the Trial Court of the Commonwealth.

Marion Dawicki, sick leave bank.

By Mr. Jones of North Reading, petition (subject to Joint Rule 12) of Bradley H. Jones, Jr., and others for an appropriation of a certain sum of money for the promotion of energy efficiency in the Commonwealth.

Energy efficiency, funding.

By Ms. L'Italien of Andover, petition (subject to Joint Rule 12) of Barbara A. L'Italien and others for an appropriation of a certain sum of money to provide for a lead paint abatement grant program for family day care homes.

Day care homes, lead paint.

By Mr. O'Brien of Kingston, petition (subject to Joint Rule 12) of Thomas J. O'Brien and others for an appropriation of a certain sum of money for the purpose of providing assistance to cities and towns in the installation of energy efficient systems in public buildings.

Public buildings, energy efficiency.

By Mr. Petersen of Marblehead, petition (subject to Joint Rule 12) of Douglas W. Petersen and Thomas M. McGee that the retirement system of the Water Resources Authority be authorized to grant creditable service to George Denhard as an employee of the Bay State Skills Corporation.

George Denhard, retirement.

By Mr. Walsh of Boston, petition (subject to Joint Rule 12) of Martin J. Walsh relative to the penalty for persons interfering with fire fighters in the performance of their official duties.

Police officers, crimes.

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

Papers from the Senate.

Bills

Amending certain laws governing motor vehicle violations (Senate, No. 2132, amended by inserting before section 1, as printed, the following section:

Campus vehicles, citations.

Campus vehicles,

citations.

“SECTION 1. Section 22 of chapter 90 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by striking out, in lines 51, 64 and 65, and 68, the words ‘or country’, each time they appear, and inserting in place thereof the following words:— , country or jurisdiction.”; by adding at the end thereof the following 5 sections:

“SECTION 4. Section 2 of chapter 228 of the acts of 2000 is hereby amended by striking out the words ‘officers in’ and inserting in place thereof the following words:— officers, including all police officers as defined under section 1 of chapter 90C of the General Laws, in.

SECTION 5. The first sentence of section 3 of said chapter 228 is hereby amended by inserting after the word ‘officers’ the following words:— , including all police officers as defined under said section 1 of the said chapter 90C.

SECTION 6. The first sentence of section 6 of said chapter 228 is hereby amended by striking out the words ‘officers on’ and inserting in place thereof the following words:— officers, and all other police officers, as defined under said section 1 of said chapter 90, on.

SECTION 7. Section 10 of said chapter 228 is hereby amended by striking out the third sentence and inserting in place thereof the following sentence:— The executive office of public safety shall, in consultation with the attorney general, if such data suggest that a state police barracks or a municipal, college, university or other educational institution or hospital police department appears to have engaged in racial or gender profiling, require such barracks or department to collect information on all traffic stops for a period of 1 year, including those not resulting in a warning, citation or arrest.

SECTION 8. The last sentence of said section 10 of said chapter 228 is hereby amended by striking out the words ‘or the municipality’ and inserting in place thereof the following words:— the municipality, college, university or other educational institution or hospital.”; and by striking out the title and inserting in place thereof the following title: “An Act amending certain laws governing motor vehicle violations.”) (on Senate, Nos. 767, 775 and 776);

Welfare reform.

Enacting responsible welfare reform (Senate, No. 2193, amended in section 1, in lines 351 to 354, inclusive, by striking out the following sentence: “Providers of the services will be reimbursed in accordance with criteria that primarily reward educational and skills advancement, as opposed to immediate job placement, retention or advancement.”; in lines 505 and 506, by striking out the words “for a family of the same size” and inserting in place thereof the words “otherwise payable to the family”; and by inserting before the enacting clause the following emergency preamble:

“Whereas, The deferred operation of this act would tend to defeat its purpose, which is forthwith to enact responsible welfare reform within the time required by federal law, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.”) (on Senate bill, No. 2144).

Severally passed to be engrossed by the Senate, were read; and they were referred, under Rule 33, to the committee on Ways and Means.

Bills

Clarifying the designation of the Purple Heart Highway (Senate, No. 1930) (on a petition);

Purple Heart Highway.
Municipal transfers.

Further regulating municipal transfers of appropriations (Senate, No. 2192, amended in lines 40, 41 and 42, by striking out the words “and with the written approval of the amount of the transfer by the municipal light department or by the school district” and inserting in place thereof the words “and with the approval of the amount of the transfer by a vote of the municipal light department board or by vote of the school committee”) (on Senate, No. 1202);

Severally passed to be engrossed by the Senate, were read; and they were referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

Reports

Of the committee on Environment, Natural Resources and Agriculture, asking to be discharged from further consideration

Green building, tax credit.

Of the petition (accompanied by bill, Senate, No. 497) of Susan C. Fargo, J. James Marzilli, Jr., Robert A. O’Leary, Bruce E. Tarr and other members of the General Court for legislation to establish a green building incentive program; and

Alternative fuels, incentives.

Of the petition (accompanied by bill, Senate, No. 499) of John A. Hart, Jr., and Martin J. Walsh for legislation to provide incentives for the purchase and use of clean, alternative transportation fuels;

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

Severally accepted by the Senate, were considered forthwith, under Rule 42; and they were accepted, in concurrence.

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:

Oxycodone.

Petition (accompanied by bill) of Brian P. Wallace for legislation to classify certain medications containing controlled release oxycodone as Class A controlled substances. To the committee on the Judiciary.

Petition (accompanied by bill) of Bradley H. Jones, Jr., and others for legislation to temporarily suspend the excise tax imposed on the sale of gasoline. To the committee on Revenue.

Gasoline tax, moratorium.

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

Norfolk County, special account.

By Ms. Kaprielian of Watertown, for the committee on Municipalities and Regional Government, on House, No. 3568, a Bill establishing a special account for the Norfolk County Fire and Rescue Dispatch Center (House, No. 4374). Read; and 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 the rules, on motion of Mr. Galvin of Canton, the bill was read a second time forthwith; and it was ordered to a third reading.

Engrossed Bills.

Bill re-enacted.

The engrossed Bill relative to federal reimbursement services for children with Autism (see House, No. 4177) (which originated in the House) (which had been returned by His Excellency the Governor with recommendation of amendment), having been certified by the Clerk to be rightly and truly prepared for final passage, was passed to be re-enacted, without amendment; and it was signed by the acting Speaker and sent to the Senate.

Engrossed bills

Bills enacted.

Authorizing the water commissioners of the Swansea Water District to appoint a clerk and a treasurer (see House, No. 3557); and Granting pension benefits to Robert Welby of the Boston Police Department (see House, No. 4121);

(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 enacted; and they were signed by the acting Speaker and sent to the Senate.

Recess.

Recess.

At twelve minutes after eleven o'clock A.M., on motion of Mr. Galvin of Canton (Mr. Petrolati of Ludlow being in the Chair), the House recessed until the hour of one o'clock P.M.; and at that time the House was called to order with Mr. Petrolati in the Chair.

Paper from the Senate.

Motion picture industry.

The House Bill providing incentives to the motion picture industry (House, No. 4252, amended) came from the Senate passed to be engrossed, in concurrence, with an amendment striking out all after the enacting clause and inserting in place thereof the text contained in Senate document numbered 2187.

Under suspension of the rules, on motion of Mr. O'Brien of Kingston, the amendment was considered forthwith.

Committee of conference.

The House then non-concurred with the Senate in its amendment; and, on further motion of the same member, asked for a committee of conference on the disagreeing votes of the two branches. Representatives Binienda of Worcester, O'Brien of Kingston and Webster of Hanson were appointed as the committee on the part of the House. Sent to the Senate to be joined.

Recess.

Recess.

At twenty-three minutes before two o'clock P.M., on motion of Mr. Peterson of Grafton (Mr. Petrolati of Ludlow being in the Chair), the House recessed until the hour of two o'clock P.M.; and at thirteen minutes after two o'clock the House was called to order with Mr. Petrolati in the Chair.

Quorum.

Quorum.

Mr. Jones of North Reading thereupon 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. 184.

Subsequently a roll call was taken for the purpose of ascertaining the presence of a quorum; and on the roll call 147 members were recorded as being in attendance.

[See Yea and Nay No. 184 in Supplement.]

Therefore a quorum was present.

Orders of the Day.

Third reading bill.

The House Bill maximizing federal reimbursement for family planning services (House, No. 4178) (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.

The House Bill relative to welfare reform (House, No. 4367, amended) (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.

Welfare reform.

Pending the question on passing the bill to be engrossed, Mr. Jones of North Reading and other members of the House moved that it be amended in section 7, in lines 38, 44 and 64, by striking out the figures "14" and inserting in place thereof, in each instance, the figures "17".

After debate on the question on adoption of the amendments, Mr. Jones and other members of the House moved that the amendments be amended by striking out the figures "17" and inserting in place thereof the figures "16".

Recess.

After debate on the question on adoption of the further amendment, at thirteen minutes after three o'clock P.M., on motion of Mr. Rushing of Boston (Mr. Petrolati of Ludlow being in the Chair), the House recessed until a quarter before four o'clock; and at eight minutes after four o'clock the House was called to order with Mrs. Harkins of Needham in the Chair.

The further amendment then was adopted.

Amendments adopted, yea and nay No. 185.

On the question on adoption of the amendments offered by Mr. Jones of North Reading, et als, as amended, the sense of the House was taken by yeas and nays, at the request of Ms. Rogeness of Longmeadow; and on the roll call 99 members voted in the affirmative and 53 in the negative.

[See Yea and Nay No. 185 in Supplement.]

Therefore the amendments, as amended, were adopted.

Recesses.

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

The Chair thereupon declared a further recess until half past five o'clock; and at that time the House was called to order with Mr. Petrolati in the Chair.

Welfare reform.

Mr. Jones of North Reading and other members of the House then moved that the bill be amended in section 7, in line 98, by inserting after the word "children" the following: "and which has been determined by the initial assessment required by section 3 of this chapter to prevent them from meeting the work requirements established in section 2H of this chapter."

The amendment was rejected.

Mr. Jones and other members of the House then moved that the bill be amended in section 7, in line 107, by inserting after the word "relative" the following: ", whose responsibilities have been determined by the initial assessment required by section 3 of this chapter to prevent them from meeting the work requirements established in section 2H of this chapter."

The amendment was rejected.

Quorum.

Mr. Peterson of Grafton then asked for a count of the House to ascertain if a quorum was present. The Chair (Mr. Petrolati of Ludlow), 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. 186.

Subsequently a roll call was taken for the purpose of ascertaining the presence of a quorum; and on the roll call 149 members were recorded as being in attendance.

[See Yea and Nay No. 186 in Supplement.]

Therefore a quorum was present.

Mr. Jones of North Reading and other members of the House then moved that the bill be amended in section 7, in paragraph (d) of proposed section 2F, by striking out the last sentence (inserted by amendment), as follows: "It shall be presumed that a recipient did not voluntarily terminate her employment, and, if the department determines that she did, the department shall carry the burden of proving that no good cause reasons existed for such voluntary termination."

Amendment rejected, yea and nay No. 187.

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. Peterson of Grafton; and on the roll call 27 members voted in the affirmative and 122 in the negative.

[See Yea and Nay No. 187 in Supplement.]

Therefore the amendment was rejected.

Mr. Jones of North Reading and other members of the House then moved that the bill be amended in section 7, in paragraph (d) of proposed section 2F (previously amended by the House), by adding at the end thereof the following sentence: "If the department proves that no good cause existed, the recipient shall be subject to the provisions of subsection (e) of section 2G."

Amendment rejected, yea and nay No. 188.

On the question on adoption of the 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 31 members voted in the affirmative and 118 in the negative.

[See Yea and Nay No. 188 in Supplement.]

Therefore the amendment was rejected.

Mr. Jones of North Reading and other members of the House then moved that the bill be amended in section 7, in lines 111 to 116, inclusive, by striking out the paragraph contained therein (previously amended by the House) and inserting in place thereof the following paragraph:

"(d) recipients in the third trimester of pregnancy; provided, however, that a recipient in the third trimester of pregnancy who, within 30 days of application or after applying, voluntarily quits a paying job for reasons unrelated to the health or safety of the recipient or her unborn child or without other good cause reasons, shall not be eligible for the exemption based on pregnancy;"

Amendment rejected, yea and nay No. 189.

On the question on adoption of the amendment, the sense of the House was taken by yeas and nays, at the request of Mr. Jones; and on the roll call 25 members voted in the affirmative and 125 in the negative.

[See Yea and Nay No. 189 in Supplement.]

Therefore the amendment was rejected.

Mr. Jones of North Reading and other members of the House then moved that the bill be amended in section 7, after line 192, by striking out the following paragraph (inserted by amendment):

"(f) In the event a recipient is given a good cause exemption from the work requirements pursuant to subsection (f) of section 2H, the calculation of the 60 month lifetime limit shall be suspended and not resume until such time as the recipient is no longer eligible for said good cause exemption, at which time the calculation shall resume."

Amendment rejected, yea and nay No. 190.

On the question on adoption of the 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 24 members voted in the affirmative and 126 in the negative.

[See Yea and Nay No. 190 in Supplement.]

Therefore the amendment was rejected.

Mr. Jones of North Reading and other members of the House then moved that the bill be amended in section 7, after line 192, in paragraph (f) (inserted by amendment), by adding at the end thereof the following: "and provided that said good cause exemption shall not exceed 24 months"

Amendment rejected, yea and nay No. 191.

On the question on adoption of the 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 48 members voted in the affirmative and 103 in the negative.

[See Yea and Nay No. 191 in Supplement.]

Therefore the amendment was rejected.

Mr. Jones of North Reading and other members of the House then moved that the bill be amended in section 7, after line 192, in paragraph (g) (inserted by amendment), by striking out the word "shall" and inserting in place thereof the word "may".

Amendment rejected, yea and nay No. 192.

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 Ms. Rogeness of Longmeadow; and on the roll call 36 members voted in the affirmative and 115 in the negative.

[See Yea and Nay No. 192 in Supplement.]

Therefore the amendment was rejected.

Welfare

reform.

Mr. Jones of North Reading and other members of the House then moved that the bill be amended in section 7, after line 192, by striking out paragraph (g) (inserted by amendment) and inserting in place thereof the following paragraph:

“The department shall authorize hardship exemptions under the provisions of this subsection for recipients who are otherwise ineligible to receive further benefits because they have received benefits for 60 months, and who encounter emergency circumstances, as defined by the department.”

Amendment rejected, yeas and nays No. 193.

On the question on adoption of the 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 31 members voted in the affirmative and 118 in the negative.

[See Yeas and Nays No. 193 in Supplement.]

Therefore the amendment was rejected.

Mr. Jones of North Reading and other members of the House then moved that the bill be amended in section 7, in lines 230 to 234, inclusive, by striking out the two sentences contained therein; and in section 11, in line 119, by inserting after the word “which” the words “department-approved”.

Amendment rejected, yeas and nays No. 194.

After debate on the question on adoption of the amendments, the sense of the House was taken by yeas and nays, at the request of Mr. Peterson of Grafton; and on the roll call 43 members voted in the affirmative and 105 in the negative.

[See Yeas and Nays No. 194 in Supplement.]

Therefore the amendments were rejected.

Mr. Jones of North Reading and other members of the House then moved that the bill be amended in section 7, in line 277, by striking out the words “for a family of the same size” and inserting in place thereof the words “otherwise payable to the family”; and the amendment was adopted.

Mr. Jones and other members of the House then moved that the bill be amended in section 7, in lines 235 to 251, inclusive, by striking out the paragraph contained therein (previously amended by the House) and inserting in place thereof the following paragraph:

“(e) The commissioner may provide that recipients subject to the work requirement who, without good cause and after having been required to perform community service pursuant to subsection (h), do not satisfy said work requirement shall not receive assistance until they meet the requirement for two weeks. At the discretion of the commissioner, recipients who are subject to the work requirements imposed by this section and who consistently fail to meet said requirements shall be subject to sanction up to and including the termination of all assistance for their family; provided, that no such termination shall occur unless the department has worked with the F.O.R Families program at the department of public health, or such other entity as the commissioner may deem appropriate, to visit the family at their home to ascertain if good cause exists for the failure to meet statutory requirements, and to try to induce compliance. If no such visit or intervention is made, the department shall not impose a full family sanction, so-called.”

The amendment was rejected.

Mr. Jones of North Reading and other members of the House then moved that the bill be amended in section 7, in line 197, by inserting after “Section 2F” the following 2 sentences: “Notwithstanding any general or special law to the contrary, including the provisions of section 2F of this chapter, any disabled person capable of meeting the direct work requirement of section 2H of this chapter, or capable of work for less than the required number of hours, shall be required to work the number of hours determined by an assessment of the capabilities of the recipient. Such recipients shall be subject to the provisions of section 2H and section 3 of this chapter applicable to non exempt recipients, but not subject to section 2G.”

Amendment rejected, yeas and nays No. 195.

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. Peterson of Grafton; and on the roll call 31 members voted in the affirmative and 118 in the negative.

[See Yeas and Nays No. 195 in Supplement.]

Therefore the amendment was rejected.

Representatives Rushing of Boston, Owens-Hicks of Boston and Jones of North Reading then moved that the bill be amended in section 7, in line 40, by adding after the word “requirements” the following: “unless the recipient, parent or guardian can establish reasonable efforts were made by the recipient to ensure said school attendance requirements were met”; and the amendment was adopted.

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. Peterson of Grafton; and on the roll call 129 members voted in the affirmative and 20 in the negative.

Bill passed to be engrossed, yeas and nays No. 196.

[See Yeas and Nays No. 196 in Supplement.]

Therefore the bill (House, No. 4378, printed as amended) was passed to be engrossed. Sent to the Senate for concurrence.

At twenty-eight minutes after seven o'clock P.M., on motion of Mr. Flynn of Bridgewater (Mr. Petrolati of Ludlow being in the Chair), the House recessed until the hour of eight o'clock P.M.; and at that time the House was called to order with Mr. Petrolati in the Chair.

Recess.

The Senate Bill relative to tax laws (Senate, No. 2156) was read a second time.

Tax laws.

Pending the question on adoption of the amendments previously recommended by the committee on Ways and Means, Mr. Jones of North Reading raised a point of order that the bill was improperly before the House for the reason that the House had previously taken up a similar matter and disposed of it and there was not the required unanimous consent to take up this bill.

Point of order.

The Chair (Mr. Petrolati) ruled that the point of order was not well taken.

Mr. Jones thereupon appealed from the decision of the Chair; and the appeal was seconded by Mr. Peterson of Grafton.

Appeal from decision of Chair.

After debate the decision of the Chair was sustained.

Point of

order.

Mr. Peterson of Grafton then raised a point of order that the bill was improperly before the House for the reason that the it did not contain a fiscal note from the committee on Ways and Means, as required by House Rule 33.

Suspension of Rule 1A.

The Chair (Mr. Petrolati) then interrupted the pending business and placed before the House the question on suspension of Rule 1A in order that the House might continue to meet beyond the hour of nine o'clock P.M.

Rule 1A suspended, yea and nay No. 197.

On the question on suspension of Rule 1A, the sense of the House was taken by yeas and nays, as required under the provision of said rule; and on the roll call 103 members voted in the affirmative and 47 in the negative.

[See Yea and Nay No. 197 in Supplement.]

Therefore Rule 1A was suspended.

In answer to the pending point of order the Chair (Mr. Petrolati of Ludlow) stated that the bill before the House addresses revenues of the Commonwealth, the fiscal impact of which is based on factors not yet known, and not based on stated amounts of expenditures. In consultation with the committee, it would not be possible to attach a fiscal note to this bill.

Point of order.

Therefore the Chair (Mr. Petrolati) ruled that the point of order was not well taken.

Mr. Peterson of Grafton then raised a point of order that the bill was improperly before the House for the reason that it was a "money bill" and, under the Constitution, could not originate in the Senate.

The Chair (Mr. Petrolati of Ludlow) ruled that the point of order was not well taken.

Pending the amendments recommended by the committee on Ways an Means,— that the bill be amended by striking out all after the enacting clause and inserting in place thereof the text contained in House document numbered 4365; by striking out the emergency preamble and inserting in place thereof the following emergency preamble:

"Whereas, The deferred operation of this act would tend to defeat its purpose, which is forthwith to make certain changes in the tax laws and other laws relating to the department of revenue, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience."; and by striking out the title and inserting in place thereof the following title: "An Act to update and improve certain tax provisions of the Commonwealth.",— and the main question on ordering the bill to a third reading, Mr. Binienda of Worcester moved that the proposed substitute text be amended by adding at the end thereof the following section:

"SECTION 62. Section 31A of chapter 62C of the General Laws, as so appearing in the 2002 Official Edition is hereby amended by striking out the first paragraph, and inserting in place thereof the following paragraph:—

If a person fails to pay to the commissioner any required tax of a corporation, partnership or limited liability company and such person is personally and individually liable therefore to the commonwealth under section five of chapter sixty-two B, section seven B of chapter sixty-four G, section sixteen of chapter sixty-four H or

section seventeen of chapter sixty-four I, the commissioner shall so notify such person in writing at any time during the period of time that such assessment against the corporation, partnership or limited liability company remains in existence and unpaid. Such person or his representative may confer with the commissioner or his duly authorized representative as to the assessment of the tax or the proposed determination that he is personally and individually liable therefore within thirty days after the date of such notification. After the expiration of thirty days from the date of such notification, such person shall be personally and individually liable for the tax of the corporation, partnership or limited liability company, which shall be deemed to be assessed against such person, and a lien under section fifty upon all property and rights of property, whether real or personal, belonging to such person shall arise in favor of the commonwealth."

The further amendment was adopted.

Mr. Jones of North Reading and other members of the House then moved that the proposed substitute text be amended by striking out section 56 and inserting in place thereof the following 3 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."

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 48 members voted in the affirmative and 102 in the negative.

Further amendment rejected, yea and nay No. 198.

[See Yea and Nay No. 198 in Supplement.]

Therefore the further amendment was rejected.

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

"SECTION 63. (a) There shall be set up and established on the books fo 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 56 of this act which, notwithstanding

Tax laws.

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 December 31, 2005, 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 1, 2006. Any revenue collected by the commonwealth pursuant to section 56 of this act on or after July 1, 2006 shall be deposited into the general fund.”

Pending the question on adoption of the further amendment, Mr. Coughlin of Dedham raised a point of order that the further amendment was improperly before the House for the reason that it went beyond the scope of the pending amendment.

In answer to the point of order, the Chair (Mr. Petrolati of Ludlow) ruled that the point of order was well taken; and the amendment was laid aside accordingly.

Mr. Jones of North Reading and other members of the House then moved that the proposed substitute text be amended by adding at the end thereof the following 3 sections:

“SECTION 63. Paragraph (a) of Part B of section 3 of chapter 62 of the General Laws, as so appearing in the 2004 Official Edition, is hereby amended by striking out subparagraph (13) and inserting in place thereof the following subparagraph:—

(13) An amount equal to the amount of the charitable contribution deduction allowed or allowable to the taxpayer under section 170 of the Code; provided, however, that, in taxable years beginning on or after January 1, 2004, no such deduction shall be allowed in any taxable year unless the personal exemptions provided in clause (A) of subparagraph (1), or clause (A) of subparagraph (1A), and clause (A) of subparagraph (2) of paragraph (b) of Part B for such taxable year are the maximum allowable amounts set forth in said clauses; and provided further, that notwithstanding said section 170 of the Code, no deduction shall be allowed for contributions of household goods or used clothing, as those items are recognized under said section 170 of the Code. All requirements, conditions and limitations applicable to charitable contributions under the Code shall apply for purposes of determining the amount of the deduction under this subparagraph, except that taxpayers shall not be required to itemize their deductions in their federal income tax returns.

SECTION 64. Section 4 of chapter 62 of the General Laws, as so appearing, is hereby amended by striking out subsection (b) in its entirety and inserting in lace thereof the following subsection:—

(b) Part B taxable income shall be taxed at the rate of 5.2 percent for the taxable year beginning on the first tax year after the end of the fiscal year where the provisions of section 65 of chapter ____ [this act] of the acts of 2005 have been met, and shall be taxes at the

rate of 5.1 percent for the taxable year beginning on the second tax year after the beginning of the fiscal year where the provisions of section 65 of chapter ____ [this act] of the acts of 2005 have been met, and shall be taxed at the rate of 5.0 percent for taxable years beginning on the third tax year after the beginning of the fiscal year where the provisions of section 65 of chapter ____ [this act] of the acts of 2005 have been met.

SECTION 65. Sections 63 and 64 shall take effect on only after the aggregate amount of the so called section distributions, chapter 70 education aid, additional assistance, and lottery aid, that are distributed in any fiscal year to cities and towns are equal to or exceeds, including an amount to compensate for inflation using the U.S. Department of Labor Statistic’s Consumer Price Index starting in July 2003 (CPI-U, Northeast, 1982-1984=100), the amounts provided for the sum of the three purposes in fiscal year 2002.”

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 20 members voted in the affirmative and 131 in the negative.

[See Ye and Nay No. 199 in Supplement.]

Therefore the further amendment was rejected.

Mr. Jones of North Reading and other members of the House then moved that the proposed substitute text be amended by adding at the end thereof the following 5 sections:

“SECTION 63. Notwithstanding any general or special law to the contrary, if the 15 day moving average of the daily retail gasoline price per gallon, as gathered by the American Automobile Association, for the commonwealth is above \$3.21 per gallon for five consecutive days, an excise shall not be imposed upon the sale of fuel, for a single period of 90 days, by a distributor or an unclassified importer for transfer into a motor vehicle or into a receptacle from which fuel is supplied by him to his own or other motor vehicles, as defined in section 1 of chapter 64A of the General Laws; provided that the provisions in this section shall not be implemented more than one time.

SECTION 64. Notwithstanding any general or special law to the contrary, if the 15 day moving average of daily gasoline prices, as gathered by the American Automobile Association, for the commonwealth is above \$3.21 per gallon for five days, a distributor or unclassified importer in the commonwealth shall not add to the sales price or collect, for a single period of 90 days, from any purchaser an excise upon the sale of fuel by a distributor or an unclassified importer for transfer into a motor vehicle or into a receptacle from which fuel is supplied by him to his own or other motor vehicles, as defined in section 1 of chapter 64A of the General Laws. The commissioner of revenue shall not require any distributor or unclassified importer to collect and pay excise upon such transfers made during this period, but any excise erroneously or improperly collected during such period shall be remitted to the department of revenue; provided that the provisions in this section shall not be implemented more than one time.

Further amendment rejected, yeas and nays No. 199.

Tax laws.

SECTION 65. Reporting requirements imposed upon distributors and unclassified importers, by law or by regulation, including, but not limited to the requirements for filing returns required by chapter 64A of the General Laws, shall remain in effect for sales for the days in which the excise is not collected in accordance with this act.

SECTION 66. On or before 90 days after the commencement of the collection of the gasoline excise after the period of non-collection, in accordance with this act, the commissioner of revenue shall certify to the comptroller the amount of sales tax revenue forgone due to the operation of this act. The commissioner shall issue a report, detailing by fund the amounts under general and special laws governing the distribution of revenues under section 13 of chapter 64A of the General Laws which would have been deposited in each fund, notwithstanding this act. The respective amounts so reported by the commissioner shall, within 30 days following such report and without further appropriation, be transferred ratably by the treasurer from the General Fund to the respective funds set forth in said section 13 of chapter 64A; provided, that the total amount of transfers made, the non-collection period, by the treasurer according to this section shall not exceed \$175 million.

SECTION 67. The commissioner of revenue shall issue instructions or forms, or promulgate rules or regulations, necessary to carry out this act.”

Pending the question on adoption of the further amendment, Mr. Coughlin of Dedham raised a point of order that the further amendment was improperly before the House for the reason that it went beyond the scope of the pending amendment.

In answer to the point of order, the Chair (Mr. Petrolati of Ludlow) ruled that the point of order was well taken; and the amendment was laid aside accordingly.

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

“SECTION 63. Chapter 64A of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by inserting, after section 7A, the following section:—

Section 7B. The sale of fuel to a city or town, who having consumed the same for any municipal purpose, shall be exempt from the excise established by this chapter.”

Pending the question on adoption of the further amendment, Mr. Binienda of Worcester raised a point of order that the further amendment was improperly before the House for the reason that it went beyond the scope of the pending amendment.

In answer to the point of order, the Chair (Mr. Petrolati of Ludlow) ruled that the point of order was well taken; and the amendment was laid aside accordingly.

Mr. Peterson of Grafton thereupon appealed from the decision of the Chair; and the appeal was seconded by Mr. Jones of North Reading.

Point of order.

Point of order.

Appeal from decision of Chair.

Decision of

After remarks the question was put “Shall the decision of the Chair stand as the judgment of the House?”; and after remarks on this question, the sense of the House was taken by yeas and nays, at the request of Mr. Peterson; and on the roll call 131 members voted in the affirmative and 20 in the negative.

[See Yea and Nay No. 200 in Supplement.]

Therefore the decision of the Chair was sustained.

The amendments recommended by the committee on Ways and Means, as amended, then were adopted; and the bill (Senate, No. 2156, amended) was ordered to a third reading.

Under suspension of the rules, on motion of Mr. Binienda of Worcester, the bill (having been reported by the committee on Bills in the Third Reading to be correctly drawn) was read a third time forthwith.

On the question on passing the bill, as amended, to be engrossed, in concurrence, the sense of the House was taken by yeas and nays, at the request of Mr. Peterson of Grafton; and on the roll call 131 members voted in the affirmative and 20 in the negative.

[See Yea and Nay No. 201 in Supplement.]

Therefore the bill (Senate, No. 2156, amended) was passed to be engrossed, in concurrence. Sent to the Senate for concurrence in the amendments.

The House Bill establishing a minimum energy-efficiency standard for certain products (House, No. 4299, amended), 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.

On motion of Mr. DiMasi of Boston,—

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

Mr. Donato of Medford then moved that the House adjourn; and the motion prevailed. Accordingly, without further consideration of the remaining matters in the Orders of the Day, at twenty minutes after ten o’clock P.M. (Mr. Petrolati of Ludlow being in the Chair), the House adjourned, to meet on Monday next at eleven o’clock A.M., in an Informal Session.

Chair sustained, yeas and nays No. 200.

Bill passed to be engrossed, yeas and nays No. 201.

Product efficiency standards.

Next meeting.