

Thursday, October 8, 2009.

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

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

Gracious God, before we address the items on today's legislative calendar we take a moment to recognize Your presence in our midst and to seek Your guidance in our actions. We believe that Your assistance enables us to make decisions and choices which are correct, just, honorable and ethical. Help us to be aware of the needs of all the people in the Commonwealth and of our various constituencies as we work together to find common goals and to define the common good in these difficult social and economic times. On Monday we celebrate Columbus Day, a holiday, on which we honor the memory, courage and determination of Christopher Columbus. We, today, are grateful for his courage in discovering this new land which has become a land of opportunity and freedom for all to exercise their human and religious rights.

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

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

Statement Concerning Representative Atkins of Concord.

A statement of Mr. Vallee of Franklin concerning Ms. Atkins of Concord 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 Atkins of Concord was unable to be present in the House Chamber for today's sitting due to illness. If she had been present, she would have voted in the negative on roll call number 233, and in the affirmative on roll calls numbered 234 and 235. Her missing of roll calls today was due entirely to the reason stated.

Statement of Representative Fox of Boston.

A statement of Ms. Fox of Boston was spread upon the records of the House, as follows:

MR. SPEAKER: I would like to call to the attention of the House the fact that I was not present in the House Chamber for a portion of today's sitting because I was on official business in another part of the State House, attending a committee hearing. Had I been present for the vote on passing to be engrossed, in concurrence, the public health emergency legislation, I would have voted in the affirmative. My missing of roll calls today was due entirely to the reason stated.

Statement Concerning Representative Mariano of Quincy.

A statement of Mrs. Haddad of Somerset concerning Mr. Mariano of Quincy was spread upon the records of the House, as follows:

Statement concerning Representative Mariano of Quincy.

MR. SPEAKER: I would like to call to the attention of the House the fact that one of our colleagues, Representative Mariano of Quincy is unable to be present in the House Chamber for today's sitting because he will be traveling for the next two weeks to Taiwan with the Taipei Economic and Cultural Office (TECO) in Boston. He is scheduled to return to the Commonwealth on Friday, October 16.

TECO-Boston represents the interest of the Republic of China (Taiwan) in New England. TECO-Boston's service area covers five New England states, including Massachusetts, Maine, New Hampshire, Rhode Island and Vermont. Representative Mariano is traveling with a New England delegation comprised of representatives from those states.

His missing of roll calls today and next week is due entirely to the reason stated.

Guests of the House.

Carine Marie Poladian.

Subsequent to the noon recess, the Speaker introduced 6-year-old Carine Marie Poladian and her parents, Nick and Lisa Poladian. Carine, who will be traveling in November to Anaheim, California to compete in the National All American Miss Pageant, currently holds the titles of Miss Bay State, National American Miss Ambassador, National Miss Cover Girl and Miss USA Ambassador. They were the guests of Mr. DiNatale of Fitchburg.

Albert "Albie" Sherman.

The Speaker then introduced Dr. Jack Wilson PhD, the President of the University of Massachusetts. President Wilson then addressed the House regarding the accomplishments of Albert "Albie" Sherman, Vice Chancellor of the University of Massachusetts Medical School, for whom the Albert Sherman Center, an interdisciplinary, state-of-the-art research and education facility on the Worcester campus that will foster interaction and collaboration among scientists and promote innovation and synergies across disciplines, is named.

Subsequent to the Speaker making comments regarding the many accomplishments of Albie Sherman, Mr. Sherman addressed the House.

Resolutions.

Robert M. Coard.

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

Earl Nelson Sample.

Resolutions (filed by Ms. Fox of Boston and other members of the House) honoring Robert M. Coard;

Winchester,— St. Germain-En-Laye.

Resolutions (filed by Ms. Gobi of Spencer) recognizing Earl Nelson Sample and his lifelong dedication to the community of Barre and its residents;

Resolutions (filed by Mr. Lewis of Winchester) honoring the friendship, camaraderie and long-standing relationship of the town of Winchester and St. Germain-En-Laye of France in celebration of the twentieth anniversary of their jumelage;

Resolutions (filed by Representatives Linsky of Natick and Peisch of Wellesley) honoring Charles Sisitsky, director of public works in the town of Natick, for his many years of dedicated service; and

Charles Sisitsky.

Resolutions (filed by Mr. Turner of Dennis) congratulating Herb Goldberg on the occasion of being recognized by the Cape Cod Islands Council, Inc. #224, Boy Scouts of America;

Herb Goldberg.

Mr. Binienda of Worcester, 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 Ms. Wolf of Cambridge, resolutions (reported by the committee on Bills in the Third Reading to be correctly drawn) were considered forthwith; and they were adopted.

Annual and Special Reports.

Annual reports

Of the Economic Stabilization Trust (under Section 14 of Chapter 23D of the General Laws) submitting a complete and detailed report of its activities for the fiscal year 2009; and

Economic Stabilization Trust.

Of the Massachusetts Life Sciences Center (under Section 15 of Chapter 23I of the General Laws) submitting its annual report for the fiscal year 2009, accompanied by the 2009 audit report of said center; and

Life Sciences Center.

A report of the Office of the Inspector General (under sections 1 to 13, inclusive of Chapter 149A of the General Laws) submitting a review of the construction management at risk (CM at risk) alternative delivery method;

Construction management.

Severally were placed on file.

Petition.

Ms. Polito of Shrewsbury presented a petition (subject to Joint Rule 12) of Karyn E. Polito relative to the electronic monitoring of sex offenders found to be in violation of the conditions of probation; and the same was referred, under Rule 24, to the committee on Rules.

Sex offenders,— electronic monitoring.

Mr. Binienda of Worcester, 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 Ms. Wolf of Cambridge, the report was considered forthwith. Joint Rule 12 was suspended; and the petition (accompanied by bill) was referred to the committee on the Judiciary. Sent to the Senate for concurrence.

Reports of Committees.

By Mr. Binienda of Worcester, for the committee on Rules and the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the petition of Martha M. Walz relative to student attendance in public schools. Under suspension of the rules, on motion of Ms. Wolf of Cambridge, the report was considered forthwith. Joint Rule 12 was suspended; and the petition (accompanied by bill) was referred to the committee on Education. Sent to the Senate for concurrence.

Students,— attendance.

Public schools,—
farm products.

By Mr. Sánchez of Boston, for the committee on Public Health, on Senate, No. 1437 and House, No. 2107, a Bill promoting better health in public schools through improved contracting with farms in the commonwealth (House, No. 2107, changed in section 1, in line 5 and also in line 13, by inserting after the word “college” the words “or university”; and in section 2, in line 20, by striking out the figures “32” and inserting in place thereof the figures “30”). Read; and referred, under Rule 33, to the committee on Ways and Means.

Whitman,—
treasurer.

By Mr. Donato of Medford, for the committee on the Municipalities and Regional Government, on a petition, a Bill establishing the office of treasurer-collector for the town of Whitman (House, No. 1920).

Westminster,—
town meeting.

By the same member, for the same committee, on a petition, a Bill validating the acts and proceedings of the 2009 spring annual town meeting and the 2009 spring special town meeting of the town of Westminster (published in House, No. 4179).

Stockbridge,—
conservation commission.

By the same member, for the same committee, on a petition, a Bill relative to the membership of the conservation commission of the town of Stockbridge (House, No. 4191).

Barnstable,—
rest area.

By Mr. Wagner of Chicopee, for the committee, on Transportation, on a petition, a Bill designating a certain rest area in the town of Barnstable as the Korean War Veterans Memorial rest area (House, No. 3159).

Billerica,—
Leary bridge.

By the same member, for the same committee, on a petition, a Bill designating a certain bridge in the town of Billerica the John F. Leary bridge (House, No. 3232).

Lowell,—
traffic circle.

By the same member, for the same committee, on a petition, a Bill to designate a certain traffic circle in the city of Lowell (House, No. 4204).

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

Engrossed Bill.

Bill enacted.

The engrossed Bill establishing the position of municipal hearing officer in the town of Southbridge (see House, No. 4116) (which originated in the House), having been certified by the Clerk to be rightly and truly prepared for final passage, was passed to be enacted; and it was signed by the acting Speaker and sent to the Senate.

Orders of the Day.

Third reading bill.

The Senate Bill authorizing the town of Sandwich to exchange certain parcels of land (Senate, No. 21, 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, in concurrence.

Second reading bill engrossed.

The House Bill designating the building of the State Laboratory Institute as the William A. Hinton Laboratory (House, No. 3007) was read a second time; and it was ordered to a third reading.

Subsequently under suspension of the rules, on motion of Ms. Malia of Boston, the bill (having been reported by the committee on Bills

in the Third Reading to be correctly drawn) was read a third time; and it was passed to be engrossed, its title having been changed by said committee to read: “An Act designating the building of the State Laboratory Institute as the Dr. William A. Hinton Laboratory.” Sent to the Senate for concurrence.

The House Bill establishing a sick leave bank for Mary Markley, an employee of the Trial Court (House, No. 4233) was read a second time; and it was ordered to a third reading.

Second reading bill engrossed.

Subsequently under suspension of the rules, on motion of Mr. O’Day of West Boylston, 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.

Senate bills

Relative to the Sandwich Visitor Services Board (Senate, No. 2074); Relative to the lease of property at Sandwich High School (Senate, No. 2075); and

Second reading bills.

Authorizing the city of Westfield to convert a seasonal license for the sale of all alcoholic beverages not to be drunk on the premises to an annual license for the sale of all alcoholic beverages not to be drunk on the premises (Senate, No. 2161); and

House bills

To create an annual City Year day (House, No. 4230); Relative to the flying of the flag of the Commonwealth at half staff on state buildings and installations (House, No. 4236); and

Authorizing the town of Montague to grant an additional license for the sale of all alcoholic beverages to be drunk on the premises (House, No. 4240);

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

Recess.

At twenty-one minutes after eleven o’clock A.M., on motion of Mr. deMacedo of Plymouth (Mr. Donato of Medford being in the Chair), the House recessed until the hour of one o’clock P.M.; and at sixteen minutes after one o’clock the House was called to order with Mr. Petrolati of Ludlow in the Chair.

Recess.

Quorum.

Mr. Donato of Medford thereupon 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.

Subsequently a roll call was taken for the purpose of ascertaining the presence of a quorum; and on the roll call 131 members were recorded as being in attendance.

Quorum,—
yea and nay
No. 232.

[See Yea and Nay No. 232 in Supplement.]

Therefore a quorum was present.

Orders of the Day.

Public health emergency preparation.

The Senate Bill relative to pandemic and disaster preparation and response (Senate, No. 2028, amended) was read a second time.

The amendments previously recommended by the committee on Ways and Means,— to amend the bill by striking out all after the enacting clause and inserting in place thereof the text contained in House document numbered 4271; and by striking out the title and inserting in place thereof the following title: “An Act relative to public health emergency preparation and response in the Commonwealth.”— were adopted; and the bill, as amended, was ordered to a third reading.

Subsequently under suspension of the rules, on motion of Mr. Murphy of Burlington, the bill (having been reported by the committee on Bills in the Third Reading to be correctly drawn) was read a third time.

Pending the question on passing the bill to be engrossed, Mr. Peterson of Grafton moved that further consideration thereof be postponed, until Tuesday, October 13, 2009.

Motion to postpone negated,— yea and nay No. 233.

After debate on the motion to postpone, the sense of the House was taken by yeas and nays, at the request of the same member; and on the roll call 22 members voted in the affirmative and 125 in the negative.

[See Yea and Nay No. 233 in Supplement.]

Therefore the motion to postpone was negated.

Subsequently a statement of Mr. Kulik of Worthington was spread upon the records of the House, as follows:

Statement concerning Representatives Murphy of Burlington, Kulik and L’Italien.

MR. SPEAKER: I would like to call to the attention of the House, the fact that on the previous roll call I was absent from the House Chamber on official business in another part of the State House while conducting a Ways and Means committee hearing in the Gardner Auditorium, along with Ways and Means committee Chairman Murphy of Burlington and Vice-Chairman L’Italien of Andover. If I had been present for the previous roll call I would have voted in the negative.

There being no objection,— On motion of Mr. Vallee of Franklin,—

Ordered, That, Notwithstanding any rule to the contrary, a court officer shall be assigned to cast roll call votes, except for quorum roll calls, for the members of the committee on Ways and Means who are conducting a public hearing in the Gardner Auditorium.

Ways and Means committee,— voting.

After debate on the question on passing the bill to be engrossed, Representatives L’Italien of Andover and Bradley of Hingham moved to amend it in section 11 (as published), in lines 223 to 226, inclusive, by striking out the paragraph in those lines and inserting in place thereof the following paragraph:

“It shall be a violation of section 4 of chapter 151B for an employee to discharge or reduce any benefits of an employee because such employee is subject to an order of isolation or quarantine or because the employee has a child under 21 years of age, disabled dependent, elderly person or spouse of whom the wage earner has custody and responsibility is subject to an order of isolation or quarantine.”

After remarks the amendment was adopted.

The same members then moved to amend the bill in section 11 (as published), in line 200, by inserting after the word “others.” the following sentence: “The Department of Public Health will upon detection of a new occurrence of a disease, infection or viral strain notify local boards of public health, will use reasonable means to notify local public health departments and the public of isolation requirements upon immediate knowledge of incubation time.”; and after remarks the amendment was adopted.

Representatives L’Italien and Bradley then moved to amend the bill in section 11 (as published), in line 203, by inserting after the word “exposed” the following sentence: “The Department of Public Health will upon detection of a new occurrence of a disease, infection or viral strain notify local boards of public health, will use reasonable means to notify local public health departments and the public of quarantine requirements upon immediate knowledge of incubation time.”. After remarks the amendment was adopted.

The same members then moved to amend the bill in section 11 (as published), in lines 227 to 234, inclusive, by striking out the paragraph contained in those lines and inserting in place thereof the following paragraph:

“(e) The individual or group subject to an order of isolation or quarantine shall be informed that the order may be appealed by filing a petition in superior court challenging the order at any time. The appeal shall be heard by the superior court no later than 15 days from the date of filing of such appeal. Such court shall issue a final decision on the appeal no later than 10 days after the initial hearing. If an individual fails to comply with the order within the time specified in the order, the commissioner or the local public health authority may apply to a judge of the superior court for an order requiring the individual to comply with the order within the time specified in the order of the court and to take whatever other action the court considers appropriate in the circumstances to protect the public health. The law enforcement authorities of the city or town where the individual is present shall enforce the court order.”

After remarks the amendment was adopted.

Representatives L’Italien of Andover and Bradley of Hingham then moved to amend the bill in section 3 by adding the following sentence: “The Department of Public Health shall make accessible to the consumer on the department’s website and by telephone hotline a manner in which to receive information on already reported conditions.”; and after remarks the amendment was adopted.

The same members then moved to amend the bill in section 9 by inserting after line 148 the following paragraph:

“Any volunteer, regardless of medical knowledge or education, shall receive adequate and sufficient training before administering a vaccine or medication, providing information to the consumer or otherwise performing duties similar to those in the medical profession. Prior to administering a vaccination or medication, a medical professional or volunteer shall inform the consumer of any possible side effects. If no side effects are known at the time of the administration of the vaccination or medication, the consumer shall be informed of that as well.”

After remarks the amendment was adopted.

Mr. Sánchez of Boston then moved to amend the bill in section 1, in line 73 (as changed by the committee on Bills in the Third Reading), by striking out the following: "clause (2)" and inserting in place thereof the following: "clauses (1) through (4) inclusive"; and after remarks the amendment was adopted.

Representatives Bradley of Hingham and L'Italien of Andover then moved to amend the bill by inserting after section 4 the following section:

"SECTION 4A. Chapter 111 of the General Laws is hereby amended by inserting after section 5A the following section:—

Section 5A½. (a) The department and, any health care provider, as defined in section 1, may not administer, or allow to be administered, any vaccine, including the influenza vaccine, to any person who is knowingly pregnant or under the age of three that contains more than trace amounts of mercury. For the purpose of this act, a trace amount is that amount as determined by the United States Food and Drug Administration.

(b) The Commissioner may declare an exemption for the department and health care providers from this section if he or she determines that there is an epidemic, an emergency or that, after diligent efforts to obtain the mercury free vaccines, or vaccine containing no more than trace amounts of mercury, there is a shortage of the mercury-free vaccine or vaccine containing no more than trace amounts of mercury. In such a case, a 12 month exemption shall be sought.

The Commissioner may seek a second 12 month exemption should he or she determine that said epidemic, emergency, or shortage persists. All health care providers who administer to any child or adult, vaccinations subject to federal oversight, must be in compliance with the National Childhood Vaccine Injury Act (42 U.S.C. § 300aa-26).

(c) This law shall take effect on December 31, 2010.

(d) On or before October 1, 2010, the Commissioner, in consultation with representatives from the Massachusetts Medical Society and the Massachusetts Chapter of the American Academy of Pediatrics, shall send a report to the Governor, the Joint Committee on Public Health, the Speaker of the House, and the Senate President regarding any issues with the implementation of this law, including any changes, if any, needed to amend existing sections of the Massachusetts General Laws relating to the purchase, procurement, or administration of vaccines.

(e) The department shall promulgate regulations to carry out the provisions of this section."

The amendment was adopted.

Mr. Sánchez of Boston then moved to amend the bill in section 11, (as published) in line 209, by inserting after the word "individuals" the following: ", or may issue an order requiring the owner or occupier of publicly accessible premises to close the premises or a specific part of the premises, and allowing reopening of the premises when the danger has ended". The amendment was adopted.

The same member then moved to amend the bill in section 1, in line 70, by inserting after the word "agency." the following sentence: "Nothing in this section shall supersede the normal operating authority of the local public health authorities, except that such

authority shall not be exercised in a manner that conflicts with any procedure or order issued by the commissioner to assure the maintenance of public health and the prevention of disease during such emergency."; and after remarks the amendment was adopted.

Mr. Vallee of Franklin then moved to amend the bill by striking out section 13 (as published) and inserting in place thereof the following section:

"SECTION 20. Section 12C of chapter 112 of the General Laws, as so appearing, is hereby amended by inserting after the word 'programs,' in line 2, the second time it appears, the following words: 'and no other person assisting in the foregoing' and by inserting after the word 'nurse,' the following word: 'physician assistant'."

The amendment was adopted.

Representatives Bradley of Hingham and L'Italien of Andover then moved to amend the bill in section 1, in line 24, by inserting before the word "willful" the words "negligence not committed under the circumstance of a public health emergency or gross negligence"; and the amendment was adopted.

Mr. Bradley then moved to amend the bill in section 9, in line 182, by inserting before the word "willful" the words "negligence not committed under the circumstance of a public health emergency or gross negligence". The amendment was adopted.

Representatives Rushing of Boston and Wolf of Cambridge then moved to amend the bill in section 11 (as published), in line 222, by striking out the words "; or isolation or quarantine of an area"; and the amendment was adopted.

Mr. Dwyer of Woburn then moved to amend the bill by inserting after section 12 (as published) the following section:

"SECTION 14A. Chapter 111C of the General Laws, as so appearing, is hereby amended by adding the following section:—

Section 25. When a Class I, II, or V ambulance transports a patient receiving care at the Paramedic level of ALS, the ambulance must be staffed with a minimum of two EMTs, one of whom is certified at the EMT-Paramedic level."

The amendment was adopted.

Mr. Bradley of Hingham then moved to amend the bill in section 19 (as published), in line 301, by inserting before the word "willful" the words "negligence not committed under the circumstance of a public health emergency or gross negligence"; and the amendment was adopted.

Mr. Jones of North Reading and other members of the House then moved to amend the bill in section 1, in line 3, by striking out the following: "(a) Upon" (as changed by the committee on Bills in the Third Reading) and inserting in place thereof the following: "(a) The following terms shall, unless the context clearly requires otherwise, have the following meanings:— 'public health emergency', an occurrence or imminent threat of a disease or condition dangerous to the public health whose scale, timing or unpredictability threatens to overwhelm routine capabilities.

(b) Upon"

The amendment was adopted.

Bill passed to
be engrossed,—
yea and nay
No. 234.

After remarks 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. Sánchez of Boston; and on the roll call 114 members voted in the affirmative and 36 in the negative.

[See Yea and Nay No. 234 in Supplement.]

Therefore the bill (Senate, No. 2028, amended) was passed to be engrossed, in concurrence. Sent to the Senate for concurrence in the amendments adopted by the House [for text of the House amendments, published as amended, see House, No. 4275].

Engrossed Bill — Land Taking.

Sandwich,—
land
exchange.

Mrs. Haddad of Somerset being in the Chair,— the engrossed Bill authorizing the town of Sandwich to exchange certain parcels of land (Senate, No. 21, 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. 235.

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

[See Yea and Nay No. 235 in Supplement.]

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

Order.

Next
sitting.

On motion of Mr. DeLeo of Winthrop,—
Ordered, That when the House adjourns today, it adjourn to meet on Tuesday next at eleven o'clock A.M.

Accordingly, without further consideration of the matters in the Orders of the Day, at eight minutes before four clock P.M., on motion of Mr. Sánchez of Boston (Mrs. Haddad of Somerset being in the Chair), the House adjourned, to meet the following Tuesday at eleven o'clock A.M., in an Informal Session.