

JOURNAL OF THE HOUSE.

Tuesday, November 15, 2005.

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, in Whom we place our hope and trust, we believe that You and Your assistance help us to face in a thoughtful way both the legislative and our personal issues of each day. As we struggle in our changing and diverse society to resolve current, sometimes emotional, legislative proposals, teach us to take a moment to reflect on our possible choices and decisions. A thoughtful moment before we act on an issue enables us to select our best possible options. Inspire us, even in this age of terrorism, to respect the personal dignity, rights, (human and civil), and the philosophical and religious views of all people. May we work together for the good and benefit of the people, future generations and our communities.

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.

Appointment to a Special Commission.

The Speaker announced the appointment of Representative LeDuc of Marlborough as the designee of the House Chair of the committee on Education to the special commission established (under section 2 of chapter 45 of the Acts of 2005) to make an investigation and study of methods to better coordinate, expand, finance, and improve accessible, affordable, quality out-of-school time programming for school age children in all settings.

Resolutions.

Resolutions (filed with the Clerk by Messrs. deMacedo of Plymouth and O'Brien of Kingston) on Thanksgiving Day 2005, were referred, under Rule 85, to the committee on Rules.

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

Statement of Representative Reinstein of Revere.

A statement of Miss. Reinstein of Revere was spread upon the records of the House, as follows:

Statement of
Representative
Reinstein of
Revere.

MR. SPEAKER: I would like to call to the attention of the House the fact that I was unable to be present in the House Chamber for the sitting of Thursday last due personal reasons. Had I been present for the taking of yea and nay numbers 279, and 282 to 288, inclusive, I would have voted, in each instance, in the affirmative. Any roll calls that I missed that day was due entirely to the reason stated.

Papers from the Senate.

Economic
stability.

The House Bill relative to economic investments to promote job creation, economic stability, and competitiveness in the Massachusetts economy (House, No. 4429) came from the Senate with the endorsement that said branch had insisted on its amendments (striking out all after the enacting clause and inserting in place thereof the text contained in Senate document numbered 2264; 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 to make forthwith supplemental appropriations for the costs for certain spending, public investment, and bonded debt of the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.”; and striking out the title and inserting in place thereof the following title: “An Act establishing a Commonwealth investment program.” (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 Hart, Panagiotakos and Tisei had been joined as the committee on the part of the Senate.

Spencer,
property
lease.

The House Bill authorizing the town of Spencer to lease certain property (House, No. 3230) came from the Senate passed to be engrossed, in concurrence, with an amendment adding at the end thereof the following section:

“SECTION 2. This act shall take effect upon its passage.”.

Under suspension of Rule 35, on motion of Ms. Gobi of Spencer, the amendment (reported by the committee on Bills in the Third Reading to be correctly drawn) was considered forthwith; and it was adopted, in concurrence.

Falmouth,
conservation
land.

The House Bill authorizing certain conservation land in the town of Falmouth (House, No. 4133) (its title having been changed by the Senate committee on Bills in the Third Reading came from the Senate passed to be engrossed, in concurrence, with an amendment adding the at end thereof the following paragraph:

“No document transferring care, custody, control or management of the property described in this act shall be valid unless the document provides that the property shall be used solely for the purposes of a water tower and an appropriate buffer for water resource protection as described in this act. Any such document shall include a reversionary clause stipulating that the property will revert to the Falmouth conservation commission for conservation and open space

purposes if the property ceases to be used for the express purposes for which it was transferred.”.

Under suspension of Rule 35, on motion of Mr. Turkington of Falmouth, the amendment (reported by the committee on Bills in the Third Reading to be correctly drawn) was considered forthwith; and it was adopted, in concurrence.

A Bill relative to the licensure of massage therapists in Massachusetts (Senate, No. 2258) (on Senate bill No. 2212), passed to be engrossed by the Senate, was read; and it was referred, under Rule 33, to the committee on Ways and Means.

Message
therapists.

A Bill authorizing the town of Webster to grant an additional license for the sale of alcoholic beverages to be drunk on the premises (Senate, No. 2274) (on Senate, No. 2246); and

Webster,
liquor
license

To provide remedies to consumers for clearing title after payoff of mortgages (Senate, No. 2278, amended in section 3, by striking out the first sentence of the proposed section 55, and inserting in place thereof the following sentence:— “A mortgagee, mortgage servicer or note holder who receives full payment and satisfaction of the conditions of a mortgage shall, within 45 days of receipt of payment, (i) cause to be recorded a duly executed and acknowledged discharge that conforms with subsection (b) and provide to the closing attorney, settlement agent or other person transmitting the payoff a copy of the discharge, together with the recording information thereof, or (ii) provide to the closing attorney, settlement agent or other person transmitting the payoff a duly executed and acknowledged discharge, also so conforming, which documents in either case shall be provided to the closing attorney, settlement agent or other person irrespective of whether the mortgagee, mortgage servicer or note holder has withheld the fee for recording the discharge.”) (on Senate, No. 624);

Mortgage
payoffs,
remedies

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.

A petition (accompanied by bill, Senate, No. 2280) of Bruce E. Tarr and Bradford Hill (by vote of the town) for legislation to authorize the town of Manchester-By-The-Sea to recall elected municipal officials, was referred, in concurrence, to the committee on Election Laws.

Manchester-
By-The-Sea,
officials.

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 petition of Shirley Gomes and Robert A. O’Leary for legislation to designate a certain portion of Route 28 in the town of Harwich as “Head of the Bay Road”. Under suspension of the rules, on motion of Mrs. Pope of Wayland, the report was considered forthwith. Joint Rule 12 was suspended; and the petition (accompanied by bill) was referred to the committee on Transportation. Sent to the Senate for concurrence.

Harwich,
Route 28.

Capital
punishment,
study.

By Mr. O'Flaherty of Chelsea, for the committee on the Judiciary, on Senate, Nos. 987 and 988 and House, No. 884, an Order relative to authorizing the committee on the Judiciary to make an investigation and study of certain Senate and House documents concerning capital punishment (House, No. 4499). 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 asking to be discharged from further consideration of said order; and recommending that the same be referred to the House committee on Rules.

Under Rule 42, the report was considered forthwith; and it was accepted.

Worcester,
parking

By Mr. DeLeo of Winthrop, for the committee on Ways and Means, that the Bill relative to the financing and construction of a public parking garage and other improvements in the city of Worcester (Senate, No. 2172, amended) ought to pass. Referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

Worcester,
parking

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

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

Veterans,
retirement.

By Mr. Donato of Medford, for the committee on Steering, Policy and Scheduling, that the Senate Bill relative to disability retirement benefits for veterans (Senate, No. 2035, amended) be scheduled for consideration by the House, with the amendment previously recommended by the committee on Ways and Means, that the bill be amended by striking out section 2, pending.

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

The amendment previously recommended by the committee on Ways and Means was adopted; and the bill (Senate, No. 2035, amended) was ordered to a third reading.

U. Mass.,
employee
payroll
deduction.

By Mr. Donato of Medford, for the committee on Steering, Policy and Scheduling, that the House Bill relative to University of Massachusetts — employee payroll deduction (House, No. 1256) be scheduled for consideration by the House.

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

Marion,
betterment
assessments.

By Mr. Donato of Medford, for the committee on Steering, Policy and Scheduling, that the House Bill relative to betterment assessments in the town of Marion (House, No. 4201) [Local Approval Received] be scheduled for consideration by the House.

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

By Mr. Donato of Medford, for the committee on Steering, Policy and Scheduling, that the House Bill authorizing the Division of Capital Asset Management and Maintenance to convey certain land to the city of Peabody (House, No. 4247) [Local Approval Received] be scheduled for consideration by the House.

Peabody,
land
conveyance.

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

By Mr. Donato of Medford, for the committee on Steering, Policy and Scheduling, that the House Bill authorizing the towns of Fairhaven, Marion, Mattapoisett and Rochester to make certain conveyances of well field and water supply and protection land to the Mattapoisett River Valley Water District (House, No. 4379) be scheduled for consideration by the House.

Mattapoisett
River Valley
Water District.

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

By Mr. Donato of Medford, for the committee on Steering, Policy and Scheduling, that the House Bill further regulating meetings of municipal boards (House, No. 4489) be scheduled for consideration by the House.

Municipal
boards,
meetings.

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

Reconsiderations.

Mrs. Walrath of Stow moved that the vote be reconsidered by which the House, at the preceding sitting, asked for a committee of conference on the disagreeing votes of the two branches, with reference to the Senate amendments of the House Bill promoting access to health care (House, No. 4479), and the motion to reconsider prevailed.

Health
care,
access.

The same member then moved that the vote be reconsidered by which the House non-concurred with the Senate in its amendments; and the motion to reconsider prevailed.

The bill then was returned to the Senate for its action.

Mr. Flynn of Bridgewater asked unanimous consent that the vote be reconsidered by which the House, on Thursday, November 10, passed to be engrossed the House Bill relative to the development of underused state owned real property and the disposition of state owned surplus real property (House, No. 4278, amended), and, there being no objection, the motion to reconsider was considered; and it prevailed.

Surplus
property.

Pending the recurring question on passing the bill to be engrossed, the same member moved that it be amended in section 4 by striking out paragraph (b) and inserting in place thereof the following paragraph:

“(b) The commissioner shall fine a report with the joint committee on bonding, capital expenditures and state assets which shall

Surplus
property.

include the commissioner's recommendation as to the proposed designation of said real property as surplus. Within 30 days of said filing, the joint committee shall hold a public hearing on the commissioner's proposed designation. Thereafter, said joint committee shall report its findings to the general court together with legislation within 30 days of said public hearing, and shall provide a copy of said findings and legislation to the commissioner; provided, further, that prior to the commissioner recommending to the committee that the real property be declared surplus to current and foreseeable state uses, there shall be an affirmative vote of the general court enacting legislation.

The commissioner shall establish the value of real property using customarily accepted appraisal methodologies. The value shall be calculated both for (i) the highest and best use of the real property as currently zoned, and (ii) subject to uses, restrictions and encumbrances as may be defined by the general court and the committee. Appraisals under this paragraph shall be conducted by an independent licensed appraiser. In no instance in which the commonwealth retains responsibility for maintaining the real property shall the terms provide for payment of less than the annual maintenance costs."

The amendment was adopted; and the bill was passed to be engrossed. The bill (House, No. 4491, printed as amended) then was sent to the Senate for concurrence.

Orders of the Day.

Third
reading
bill.

The Senate Bill authorizing the town of Winchendon to use a portion of a certain parcel of public park land for library purposes (Senate, No. 2151, 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.

House bills

Third
reading
bills.

Relative to the leasing of real property to civic or social organizations by municipalities (House, No. 3438); and

Relative to the Northern Berkshire Industrial Park and Development Corporation (House, No. 4376) (its title having been changed by the committee on Bills in the Third Reading);

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

Second
reading
bill
engrossed.

The House Bill authorizing the city of Brockton to convey certain park land (House, No. 4470) was read a second time; and it was ordered to a third reading.

Subsequently, under suspension of the rules, on motion of Mrs. Creedon of Brockton, the bill (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.

House bills

Authorizing Peter Jakub Jegorow to take the civil service examination for the position of firefighter in the city of Haverhill notwithstanding the maximum age requirement (House, No. 295);

Second
reading
bills.

Pertaining to fire fighter safety (House, No. 1929);

Authorizing the town of Concord to establish a post-retirement group health insurance trust fund (House, No. 2980);

Declaring December 15 as Bill or Rights Day (House, No. 3477);

Relative to the charter of the town of Truro (House, No. 4104);

Authorizing Julio Perez to take the civil service examination for the position of firefighter in the city of Haverhill notwithstanding the maximum age requirement (House, No. 4119);

Relative to reduction in rank for members of the fire department of the town of Swampscott (House, No. 4184);

Relative to the membership of the town meeting of the town of Shrewsbury (House, No. 4206);

Authorizing the town of Stoughton to establish a MWRA capital infrastructure fund (House, No. 4255, changed);

Establishing a sick leave bank for Maureen A. Sullivan, an employee of the Massachusetts Parole Board (House, No. 4357);

Amending the town of Southbridge home rule charter (House, No. 4382);

Establishing a revolving fund in the town of Sudbury (House, No. 4389, changed);

Relative to the historic district commission of the town of Sudbury (House, No. 4390);

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

Recesses.

At seventeen minutes after eleven o'clock A.M., on motion of Mr. Hill of Ipswich (Mr. Donato of Medford being in the Chair), the House recessed until one o'clock P.M.; and at ten minutes after one o'clock P.M. the House was called to order with Mr. Petrolati in the Chair.

Recesses.

The House thereupon took a further recess, on motion of Mr. Donelan of Orange, until half past one o'clock P.M.; and at that time the House was called to order with Mr. Petrolati of Ludlow in the Chair.

Quorum.

Mr. Jones of North Reading 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.

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.

Quorum,
yea and nay
No. 299.

[See Yea and Nay No. 299 in Supplement.]

Therefore a quorum was present.

*Orders of the Day.*Capital
punishment,
reinstatement.

The House report of the committee on the Judiciary, ought NOT to pass, on a message from His Excellency the Governor recommending legislation relative to reinstating capital punishment in the Commonwealth (accompanied by bill, House, No. 3834), was considered.

Pending the question on acceptance of the report, Mr. Jones of North Reading moved that it be amended by substitution of the Bill reinstating capital punishment in the Commonwealth (House, No. 3834), which was read.

Quorum.

After remarks on the question on adoption of the amendment, Mr. Jones of North Reading 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. 300.

Subsequently a roll call was taken for the purpose of ascertaining the presence of a quorum; and on the roll call 154 members were recorded as being in attendance.

[See Yea and Nay No. 300 in Supplement.]

Therefore a quorum was present.

Substitute
bill
rejected,
yea and nay
No. 302.

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. Humason of Westfield; and on the roll call 53 members voted in the affirmative and 100 in the negative.

[See Yea and Nay No. 302 in Supplement.]

[Miss Reinstein of Revere answered "Present" in response to her name.]

Therefore the amendment was rejected; and the report was accepted. Sent to the Senate for concurrence.

Engrossed Bill.

There being no objection,—

Loaded
weapon,
definition

The engrossed Bill relative to a loaded shotgun or rifle (see Senate, No. 2255) (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,
yea and nay
No. 301.

On the question on passing the bill to be enacted, the sense of the House was taken by yeas and nays, at the request of Mr. Jones of North Reading; and on the roll call 154 members voted in the affirmative and 0 in the negative.

[See Yea and Nay No. 301 in Supplement.]

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

*Emergency Measure.*Genetic
testing
results.

The engrossed Bill relative to genetic testing results (see House, No. 3899), 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 30 to 0. Sent to the Senate for concurrence.

On the question on passing the bill to be enacted the sense of the House was taken by yeas and nays, at the request of Mr. Peterson of Grafton; and on the roll call 154 members voted in the affirmative and 0 in the negative.

Bill
enacted,
yea and nay
No. 303.**[See Yea and Nay No. 303 in Supplement.]**

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

Order.

On motion of Mr. DiMasi of Boston,—

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

Next
sitting.

Mr. Marzilli of Arlington then moved the House adjourn; and the motion prevailed. Accordingly, without further consideration of the remaining matters in the Orders of the Day, a ten minutes before seven o'clock P.M. (Mr. Petrolati of Ludlow being in the Chair) the House adjourned, to meet tomorrow at eleven o'clock A.M.