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## UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



### JOURNAL OF THE SENATE.

Monday, December 30, 2002.

Met at twelve minutes past one o'clock P.M.

#### *Communication.*

A communication was received from the President announcing the appointment of Andre Leroux as the member of a community-based organization; Robert Fox as the member of the agency board of directors; Robert H. Kuehen, Jr. as the member of the land use and development community; Vivien Li as the member of an environmental advocacy organization; and Mayor John T. Yunits, Jr. as the member representing a municipality to the Brownfields Advisory Group pursuant to Section 24 of Chapter 463 of the Acts of 1998.

#### *Reports of Committees.*

By Mr. Moore, for the committee on Health Care, on petition (accompanied by bill, Senate, No. 401), a Bill relative to the certification of speech-language pathology assistants and audiology assistants (Senate, No. 2511);

**Read and, under Senate Rule 27, referred to the committee on Ways and Means.**

Ms. Resor, for the committee on Steering and Policy, reported that the following matters be placed in the Orders of the Day for the next session:

The House bills

Relative to wholesalers and importers liquor licenses (House, No. 771);

Relative to payment of fire insurance claims to mortgagees (House, No. 2348); and

Relative to civil commitment of sexually dangerous persons (House, No. 4915).

#### PAPERS FROM THE HOUSE.

A message from Her Honor the Lieutenant-Governor, Acting Governor (under the provisions of Section 8 of Article LXXXIX of the Amendments to the Constitution) recommending legislation relative to validating action taken at the November 18, 2002 town meeting held in the town of Adams (House, No. 5404),— **was referred, in concurrence, to the committee on Election Laws.**

A petition (accompanied by bill, House, No. 5400) of John H. Rogers (by vote of the town) for legislation to provide for the appointment of a treasurer in the town of Norwood,— **was referred, in concurrence, to the committee on Local Affairs.**

*Remarks of the Honorable Thomas F. Birmingham.*

Many of us remember the apprehension — even the dread — that attended our first — our so-called “maiden” — speech. Let me assure you, the last one is no easier.

I had never served in elected office before joining the Senate. But my experience here — from freshman to presiding officer — has been wholly fulfilling. I can easily recall my first day in 1991 walking into this room with a largely different set of colleagues and being surprised by the relatively small size of the Chamber, which is proportionate to our number.

For we are a *small* body. In a Commonwealth of 6,000,000 we are a Senate of only 40. We *are* “the few, the happy few.” What a privilege it is to serve here and what an intense experience it is. Perhaps the greatest pleasure is the opportunity we all have to be centrally involved in the political and economic and social life of our state, to be in a position to make a difference in the lives of the regular people who are the Commonwealth of Massachusetts. I will miss that and I will miss you.

This is the time of the year when convention dictates we look simultaneously in opposite directions, and that is especially true this year and for those who serve here.

Surely, you look forward to the future with happy anticipation because change, even in difficult times, change is exciting. I also hope we can briefly look backwards with a sense of pride in what we have been able to accomplish working together to make ours a better state and this a better Senate.

In 1996 at my inauguration as Senate President, I expressed the hope that we would put our divisions — what had become our self-destructing divisions — behind us, noting that we are like a family — bounded by history, duty, love . . . and mandatory interaction. Like that old TV show “Family Feud”, we had feuds of our own which we were able to put behind us, through conscious efforts at cooperation.

Of course you will have your disagreements — that is the very nature of a legislative body. And, to be sure, you will have your competitions — that is what politics is all about. But these should be expressed and conducted in the context of the shared recognition that we are all in this together.

A legislature’s wisdom is by its nature collective. And who better to realize the potential that all of the members will bring collectively to this enterprise than my friend and yours Senator Travaglini. Help him to make the whole of this Senate more than the sum of its parts. Please accord him that same civility and collegiality that characterized so much of our tenure here together.

Some may deride Beacon Hill as “a mess” — and of course state government is a human institution and therefore far from perfect — but, I hope *we* at least remember the gains we have made to improve the lives of our citizens. I will not indulge myself in a long substantive litany but to cite just two examples: whether it is the expansion of health care for kids and seniors, or achieving the highest minimum wage in the country, *we* in the Senate have made a *positive* difference.

And we have made a *historic* difference in improving our public schools. It is not an accident that our elementary school kids score first in the nation in math and science. It didn’t just happen by mistake that our middle school students rank 2nd in the United States in English composition. It’s not a coincidence that Massachusetts now sends more high school seniors to college than any other state in the union.

These historic advances have occurred because we’ve not only set high standards but we have also provided the resources to give every child a fair chance at succeeding.

And it *should* be a source of institutional pride — as it is of personal pride for me — that we in the Senate and we alone have kept the promise to provide adequate support to our schools year in, year out since the inception of the Education Reform Act.

It is only because *we* have kept that promise, the students are fulfilling their promise and our state — even in fiscally daunting times — retains the promise of a bright future.

We have pushed up the hill so far that we can now see the promised land of true educational opportunity for all our children. But we’re not there yet and we can’t take our success for granted because if *we* stop pushing, we *will* roll backwards.

This is *not* about bragging rights, this is not about *my* legacy because it is *our* achievement; this is *not* about altruism either. This is about making our Commonwealth as strong as it can be economically and as fair as it can be socially. And that’s not a bad definition of what state government should be about.

As I leave this beautiful Chamber, refurbished in more ways than one, I think, on our watch, I must thank the people of my senatorial district for giving me the gift of serving here. Without their support, nothing. To my staff, most of whom have been with me a decade or longer — extraordinary tenure in this building — we have worked together and played together; laughed together and cried together — thanks, we have had a great ride together. To my family, my mother who deservedly assumed almost iconic stature in the most recent campaign; my kids Erica and Megan who have dubbed this the “swearing out” ceremony,

and Selma who not only put up with a lot but always gave completely of herself to me. You have always been there for me, before the Senate, while here and now as I leave, I hope always to be there for you, too.

And to you my colleagues, my friends and fellow members of this Senate . . . I have spoken today about some issues of real significance. As important as issues are, however, the day will probably come when we cannot remember the nature of our differences of opinion; when we forget the substantive basis for our disagreements; or fail even to recall what it was that we debated over so passionately once upon a time. What remains permanent will be the relationships we have forged here; the bonds we have struck here; the memories we have made here. The friendships that have started here will last me the rest of my life.

And I will leave the Senate knowing this: the last 12 years, the years I have spent *here*, the years I have spent with *you* have been the best 12 years of my life.

Thank you all very much, and good luck in the New Year.

Ms. Melconian in the Chair,—

*Remarks of the Honorable Diane Wilkerson.*

I consider it a privilege to rise today to add my comments in honor of the man to whom we bid farewell today.

As I was thinking about what I might say in the short time allotted to me it occurred that much of my thanks and praise for our President stems from a real personal appreciation of how far we've come as a body in the decade I've spent here. Many, if not most of my colleagues, have been here only under your leadership.

But those of us who have been here for some time know well the imprint and impact the leader's personality can have on shaping the philosophy of the entire body. That is not necessarily a criticism as much as it is a plain fact. And it was no different here. I am proud to say that in 1996 when you assumed the position as President, this body took on your personality. Your tenure has been marked by an unwavering theme and message focused on caring, and compassion. Average working class men and women became important, and so did protecting and providing for children, the rights of women, and the rights of the historically disadvantaged. Their importance to you became an important matter for us and is reflected in the many historic legislative legacies you will leave. The Education Reform Act, Buffer Zone, CRA Insurance, Racial and Gender Profiling, Workforce Training Initiatives, Health Care Expansion and the highest minimum wage in the nation are but a few of the things we were able to do. Most of these accomplishments were unprecedented; many were the first in the nation. Those seeking equity and justice and to level the playing field from across the Commonwealth came here first because they knew you to be a man who cared.

You came to do good and accomplished great things. During some of the most challenging times, we made a difference most often with the full cooperation of our colleagues from across the aisle.

Few would know that in the middle of a grueling campaign, you sacrificed your own self-interest by personally engaging in countless hours of conference committee deliberations because you knew the importance of protecting methadone treatment and Medicaid. Not necessarily a popular issue or a popular constituency.

I know it sounds cliché to say but yes life will go on in the Senate. Forty-eight hours from now we will elect a new Senate President. But it is your legacy we mark today as one of caring and compassion.

An unintended consequence of your tenure has been getting to know your family, your wife Selma, your beautiful daughters and your wonderful mom, Agnes. I want to thank you Mr. President. It has been my honor and privilege to serve with you and to call you my President. But an even higher honor today is to call you my friend. May God be with you in whatever you do.

*Remarks of the Honorable Brian A. Joyce.*

Thank you, Mr. President, for this opportunity to address you and your family, and to publicly thank you for all that you have done for families throughout Massachusetts, including my own.

Luke, at Chapter 12, Verse 48, says "to whom much is given, of him much will be required." Tom Birmingham was given more than most men could ask for. He was born into a wonderful family. I had the pleasure of campaigning with his mother, Agnes, and all I can say is Tom, you should have featured her more. I'll soon represent his brother Jim, who I guess will now have to call me with his constituent requests.

Tom was born with an extraordinary intellect, excelling academically in the Chelsea Public Schools, Austin Prep, Exeter, Harvard, as a Rhodes Scholar at Oxford University and finally at Harvard Law School. He wasn't a bad athlete either, captaining his football and basketball teams and playing a very solid third base.

Of course he has the good fortune to be married to Selma, whose own abilities match Tom's, and to be blessed with two beautiful daughters who have proven to be smarter than their father by playing a real sport — hockey.

So clearly, this is a guy to whom much has been given. What has Tom given in return?

John Eliot, one of the first trustees of Harvard College, or, more accurately, because we know the Senate President is a stickler for academic accuracy, a Feoffee of Harvard, believed that the thrust of a man's life should be public service, and he wanted to instill in students a desire to live serious lives of noble purpose characterized by concern for others. More than 350 years later Tom Birmingham has, by the eloquent example he set as our Senate President, fulfilled that charge more ably than any other leader with whom I have had the pleasure of working.

When Tom Birmingham became the leader of this body, there were over 700,000 people in Massachusetts without health insurance. Five years later we had cut that number by more than half. We now have universal health care for children and prescription drug assistance for seniors. Through his leadership we've raised the wages of tens of thousands of workers who without Tom might not have had a strong voice in government. And in the area that I believe will be Tom Birmingham's lasting legacy, we have made remarkable strides in public education in Massachusetts.

Long before it was politically popular, Tom led the effort to increase funding for our schools, and to make sure that investment paid off for the taxpayers, the parents and for the children we are preparing to compete in a global economy.

Year in and year out, Tom Birmingham has remained steadfast in his commitment to improving our schools, not just as good social policy, but as good economic policy. My own children's class sizes are smaller, and they will soon be in new classrooms, thanks to Senate President Tom Birmingham.

How do I adequately thank a guy for that? I can't. I know that, at age 53, you have many more successes ahead of you. And I'm certain that your family will appreciate that the glare of the public spotlight will dim somewhat, at least for a while.

But please know that your tenure in the Massachusetts Senate has certainly been one of noble purpose characterized by concern for others, and that the Senate and indeed the Commonwealth are immeasurably improved because of your thoughtful, compassionate and intelligent leadership.

Mr. President, to you, your family and your capable staff, thank you.

*Remarks of the Honorable Robert E. Travaglini.*

When each of us arrived in this chamber, we thought we knew what the plan was and hoped to have an effect. We wanted to help people and families in need. This person is leaving a legacy that will be hard to live up to. He came in as chairman of education and made history. He brought education back as a tool of equality for everyone. At the beginning, he did it by himself even though others have tried to take credit for it. After two years, he assumed a greater responsibility and took over the entire fiscal debate for the Senate. Three years later — in a meteoric rise, he became president of this body. That speaks volumes about him. There was a level of camaraderie he sustained during his presidency. This body was driven in debate for all the right reasons. At times we could have made decisions more quickly but people were in need and Tom Birmingham stood for them. I now have the daunting responsibility of serving as president. As a member of his leadership, I have observed this man and I pray a lot so I think I'm ready — but I will lean on each of you. I often tell him I owe him a lot. I didn't vote for him when he first ran yet he has helped me. On behalf of all of us, we thank you for your wit, wisdom, loyalty and respect. My work is cut out for me. I'm sure we'll be chatting. We thank you for your service.

*Remarks of the Honorable Brian P. Lees.*

Thank you Madame President. I rise to say thank you to you, Tom Birmingham, for your service to this body, your district and the citizens of the Commonwealth.

It has been my distinct pleasure in working side by side with you since your election. As the leader of the Republicans I can honestly say, as leader of the Democrats, you have been a worthy adversary.

Mr. President, you could have, in your position, treated the minority unfairly and with disdain, but you never did. You changed the rules to allow roll call votes; you allowed for debates, you also agreed with me that never, ever would a bill or amendment go through this chamber without explanation or a right for a vote.

It's not an easy job making all members happy but your leadership team of Sen. Melconian, Sen. Travaglini and Sen. Rosenberg, Sen. Montigny and Sen. Jacques has tried and done an excellent job.

And Mr. President I want to say that for the most part I enjoyed every day we were here in formal sessions, because of that leadership and fairness.

Also your willingness to laugh and not take your job so seriously. Whether it be that outrageous gun bill, which lumped a bayonet clip with a grenade launcher, or the endless beer, wine and spirit bills for every farm, roadside stand, club and organization in the Commonwealth.

The raising of taxes, while I acknowledge your brains on many subjects, on this issue you were just dumb. And of course my constant "Give me a break" line. You always took those comments well and in the spirit in which they were said.

So, in closing and on behalf of all the Senators, staff and citizens of the Commonwealth, thank you for your service and friendship and thank your wife Selma, your daughters and your wonderful mother for sharing you with us. You are a good and honest person who will be missed. God Bless you.

*Remarks of the Honorable Linda J. Melconian.*

Equality and opportunity are the two fundamental values of Massachusetts history and the cornerstone of Tom Birmingham's twelve years of service to the people of Massachusetts.

As our Senate President, Tom you were a champion of working people. Your commitment to education, health care and workers wages and access to job training are unsurpassed on Beacon Hill. We all thank you for your commitment and dedication to what makes Massachusetts a great Commonwealth.

**On motion of Mr. Rosenberg, all of the above remarks were ordered printed in the Journal of the Senate.**

*Recess.*

There being no objection, at nine minutes before two o'clock P.M., the Chair (Ms. Melconian) declared a recess subject to the call of the Chair; and at one minute past three o'clock P.M., the Senate reassembled, Ms. Melconian in the Chair (having been appointed by the President, under authority conferred by Senate Rule 4, to perform the duties of the Chair).

PAPERS FROM THE HOUSE.

*Emergency Preamble Adopted.*

An engrossed Bill relative to group marketing plans (see House, No. 5375), having been certified by the Senate Clerk to be rightly and truly prepared for final passage and containing an emergency preamble,— **was laid before the Senate; and, a separate vote being taken in accordance with the requirements of Article LXVII of the Amendments to the Constitution, the preamble was adopted in concurrence, by a vote of 3 to 0.**

The bill was signed by the Acting President and sent to the House for enactment.

*Engrossed Bills.*

An engrossed Bill providing for the office of town clerk, collector and treasurer in the town of Deerfield to be an appointed office (see House Bill, printed in House, No. 5260) (which originated in the House), **having been certified by the Senate Clerk to be rightly and truly prepared for final passage, was passed to be enacted, two-thirds of the members present having voted in the affirmative, and it was signed by the Acting President and laid before the Acting Governor for her approbation.**

The following engrossed bills (all of which originated in the House), having been certified by the Senate Clerk to be rightly and truly prepared for final passage, were severally passed to be enacted and were signed by the Acting President and laid before the Acting governor for her approbation, to wit:

Relative to the "school-to-work" program (see House, No. 2852, amended);

Increasing the penalty for passing a school bus (see House, No. 4405);

Relative to the donation of bone marrow by certain minors (see House, No. 4970);

Relative to the retirement allowance of Louis Caton of the town of Dartmouth (see House, No. 5071, changed);

Authorizing the Chicopee Municipal Light Plant to make certain payments to the city of Chicopee (see House No. 5183);

Providing for recall elections in the town of Montague (see House, No. 5263);

Authorizing Philip M. Akstin to take the civil service examination for the position of firefighter in the city of Haverhill notwithstanding the maximum age requirement (see House, No. 5325);

Exempting the position of auditor in the city of Haverhill from the civil service law (see House, No. 5372);

Authorizing the town of Lynnfield to establish a capital facilities maintenance fund (see House, No. 5379);

Relative to memorials for firefighting and law enforcement personnel (see House, No. 5385);

Relative to the salaries of certain public officials in the city of Medford (see House, No. 5392); and

Establishing the Shrewsbury corporation (see House, No. 5395).

*Report of a Committee.*

By Mr. Montigny, for the committee on Ways and Means, that the House Bill establishing a sick leave bank for Saillens Dumay, an employee of the Department of Correction (House, No. 5371, changed),— ought to pass.

**There being no objection, the rules were suspended, on motion of Ms. Fargo, and the bill was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence, its title having been changed by the committee on Bills in the Third Reading to read as follows: “An Act establishing a sick leave bank for Saillens Dumay, an employee of the Department of Correction and extending the time for a certain report.”**

*Matters Taken Out of the Orders of the Day.*

There being no objection, the following matters were taken out of the Orders of the Day and considered, as follows:

The House bills

Relative to the disposition of certain taxes collected by the town of Carver (House, No. 5316);

Authorizing the city of Leominster to provide for an early incentive retirement for its workforce (House, No. 5367 changed); and

Exempting David Lahey and Steven M. Moriarty from the maximum age requirement as firefighters in the city of Methuen (House, No. 5383);

**Were severally read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence.**

*Recess.*

There being no objection, at ten minutes past three o’clock P.M., the Chair (Ms. Melconian) declared a recess subject to the call of the Chair; and at two minutes before four o’clock P.M., the Senate reassembled, Ms. Melconian in the Chair.

PAPERS FROM THE HOUSE.

The engrossed Bill relative to the tax treatment of prepaid calling arrangements (House, No. 1320),— came from the House amended as follows:

Striking out section 1 and inserting in place thereof the following section:

“SECTION 1. The definition of ‘sale at retail’ in section 1 of chapter 64H of the General Laws, as amended by section 27 of chapter 186 of the acts of 2002, is hereby further amended by striking out the last sentence and inserting in place thereof the following sentences:— In the case of the sale or recharge of prepaid calling arrangements, the sale or recharge of such arrangements shall be deemed to be within the commonwealth if the transfer for consideration physically takes place at a retail establishment in the commonwealth. In the absence of such physical transfer for consideration at a retail establishment, the sale or recharge shall be deemed a retail sale within the commonwealth if the customer’s shipping address is in the commonwealth or, if there is no item shipped, if the customer’s billing address or the location associated with the customer’s mobile telephone number, as applicable, is in the commonwealth. For purposes of collection of the tax imposed by this chapter on such sales, such sale shall be deemed to occur on the date that the bill is first issued by the vendor in the regular course of its business; provided, however, in the case of prepaid calling arrangements, the sale shall be deemed to occur on the date of the transfer for consideration.”

**The rules were suspended, on motion of Mr. Moore, and the House amendment was considered forthwith and adopted, in concurrence.**

A Bill exempting Daniel J. McCarthy from the maximum age requirements as a police officer in the city of Haverhill (House, No. 5349,— on petition) [Local approval received],— was read.

**There being no objection, the rules were suspended, on motion of Ms. Fargo, and the bill was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence.**

A Bill authorizing the town of Milford to issue an additional license for the sale of all alcoholic beverages to be drunk on the premises (House, No. 5362,— on petition) [Local approval received],— was read.

**There being no objection, the rules were suspended, on motion of Mr. Hedlund, and the bill was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence.**

A Bill authorizing the town of Milford to issue an additional license for the sale of wines and malt beverages not to be drunk on the premises (House, No. 5363,— on petition) [Local approval received],— was read.

**There being no objection, the rules were suspended, on motion of Mr. Moore, and the bill was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence.**

*Engrossed Bills.*

The following engrossed bills (both of which originated in the House), having been certified by the Senate Clerk to be rightly and truly prepared for final passage, were severally passed to be enacted and were signed by the Acting President and laid before the Acting Governor for her approbation, to wit:

Further regulating the expiration dates of gift certificates and certain other mediums of exchange (see House, No. 216, amended); and

Relative to group marketing plans (see House No. 5375).

*Recess.*

There being no objection, at three minutes past four o'clock P.M., the Chair (Ms. Melconian) declared a recess subject to the call of the Chair; and at seventeen minutes past five o'clock P.M. the Senate reassembled, Ms. Melconian in the Chair.

PAPERS FROM THE HOUSE.

A Bill relative to appointive powers of the board of selectmen in the town of Saugus (House, No. 5391,— on petition) [Local approval received],— was read.

**There being no objection, the rules were suspended, on motion of Mr. McGee, and the bill was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence.**

A petition (accompanied by bill, House, No. 5406) of Joseph C. Sullivan, Michael W. Morrissey, Robert L. Hedlund and others (by vote of the town) that the town of Braintree be authorized to establish a community preservation account,— **was referred, in concurrence, under suspension of Joint Rule 12, to the committee on Taxation.**

*Emergency Preamble Adopted.*

An engrossed Bill relative to the tastings of alcoholic beverages (see House, No. 5247, amended), having been certified by the Senate Clerk to be rightly and truly prepared for final passage and containing an emergency preamble,— **was laid before the Senate; and, a separate vote being taken in accordance with the requirements of Article LXVII of the Amendments to the Constitution, the preamble was adopted in concurrence, by a vote of 3 to 0.**

**The bill was signed by the Acting President and sent to the House for enactment.**

*Report of a Committee.*

By Mr. Montigny, for the committee on Ways and Means, that the House Bill authorizing the reinstatement of Frederick Nasson as a member in service of the state retirement system (House, No. 4985),— ought to pass, with an amendment striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2513.

**The rules were suspended, on motion of Ms. Fargo, and the bill was read a second time and was amended, as recommended by the committee on Ways and Means. The bill, as amended, was then ordered to a third reading, read a third time and passed to be engrossed, in concurrence, with the amendment. Sent to the House for concurrence in the amendment.**

*Order Adopted.*

On motion of Mr. McGee,—

*Ordered*, That when the Senate adjourns today, it adjourn to meet again tomorrow at eleven o'clock A.M., and that the Clerk be directed to dispense with the printing of a calendar.

On motion of Mr. Hedlund, at twenty-one minutes past five o'clock P.M., the Senate adjourned to meet on the following day at eleven o'clock A.M.