

NOTICE: While reasonable efforts have been made to assure the accuracy of the data herein, this is **NOT** the official version of Senate Journal. It is published to provide information in a timely manner, but has **NOT** been proofread against the events of the session for this day. All information obtained from this source should be checked against a proofed copy of the Senate Journal.

UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



JOURNAL OF THE SENATE.

Thursday, December 9, 2004.

Met at six minutes past eleven o'clock A.M. (Mr. Havern in the Chair) (having been appointed by the President, under authority conferred by Senate Rule 4, to perform the duties of the Chair).

The Chair (Mr. Havern), members, guests and employees then recited the pledge of allegiance to the flag.

Communication.

A communication from the Department of Public Health relative to a plan of correction submitted pursuant to inspection of the Berkshire County House of Correction and Jail (received Wednesday, December 8, 2004),— **was read and sent to the House for its information.**

Report.

A report of the University of Massachusetts Building Authority (under the provisions of Section 6 of Chapter 773 of the Acts of 1960 as amended by Section 6A of Chapter 708 of the Acts of 1983) submitting a copy of its audited financial report for the fiscal year ending June 30, 2004 (received Friday, December 3, 2004),— **was placed on file.**

Report of a Committee.

By Ms. Wilkerson, for the committee on State Administration, on petition, (accompanied by bill, Senate, No. 2511), a Bill authorizing the conveyance of a certain parcel of land in the city of Revere (Senate, No. 2514);

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

A Bill relative to a retirement buy-back for Donald Muldoon (printed as Senate, No. 1591,— on petition),— **was read and, under Senate Rule 27, referred to the committee on Ways and Means.**

Resolutions.

The following resolutions (having been filed with the Clerk) were severally considered forthwith and adopted, as follows:—

Resolutions (filed by Ms. Murray) “congratulating the Bourne Lady Canalmen Volleyball Team”; and
Resolutions (filed by Ms. Wilkerson) “on the fiftieth anniversary of the Lemuel Shattuck Hospital.”

Petitions were referred in concurrence, as follows:

Petition (accompanied by bill, House, No. 5151) of Michael A. Costello and other members of the House that certain consumer reporting agencies be required to provide consumer credit scores to consumers;

Under suspension of Joint Rule 12, to the committee on Commerce and Labor.

Petition (accompanied by bill, House, No. 5152) of Michael A. Costello for legislation to increase the terms of members appointed to boards of trustees of public institutions of higher education in the Commonwealth;

Under suspension of Joint Rule 12, to the committee on Education, Arts and Humanities.

Petition (accompanied by bill, House, No. 5153) of Michael A. Costello and Steven A. Baddour for legislation to increase the borrowing authority of the Ring's Island Water District of Salisbury;

Under suspension of Joint Rule 12, to the committee on Local Affairs and Regional Government.

A Bill authorizing the Plymouth Airport Commission to lease certain parcels of land (House, No. 4214,— on House, No. 3986),— was read.

There being no objection, the rules were suspended, on motion of Ms. Wilkerson, and the bill was read a second time and was ordered to a third reading.

A Bill authorizing the town of Plymouth Airport Commission to lease certain parcels of land (House, No. 4820,— on petition) [Local approval received],— was read.

There being no objection, the rules were suspended, on motion of Mr. Brown, and the bill was read a second time and was ordered to a third reading.

Subsequently, the bill was read a third time.

Mr. Shannon, for the committee on Bills in the Third Reading reported, recommending that the same be consolidated with the House Bill authorizing the Plymouth Airport Commission to lease certain parcels of land (House, No. 4214) likewise referred to said committee.

The report was accepted.

Pending the question on passing the bill (House, No. 4820) to be engrossed, Ms. Murray presented an amendment striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2515.

The amendment was **adopted**.

The bill, as amended, was then passed to be engrossed, in concurrence, with the amendment.

Sent to the House for concurrence in the amendment.

Engrossed Bill.

An engrossed Bill relative to creditable service for vocational education teachers (See Senate, No. 1559, amended) (which originated in the Senate), **having been certified by the Assistant Clerk, Acting Clerk to be rightly and truly prepared for final passage, was passed to be re-enacted and was signed by the Acting President and again laid before the Governor for his approbation.**

Engrossed Bills.

The following engrossed bills (the first three of which originated in the Senate), having been certified by the Assistant Clerk, Acting 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 Governor for his approbation, to wit:

Authorizing the town of Weston to regulate certain property tax exemption eligibility requirements for the elderly (see Senate, No. 2053, amended);

Authorizing the town of Westborough to grant an additional license for the sale of wines and malt beverages to be drunk on the premises (see Senate, No. 2326);

Establishing the Taunton industrial improvement district in the city of Taunton (see Senate, No. 2444);

Amending the insurance laws (see House, No. 24, changed and amended);

Authorizing the town of Hingham to issue pension obligation bonds (see House, No. 3688);

Relative to certain land sales in the city of Gloucester (see House, No. 4451);

Exempting the position of town hall custodian of the town of Stoneham from the civil service law (see House, No. 4803);

Authorizing the city of Medford to use certain land for memorial purposes (see House, No. 4864, amended); and

Establishing the Athol development and industrial corporation (see House, No. 5004, amended.)

Reports of Committee.

By Ms. Murray, for the committee on Ways and Means, that the House Bill providing greater consumer protection powers to the boards within the Division of Professional Licensure (House, No. 5074),— ought to pass, with an amendment in section 2, as printed, by striking out, in line 7, the figure “143” and inserting in place thereof the following figure:— “142”;

In said section 2, by inserting after the word “an”, in line 8, the following words:— “opportunity for”;

In section 4, by striking out, in line 7, the words “paragraph (7)” and inserting in place thereof the following words:—
“paragraphs (3) to (7), inclusive”;

By striking out section 5 and inserting in place thereof the following section:—

“SECTION 5. Said chapter 112, as so appearing, is hereby further amended by striking out section 65 and inserting in place thereof the following section:—

Section 65. (a) Whoever continues to practice a trade or profession after his certificate, registration, license or authority to do so has been suspended, revoked or cancelled under section 61, and while such disability continues, shall be punished by a fine of not more than \$2,500 or by imprisonment for not more than 6 months, or both.

(b) Notwithstanding any general or special law to the contrary, each board of registration under the supervision of the division of professional licensure and each board of registration under the supervision of the department of public health may, after a consent agreement between the parties or after an opportunity for an adjudicatory proceeding held pursuant to chapter 30A, assess and collect a civil administrative penalty of not more than \$1,000 for the first violation and not more than \$2,500 for a second or subsequent violation upon a person who practices a trade or profession at a time when his license, certificate, registration or authority to do so has been suspended, revoked or cancelled by the board of registration that issued the license, and upon any person who knowingly practices a trade or profession at a time when his license, certificate, registration or authority to do so has expired; provided, however, that if a licensee has, in accordance with any law and with board regulations, made timely and sufficient application for a renewal, his license shall not expire until his application has been finally determined by the board; provided further, that prior to the assessment of a civil administrative penalty under this section, the board shall notify the licensee that he has at least 90 days after the date of expiration within which to submit an application for renewal during which time the board shall waive any applicable penalties pursuant to this paragraph. An assessment of a civil administrative penalty under this section shall bar a subsequent imposition of a criminal penalty for the same violation and an imposition of a criminal penalty under this section shall bar a subsequent assessment of a civil administrative penalty for the same violation.

(c) A board may apply to the appropriate court for an order enjoining the unlicensed practice of a trade or profession or for an order for payment of an assessed penalty or for such other relief as may be appropriate to enforce this section.”;

In section 6, in the proposed section 65A, by striking out the last sentence and inserting in place thereof the following sentence:— “A board may apply to the appropriate court for an order enjoining the unlicensed practice of a trade or profession or for an order for payment of an assessed penalty or for such other relief as may be appropriate to enforce this section.” and

In said section 6, in the proposed section 65B, by adding the following sentence:— Nothing in this section shall be deemed to limit any board of registration’s summary suspension authority.

There being no objection, the rules were suspended, on motion of Ms. Chandler, 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 was passed to be engrossed, in concurrence, with the amendment.

Sent to the House for concurrence in the amendment.

Ms. Murray, for the committee on Ways and Means, that the House Bill establishing a sick leave bank for John Fitts, an employee of the Department of Youth Services (House, No. 5092),— ought to pass, with an amendment by adding at the end thereof the following:— Whenever John Fitts terminates employment with the department of youth services or requests to dissolve the sick leave bank, any remaining time in the sick leave bank shall be transferred to the extended illness leave bank.

There being no objection, the rules were suspended, on motion of Mr. McGee, 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 was passed to be engrossed, in concurrence, with the amendment.

Sent to the House for concurrence in the amendment.

A Bill relative to the terms of certain bonds to be issued by the Commonwealth (printed in House, No. 5108,— being a message from Her Honor the Lieutenant-Governor, Acting Governor),— was read.

There being no objection, the rules were suspended, on motion of Mr. Tarr, 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 relative to town meeting warrant summaries in the town of North Andover (House, No. 4787,— on petition) [Local approval received],— was read.

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

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 Bill relative to town meeting warrants in the town of North Andover (House, No. 4785),— **was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence.**

The House Bill relative to fees charged for the sending of bills and invoices by postal mail (House, No. 4398),— **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 prohibiting fees for mailing bills or invoices”.**

The House Bill relative to certain sewer betterments in the city of Gloucester (House, No. 4889),— **was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence.**

The House Bill authorizing the certification for appointment of Eric K. Gouck as a firefighter in the town of North Attleborough (House, No. 4963),— **was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence.**

The House Bill relative to elections in the town of North Attleborough (House, No. 5012), — **was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence.**

The Senate Bill authorizing the town of Hull to extend leases on Nantasket Pier and to borrow money for the construction of a certain marine or pier facility for a term not to exceed 30 years (Senate, No. 2214, amended),— came from the House passed to be engrossed, in concurrence, *with an amendment* striking out all after the enacting clause and inserting in place thereof the following:

“SECTION 1. The town of Hull, acting by and through its board of selectmen, may, subject to paragraphs (a), (b) and (g) of section 16 of chapter 30B of the General Laws, and on such terms and conditions as the town deems to be in the town’s best interests in keeping with said paragraphs (a), (b) and (g) of said section 16 of said chapter 30B, extend the leases of the current lessees or their heirs, assigns and successors of portions of Nantasket Pier and the abutting shore land for periods of not more than 25 years for use as a marine or pier facility, including commercial activities incidental and related to such use and necessary in order to achieve the primary public objectives of the town to use such property as a marine or pier facility. A lessee of this property shall not sublease the property, or any portion thereof, or any improvements thereto, without the prior written approval of the board of selectmen of said town.

SECTION 2. The town of Hull may borrow funds, for a term not to exceed 30 years, to construct a marine or pier facility at Nantasket Pier in the town.

SECTION 3. Any further disposition of the marine or pier facility described in section 1, or any portion thereof or improvement thereto, shall be subject to section 16 of chapter 30B of the General Laws.”

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

The Senate Bill authorizing the town of Hull to extend the leases at Pemberton Pier (Senate, No. 2215, amended),— came from the House passed to be engrossed, in concurrence, *with an amendment* striking out all after the enacting clause and inserting in place thereof the following:—

“SECTION 1. The town of Hull, acting by and through its board of selectmen, may, subject to paragraphs (a), (b) and (g) of section 16 of chapter 30B of the General Laws, and on such terms and conditions as the town deems to be in the town’s best interests and in keeping with said paragraphs (a), (b) and (g) of said section 16 of said chapter 30B, extend leases with the current lessees or their heirs, assigns and successors for all, or any portion, or any improvement thereto of the Pemberton Pier for a period of not more than 25 years for uses consistent with a pier facility. A lessee of this property, or any portion thereof, or any improvement thereto, shall not sublease the property, portion, or improvement without the prior written approval of the board of selectmen of said town.

SECTION 2. Any further disposition of the Pemberton Pier facility described in section 1, or any portion thereof or improvement thereto, shall be subject to section 16 of chapter 30B of the General Laws.”

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

The House Bill relative to the Massachusetts Property Insurance Underwriting Association (House, No. 4672),— came from the House with the endorsement that the House had concurred in the Senate amendment in section 2 (as printed), in lines 48 and 49, striking out the following: “increase rates in large share territories by not less than 3 per cent and shall also” (as changed by the Senate committee on Bills in the Third Reading; striking out section 4 and inserting in place thereof the following section:

“SECTION 4. There shall be a special commission to examine the homeowner insurance market in large share territories, as defined, in section 1 of chapter 175C. The commission shall investigate the availability and affordability of property insurance;

the relevant rate driving factors including, but not limited to, insurance fraud, types of loss costs and their frequency, the cost and availability of reinsurance; the use of storm damage prediction data, the creation and potential benefit of a state-run catastrophic reinsurance program; and the overall competitiveness of the homeowners market in large share territories. The commission shall make any recommendations for legislative or regulatory action on those matter, with the clerks of the House and Senate before November 1, 2004.

Said commission shall consist of the chairman of the house committee on insurance or a designee; the vice chairman of the house committee on insurance or a designee, the house minority leader or a designee; the chairman of the senate committee on insurance or a designee; the vice chairman of the senate committee on insurance or a designee, the senate minority leader or a designee, 1 member of the house of representatives and one member of the senate who represents Cape Cod or coastal areas of the commonwealth; the commissioner of insurance or a designee; a representative from the Massachusetts Property Insurance Underwriting Association; a representative of the Massachusetts Association of Insurance Agents, a representative of the Center for Insurance Research, and a representative of the Massachusetts Public Interest Research Group.”; and adding at the end thereof, the following section:

“SECTION 5. Sections 1, 2 and 3 shall take effect on October 1, 2005.”, *with further amendments*, in section 4, striking out the date ‘November 1, 2004’ and inserting in place thereof the date ‘April 1, 2005’; in section 5, striking out the following: ‘1, 2 and 3’ and inserting in place thereof the following: ‘1 and 2’; and adding at the end thereof the following section:

‘SECTION 6. Sections 3 and 4 shall take effect upon the passage of this act.’.”

The rules were suspended, on motion of Ms. Wilkerson, and the further House amendment was considered forthwith and adopted, in concurrence.

The Senate Bill establishing the Essex North Shore Agricultural and Technical School district (Senate, No. 2419),— came from the House passed to be engrossed, in concurrence with an amendment striking out all after the enacting clause and inserting in place thereof the text of House document numbered 5145.

The rules were suspended, on motion of Mr. Tarr, and the House amendment was considered forthwith.

Messrs. Berry and Tarr moved that the Senate concur in the House amendment *with a still further amendment* in section 3, in the first paragraph, by striking out the last sentence and inserting in place thereof the following sentence:— “The board, whose appointments shall be made within 30 days from the effective date of this act, shall not begin construction nor incur indebtedness until the vote required by section 4 has been certified by the commissioner of education.”;

In said section 3, in the second paragraph, in the second sentence, by striking out the words “following certification by the commissioner of education of the vote required by section 4” and inserting in place thereof the following words:— “preceding the opening of the Essex North Shore Agricultural and Technical School,”;

In section 14, in the first paragraph, in the first sentence, by striking out the words “following certification by the commissioner of education of the vote required by section 4” and inserting in place thereof the following words:— “preceding the opening of the Essex North Shore Agricultural and Technical School,”; 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 provide for the establishment of the Essex North Shore Agricultural and Technical School district, therefore it is hereby declared to be an emergency law, necessary for the preservation of the public convenience.”

The amendment was adopted.

Sent to the House for concurrence in the further amendment.

Engrossed Bill.

An engrossed Bill establishing standards for long term care insurance (see Senate, No. 2415, amended) (which originated in the Senate), **having been certified by the Senate Clerk to be rightly and truly prepared for final passage, was passed to be enacted and was signed by the Acting President and laid before the Governor for his approbation.**

Order Adopted.

On motion of Mr. Tarr,—

Ordered, That when the Senate adjourns today, it adjourn to meet again on Monday next at eleven o’clock A.M. and that the clerk be directed to dispense with the printing of a calendar.

Adjournment in Memory of Theodore L. Beless.

The Senator from Cape and the Islands, Mr. O'Leary, moved that when the Senate adjourns today it adjourn in memory of Theodore L. Beless.

Theodore died Tuesday December 7th at the Soldier's Home in Chelsea, Massachusetts. He grew up in Winthrop and was employed in the years leading up to World War II as a page in the Massachusetts State Senate. He enlisted in the United States Marine Corps and served in the Pacific Theater from December of 1941 through October of 1945 where he saw action in Guadalcanal, Cape Gloucester and Peleliu. Following the War he returned to the Senate where he served as a Court Officer until his retirement in 1969. He moved to Rockport upon retirement and became an active member of the Rockport Golf Club, the Rockport Legion Edward Peterson Post, the Veterans of Foreign Wars and the Gloucester Lodge of Elks. Affectionately known as "Uncle Teddy" by friends and family, he relished his friendships made in the Marines and in the Senate and provided everyone he encountered with lasting memories of his kindness and generosity.

Accordingly, as a mark of respect to the memory of Theodore L. Beless, at nineteen minutes before twelve o'clock noon, on motion of Mr. Tarr, the Senate adjourned to meet again on Monday next at eleven o'clock A.M.