

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.

Wednesday, March 22, 2006.

Met according to adjournment at one o'clock P.M., (Mr. Rosenberg the Chair).

Distinguished Guests.

There being no objection, during consideration of the Orders of the Day, the following guests were recognized:
The Chair (Ms. Walsh) handed the gavel to Ms. Resor for the purpose of an introduction. Ms. Resor then introduced, in the rear of the Chamber, the Westborough Women's Club, part of the Federation of Women's Club of Massachusetts.

The Chair (Ms. Walsh) handed the gavel to Ms. Creem for the purpose of an introduction. Ms. Creem then introduced, in the rear of the Chamber, the Wellesley High School Girls Hockey Team. The team won the Division II Ice Hockey Championship.

The President in the Chair, introduced the Honorable Edward M. Kennedy, United States Senator from Massachusetts. Senator Kennedy briefly addressed the Chamber, signed the guest book and withdrew from the Chamber.

Petitions.

Mr. Rosenberg in the Chair, petitions were presented and referred as follows:

By Mr. Brewer, a petition (accompanied by bill, Senate, No. 2445) of Stephen M. Brewer and Mark J. Carron (by vote of the town) for legislation relative to the Charlton Water and Sewer Commission [Local approval received]; and

By the same Senator, a petition (accompanied by bill, Senate, No. 2446) of Stephen M. Brewer and Mark J. Carron (by vote of the town) for legislation relative to the Charlton Water and Sewer Commission's water supply [Local approval received];

Severally, under Senate Rule 20, to the committee on Municipalities and Regional Government.

Severally sent to the House for concurrence.

Mr. Brown presented a petition (subject to Joint Rule 12) of Scott P. Brown for legislation relative to appointment of Massachusetts National Guardsmen as special State Police Officers,— **and the same was referred, under Senate Rule 20, to the committees on Rules of the two branches, acting concurrently.**

Reports of Committees.

By Ms. Fargo, for the committee on Public Health, on petition, a Bill relative to MassHealth enrollment for persons leaving correctional facilities in Massachusetts (Senate, No. 1274);

Read and, under Joint Rule 1E, referred to the committee on Health Care Financing.

By Mr. Montigny, for the committee on Bonding, Capital Expenditures and State Assets, on petition, a Bill relative to the Wrentham Development Center lease (Senate, No. 37);

By the same Senator, for the same committee, on petition, a Bill authorizing the funding of capital expenditures for workforce development and adult basic education (Senate, No. 272);

By the same Senator, for the same committee, on petition (accompanied by bill, Senate, No. 550), a Bill to promote the viability and sustainability of commercial fisheries in the Commonwealth (Senate, No. 2439);

By Ms. Spilka, for the committee on Children and Families, on petition, a Bill protecting disabled persons from financial exploitation (Senate, No. 394);

By the same Senator, for the same committee, on petition (accompanied by bill, Senate, No. 2167), a Bill further regulating the rights of an adopted child (Senate, No. 2441);

By the same Senator, for the same committee, on petition (accompanied by bill, Senate, No. 1154), a Bill eliminating wage disparity among direct care workers for the mentally retarded (Senate, No. 2443);

By Ms. Wilkerson, for the committee on State Administration and Regulatory Oversight, on petition, a Bill relative to vehicular rental transaction contracts in the city of Boston (Senate, No. 1787, changed in section 1 by striking out the words “not be imposed” in line 4 and inserting in place thereof, the words “be \$5.00”); and

By Mr. Baddour, for the committee on Transportation, on petition, a Bill relative to Gold Star license plates (Senate, No. 2203);
Severally read and, under Senate Rule 27, referred to the committee on Ways and Means.

By Mr. Barrios, for the committee on Public Safety and Homeland Security, on petition, a Bill relative to parking for handicapped individuals and disabled veterans (Senate, No. 1172);

Read and, under Senate Rule 26, referred to the committee on Ethics and Rules.

By Mr. Barrios, for the committee on Public Safety and Homeland Security, on petition, a Bill relative to drag racing in the city of Taunton (Senate, No. 2084) [Local approval received];

Read and, under Senate Rule 26, placed in the Orders of the Day for the next session.

Mr. Buoniconti, for the committee on Ethics and Rules, reported that the following matter be placed in the Orders of the Day for the next session:

The Senate Bill relative to establishing a campus rape and sexual assault prevention advisory council (Senate, No. 2408).

Committee Discharged.

Mr. Buoniconti, for the committees on Rules of the two branches, acting concurrently, reported, asking to be discharged from further consideration

Of the Senate Order relative to authorizing the joint committee on Community Development and Small Business to make an investigation and study of certain current Senate documents relative to community development and small business (Senate, No. 2413);

Of the Senate Order relative to authorizing the joint committee on Public Health to make an investigation and study of certain current Senate documents relative to public health (Senate, No. 2419); and

Of the Senate Order relative to authorizing the joint committee on Transportation to make an investigation and study of certain current Senate documents relative to transportation (Senate, No. 2417);

And recommending that the same severally be referred to the Senate committee on Ethics and Rules.

Under Senate Rule 36, the reports were severally considered forthwith and accepted.

There being no objection, at one minute past one o'clock P.M., the Chair (Mr. Rosenberg declared a recess subject to the call of the Chair; and, at fourteen minutes past one o'clock P.M., the Senate reassembled, the President in the Chair.

The following prayer was offered by Father Bernard McLaughlin, Chaplain of the Senate;

Briefly, a story (true) of a soldier and a child. One day last week a young soldier, just back from Iraq, dropped by my church school to thank the young students for writing to him while he was in the war zone. I ask myself “why war”? The next Sunday morning a young child began crying in the church. I ask myself “what and where is tomorrow going for the child”? Why are these questions without answers? Is there no reason for the war of the soldier or of the destiny of the child? As Americans we say there is reason for the life of the child and there is purpose for the self-defense of our country. It is good to remember that you are our chosen leaders and to a great extent the child and the soldier depend on you for the fulfillment of the purpose in the life of the soldier and the child. Amen.

The President, members, guests and employees then recited the pledge of allegiance to the flag.

Resolutions.

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

Resolutions (filed by Mr. Morrissey) “recognizing the Quincy Pee Wee C-1 Hockey Team as the Massachusetts Pee Wee C-1 State Champions.”

Orders of the Day.

The Orders of the Day were considered, as follows:

Bills

Relative to private road betterment borrowing (Senate, No. 1198);
Providing enforcement of delinquent municipal sewer fees (Senate, No. 2112, changed);
Establishing a post employment health insurance liability fund in the town of Sudbury (House, No. 4391); and
Authorizing the city of Revere to use certain dedicated park land for school purposes (House, No. 4546);
Were severally read a second time and ordered to a third reading.

The Senate bills

Establishing a sick leave bank for Denise Gamache, an employee of the Department of Revenue (Senate, No. 2248, amended;
Relative to a certain corporate credit union Senate, No. 2286) (its title having been changed by the committee on Bills in the Third Reading);
Prohibiting excessive fees on gift certificates and gift cards (Senate, No. 2442); and
Relative to the conversion of Massachusetts-chartered credit unions to a federal charter (printed as House, No. 2982) (its title having been changed by the committee on Bills in the Third Reading);
Were severally read a third time and passed to be engrossed.
Severally sent to the House for concurrence.

The House bills

Addressing the special education needs of children with autism spectrum disorder (House, No. 1123) (its title having been changed by the committee on Bills in the Third Reading); and
Modifying the schedule for deposits of revenue for the service of civil process by constables (House, No. 3576) (its title having been changed by the committee on Bills in the Third Reading);
Establishing a sick leave bank for Ellen E. Briggs, an employee of the Trial Court (House, No. 4634);
Were severally read a third time and passed to be engrossed, in concurrence.

The Senate Bill protecting the natural and historic resources of the commonwealth (Senate, No. 2360),— **was considered; and it was passed to be engrossed.**
Sent to the House for concurrence.

The Senate Sill prohibiting the use of alcoholic beverage vaporizers (Senate, No. 2311, amended),— **was considered; and it was passed to be engrossed.**
Sent to the House for concurrence.

The Senate Bill further regulating intermunicipal agreements (Senate, No. 1174) (its title having been changed by the committee on Bills in the Third Reading),— **was read a third time.**
Pending the question on passing the bill to be engrossed, on motion of Ms. Fargo, the further consideration thereof was postponed until Wednesday, March 29.

The Senate Bill establishing standards for long-term care insurance (Senate, No. 2285) (its title having been changed by the committee on Bills in the Third Reading),— **was read a third time.**
Pending the question on passing the bill to be engrossed, Ms. Chandler moved that the bill be amended by inserting after section 2 the following section:—
“SECTION 2A. Chapter 118E of the General Laws is hereby amended by striking out Section 33, as so appearing, and inserting in place thereof the following section:—
Section 33. No claim for costs of a nursing facility and other long-term care services may be made by the division under section 31 or 32 if the individual receiving medical assistance was permanently institutionalized, had notified the division that he had no intention to return home and, on the date of admission to the nursing facility or other medical institution, had long-term care insurance that, when purchased, met the requirements of 211 C.M.R. 65.00.”
This amendment was adopted.
The bill (Senate, No. 2285, amended) was then passed to be engrossed.
Sent to the House for concurrence.

The Senate Bill reducing the loss of life due to fires caused by cigarettes (Senate, No. 2403),— **was read a third time.**
There being no objection, Mr. Brewer moved that his request for a call of the yeas and the nays on the question on passing the bill to be engrossed, which was made at a previous session, be withdrawn; and this motion prevailed.

Ms. Walsh in the Chair, after remarks, and pending the question on passing the bill to be engrossed, Mr. Brewer moved that the bill be amended in Section 2, by striking out subsection (f) of the proposed section 2B of chapter 64C of the General Laws and inserting in place thereof the following subsection:—

“(f) The commissioner, in consultation with the state fire marshal, shall review the effectiveness of this section, annually, and provide the joint committee on public safety and the committees on ways and means a report detailing his findings and recommendations for legislation, if any, to improve the effectiveness of this section. The report and recommendations shall be

submitted not later than June 30th each year.”; in said Section 2, in said proposed section 2B of said chapter 64C, by adding the following subsection:—

“(h) This section shall not require additional testing if cigarettes are tested to satisfy another purpose, but are tested in a manner that satisfies this section.”; in said Section 2, by striking out subsection (c) of the proposed section 2C of said chapter 64C and inserting in place thereof the following subsection:—

“(c) Such certification shall identify the date or dates on which the testing was conducted and, if the testing was conducted by an entity other than the manufacturer, the certification shall identify such entity and contain the signature of an officer authorized by the entity to attest that the certification testing was conducted.”; in said Section 2, by striking out, in subsection (d) of the proposed section 2D of said chapter 64C, the words ‘its fire safety regulations, unless the commissioner determines that cigarettes approved for sale in New York do not meet the requirements for certification pursuant to section 2C’ and inserting in place thereof the following words:—

“the New York fire safety standards for cigarettes”; in said Section 2, in the proposed section 2E of said chapter 64C, by adding the following subsection:—

“(e) Each cigarette that is subject to sections 2B to 2E, inclusive, for which a certification in accordance with section 2C has not been filed, and the manufacturer thereof shall not be eligible for inclusion in the directory of tobacco product manufacturers and cigarette brand families maintained pursuant to chapter 94F and no person shall: (1) affix an excise stamp to a package or other container of such cigarettes; or (2) sell, offer or possess for sale such cigarettes, unless and until certification in compliance with section 2C has been filed for such cigarettes and all penalties, costs or fees resulting from a violation of sections 2B to 2E, inclusive, relative to such cigarettes have been paid.”; in said Section 2, in the third sentence of the proposed section 2F of said chapter 64C, by striking out the words ‘available to the commissioner to support’ and inserting in place thereof the following words:— “expended by the state fire marshal, without further appropriation, for”; and

“SECTION 5. This act shall take effect 180 days after its passage.”

The amendment was **adopted**.

Ms. Walsh and Mr. Brewer moved that the bill be amended by adding the following section:—

“SECTION 6. This act shall be known as the Kearney O’Neill McGovern Law.”

The amendment was adopted.

The bill (Senate, No. 2403, amended) was then passed to be engrossed. Sent to the House for concurrence.

The engrossed Bill relative to certain motor vehicle violations (see Senate, No. 2132, amended) (which originated in the Senate), having been certified by the Senate Clerk to be rightly and truly prepared for final passage,— was considered, the question being on passing the bill, to be enacted.

Pending the question on passing the engrossed bill to be enacted, Mr. Lees moved that the engrossed bill be laid on the table; and, in accordance with the provisions of Senate Rule 24, the consideration of the motion to lay on the table was postponed, without question, until the next session.

The Senate Bill regarding choice of long-term care settings (Senate, No. 2273) (its title having been changed by the committee on Bills in the Third Reading),— **was read a third time.**

Pending the question on passing the bill to be engrossed, Ms. Tucker, Mr. Baddour, Ms. Chandler and Mr. Tarr moved that the bill be amended in section 1, in the last sentence, by striking out the word “changes.” and inserting in place thereof the following words:— “changes, but for each such individual, the division of health care finance and policy shall establish a rate that reflects the individual’s clinical case-mix acuity and his care and benefit needs in the most appropriate setting.”

This amendment was **adopted**.

After remarks, the question on passing the bill to be engrossed was determined by a call of the yeas and nays, at eight minutes past two o’clock P.M., on motion of Mr. Lees, as follows, to wit (*yeas 37 — nays 0*) [**Yeas and Nays No. 234**]:

YEAS.

Antonioni, Robert A.	Montigny, Mark C.
Augustus, Edward M., Jr.	Moore, Richard T.
Baddour, Steven A.	Morrissey, Michael W.
Barrios, Jarrett T.	Murray, Therese
Berry, Frederick E.	Nuciforo, Andrea F., Jr.
Brewer, Stephen M.	O’Leary, Robert A.

Chandler, Harriette L.	Pacheco, Marc R.
Creedon, Robert S., Jr.	Panagiotakos, Steven C.
Creem, Cynthia Stone	Resor, Pamela
Fargo, Susan C.	Rosenberg, Stanley C.
Hart, John A., Jr.	Spilka, Karen E.
Havern, Robert A.	Tarr, Bruce E.
Hedlund, Robert L.	Timilty, James E.
Jehlen, Patricia D.	Tisei, Richard R.
Joyce, Brian A.	Tolman, Steven A.
Knapik, Michael R.	Tucker, Susan C.
Lees, Brian P.	Walsh, Marian
McGee, Thomas M.	Wilkerson, Dianne —
	37.
Menard, Joan M.	

NAYS — 0.

ABSENT OR NOT VOTING.

Brown, Scott P.	Buoniconti, Stephen J.
	— 2.

The yeas and nays having been completed at twelve minutes past two o'clock P.M., the bill (Senate, No. 2273, amended) was passed to be engrossed.
Sent to the House for concurrence.

PAPER FROM THE HOUSE.

Engrossed Bill — Land Taking for Conservation, Etc.

There being no objection, during the consideration of the Orders of the Day, an engrossed Bill authorizing the town of Hingham to convey certain land (see House, No. 4267, amended) (which originated in the House), having been certified by the Senate Clerk to be rightly and truly prepared for final passage,— was put upon its final passage; and, 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, the question on passing it to be enacted was determined by a call of the yeas and nays, at thirteen minutes past two o'clock P.M., as follows, to wit (*yeas 37 — nays 0*) [**Yeas and Nays No 235**]:

YEAS.

Antonioni, Robert A.	Montigny, Mark C.
Augustus, Edward M., Jr.	Moore, Richard T.
Baddour, Steven A.	Morrissey, Michael W.
Barrios, Jarrett T.	Murray, Therese
Berry, Frederick E.	Nuciforo, Andrea F., Jr.
Brewer, Stephen M.	O'Leary, Robert A.
Chandler, Harriette L.	Pacheco, Marc R.
Creedon, Robert S., Jr.	Panagiotakos, Steven C.
Creem, Cynthia Stone	Resor, Pamela
Fargo, Susan C.	Rosenberg, Stanley C.
Hart, John A., Jr.	Spilka, Karen E.
Havern, Robert A.	Tarr, Bruce E.
Hedlund, Robert L.	Timilty, James E.
Jehlen, Patricia D.	Tisei, Richard R.
Joyce, Brian A.	Tolman, Steven A.
Knapik, Michael R.	Tucker, Susan C.

Lees, Brian P. Walsh, Marian
McGee, Thomas M. Wilkerson, Dianne —
 37.
Menard, Joan M.

NAYS — 0.
ABSENT OR NOT VOTING.

Brown, Scott P. Buoniconti, Stephen J.
 — 2.

The President in the Chair, the yeas and nays having been completed at seventeen minutes past two o'clock P.M., the bill was passed to be enacted, two-thirds of the members present having agreed to pass the same, and it was signed by the Acting President (Mr. Berry) and laid before the Governor for his approbation.

Mr. Berry in the Chair, at twenty-seven minutes past two o'clock P.M., at the request of Mr. Lees, for the purpose of a minority party caucus, the Chair (Mr. Berry) declared a recess; and, at eight minutes before three o'clock P.M., the Senate reassembled, Mr. Berry in the Chair (having been appointed by the President, under authority conferred by Senate Rule 4, to perform the duties of the Chair).

Orders of the Day.

The Orders of the Day were further considered, as follows:

The Senate Bill relative to rates of pilotage (Senate, No. 2391),— was considered; the question being on passing the bill to be engrossed.

Pending the question on passing the bill to be engrossed, Mr. McGee moved that the bill be amended by striking out section 3.

Pending the question on adoption of the amendment and pending the main question on passing the bill to be engrossed, on motion of Mr. Lees, the further consideration thereof was postponed until Wednesday, April 19.

The Senate Bill to provide for the public inspection of records made or received by special state police officers at educational institutions and hospitals (Senate, No. 1735),— was considered; the question being on ordering it to a third reading.

On motion of Mr. Lees, the further consideration thereof was postponed until Wednesday, April 19.

The Senate Bill promoting school nutrition (Senate, No. 2373),— was considered; the question being on passing it to be engrossed.

On motion of Mr. Lees, the further consideration thereof was postponed until Wednesday, March 29.

The Senate Resolutions (filed by Messrs. Nuciforo, Augustus and Barrios, Ms. Creem, Ms. Fargo, Mr. Havern, Ms. Jehlen, Messrs. McGee, O'Leary and Rosenberg, Ms. Resor, Mr. Pacheco, Ms. Chandler and Ms. Spilka) "affirming the civil rights and liberties of the people of Massachusetts,"— was considered.

Pending the question on the motion to lay the matter on the table and pending the main question on adoption of the resolutions, on motion of Mr. Lees, the further consideration thereof was postponed until Wednesday, April 19.

Matter Taken Out of the Notice Section of the Calendar.

There being no objection, the following matter was taken out of the Notice Section of the Calendar and considered as follows:

The House Bill authorizing the town of Milford to grant an additional license for the sale of wine and malt beverages not to be drunk on the premises (House, No. 4722),— was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence.

PAPERS FROM THE HOUSE.

Engrossed Bills.

The following engrossed bills (the first of which originated in the Senate), 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 (Mr. Berry) and laid before the Governor for his approbation, to wit:

Changing the term of office of the moderator for the town of Milton (see Senate, No. 2095);

Relative to the treatment of waste water in the town of Shrewsbury (see House, No. 4485); and

Regulating the financial conditions in the Athol-Royalston Regional School District (see House, No. 4752).

A petition (accompanied by bill, House, No. 4784) of Salvatore F. DiMasi for legislation to establish a sick leave bank for Jean Simonelli, an employee of the Massachusetts Department of Revenue,— **was referred, in concurrence, under suspension of Joint Rule 12, to the committee on Public Service.**

Reports of a Committee.

The committee on Telecommunications, Utilities and Energy, reported ought NOT to pass (under Joint Rule 10) on the petition (accompanied by bill, Senate, No. 1810) of Michael W. Morrissey and Paul Hannon for legislation to provide for the annual inspection of schools, churches, hospitals, theatres, arenas and other public buildings by gas corporations in the Commonwealth. **There being no objection, the rules were suspended, on motion of Mr. McGee, and the matter was considered forthwith. On motion of Mr. Morrissey, the petition was recommitted to the Joint Committee on Telecommunications, Utilities and Energy.**

The committee on Telecommunications, Utilities and Energy, reported ought NOT to pass (under Joint Rule 10) on the petition (accompanied by bill, Senate, No. 1814) of Michael W. Morrissey for legislation to promote regulated utility service. **There being no objection, the rules were suspended, on motion of Mr. McGee, and the matter was considered forthwith. On motion of Mr. Morrissey, the petition was recommitted to the Joint Committee on Telecommunications, Utilities and Energy.**

Order Adopted.

On motion of Mr. Moore,—

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.

Adjournment in Memory of Theresa M. O'Halloran.

The Senator from Middlesex and Norfolk, Ms. Creem, presented a request that when the Senate adjourns today, it do so as a mark of respect to the memory of Theresa M. (Coletti) O'Halloran.

Terry O'Halloran served as an Alderman in the city of Newton from September 1993 through December 2001. She was a strong advocate for the Newton Boys and Girls Club and worked tirelessly on behalf of the city in support of the construction of municipal parking lots in Newton. She was the legislative chairperson of first state-wide Title I Advisory Committee and was a recipient of the Newton Conservators' "Environmentalist of the Year Award" in 1993 for efforts in preserving open space.

Terry was a long-time member of the Fiori d'Italia branch of the Sons of Italy Lodge. She was a beloved wife of the late John F. O'Halloran and the devoted mother of Mary Louise O'Halloran of Newton and John F. O'Halloran, Jr. of Marlboro. She will be missed by all those who knew her.

Accordingly, as a mark of respect to the memory of Theresa M. O'Halloran, at seven minutes past three o'clock P.M. on motion of Mr. Moore, the Senate adjourned to meet again tomorrow at eleven o'clock A.M.