

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.

Tuesday, May 31, 2005.

Met at twenty-two minutes past one o'clock P.M.

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

Communication.

A communication was received from the Honorable Robert E. Travaglini, President of the Senate, announcing the appointment of the Honorable Steven A. Tolman as a member of the Special Commission to establish (pursuant to Executive Order No. 467 (05-05)) the Massachusetts Interagency Council on Substance Abuse and Prevention.

Reports.

The following reports were severally read and placed on file:

A report of the Division of Unemployment Assistance (under the provisions of Section 14F of Chapter 151A of the General Laws, as most recently amended by Section 6 of Chapter 142 of the Acts of 2003) relative to the condition of the Unemployment Insurance Trust Fund for the month of April 2005 (received Wednesday, May 18, 2005);

A report of the Massachusetts Bay Transportation Authority (under the provisions of Subsection 5 of Section 151 of Chapter 127 of the Acts of 1999) submitting its Report of Operations for Fiscal Year 2004 (received Thursday, May 19, 2005);

A report of MassDevelopment (pursuant to Section 71 of Chapter 141 of the Acts of 2003) submitting its report relative to the Emerging Technology Fund for the first calendar quarter of 2005 (received Friday, May 27, 2005); and

A report of The Property and Casualty Initiative (under the provisions of Section 3 of Chapter 259 of the Acts of 1998) submitting its annual report for Fiscal Year 2004 (received Friday, May 27, 2005).

Petitions.

Petitions were presented and referred as follows:

By Ms. Spilka, a petition (accompanied by bill, Senate, No. 2070) of Karen E. Spilka and Paul J.P. Loscocco (by vote of the town) for legislation to authorize certain terms for borrowing by the town of Hopkinton for construction of school buildings to meet growing enrollment [Local approval received];

Under Senate Rule 20, to the committee on Education.

By Mr. Rosenberg, a petition (accompanied by bill, Senate, No. 2069) of Stanley C. Rosenberg and Peter V. Kocot (with approval of the mayor and city council) for legislation relative to civil service positions in the fire department in the city of

Northampton [Local approval received];
Under Senate Rule 20, to the committee on Public Service.
Severally sent to the House for concurrence.

Petitions were presented and referred, as follows:

By Mr. Antonioni, a petition (subject to Joint Rule 12) of Robert A. Antonioni, Jennifer L. Flanagan and Lewis G. Evangelidis for legislation to authorize the teachers' retirement board to include additional compensation in calculating the retirement allowance of Nancy Swanson;

By Mr. Brewer, a petition (subject to Joint Rule 12) of Stephen M. Brewer for legislation relative to a retirement buy back from the Massachusetts teachers' retirement system;

By the same Senator, a petition (subject to Joint Rule 12) of Stephen M. Brewer for legislation relative to veterans' benefits and the cost of living;

By Mr. O'Leary (by request), a petition (subject to Joint Rule 12) of James R. Powell and Margaret M. Regan for legislation relative to school attendance;

By Mr. Panagiotakos, a petition (subject to Joint Rule 12) of Steven C. Panagiotakos for legislation to require the use of helmets by certain children during winter sporting activities;

By the same Senator, a petition (subject to Joint Rule 12) of Steven C. Panagiotakos, David M. Nangle and Glenn Morales for legislation relative to military service; and

By Mr. Tolman, a petition (subject to Joint Rule 12) of Steven A. Tolman for legislation relative to controlled-release oxycodone;
Severally, under Senate Rule 20, to the committees on Rules of the two branches, acting concurrently.

Reports of Committees.

By Ms. Menard, for the committee on Ethics and Rules, that the Senate Resolve to establish a special commission relative to the training of law enforcement officers (Senate, No. 1352, changed),— ought to pass;
Referred, under Senate Rule 27, to the committee on Ways and Means.

By Mr. Buoniconti, for the committee on Public Service, on Senate, Nos. 1479 and 1491, a Bill relative to accidental retirement benefits for certain family members (Senate, No. 1491);
Read and, under Senate Rule 27, referred to the committee on Ways and Means.

By Mr. Timilty, for the committee on Municipalities and Regional Government, on petition, a Bill amending the membership of the Metropolitan Area Planning Council (Senate, No. 1175); and

By the same Senator, for the same committee, on petition, a Bill relative to the redetermination of municipal sewer assessments (Senate, No. 1203);
Severally read and, under Senate Rule 26, referred to the committee on Ethics and Rules.

By Mr. Timilty, for the committee on Municipalities and Regional Government, ought NOT to pass:

On the petition (accompanied by bill, Senate, No. 1180) of Irving Murstein for legislation to establish a term of service for certain members of local retirement boards; and

On the petition (accompanied by bill, Senate, No. 1208) of Charles E. Shannon and Walter F. Timilty for legislation relative to stabilization funds;
Severally referred, under Senate Rule 36, to the committee on Ethics and Rules.

Committee Discharged.

Mr. Timilty, for the committee on Municipalities and Regional Government, reported, asking to be discharged from further consideration

Of the petition (accompanied by bill, Senate, No. 1185) of Thomas M. McGee for legislation relative to second-hand dealers,— and recommending that the same be referred to the committee on Consumer Protection and Professional Licensure; and

Of the petition (accompanied by bill, Senate, No. 1184) of Larry Joseph and Steven A. Baddour for legislation relative to the placement of automatic external defibrillators,— and recommending that the same be referred to the committee on Public Health.

**Under Senate Rule 36, the reports were severally considered forthwith and accepted.
Severally sent to the House for concurrence.**

PAPERS FROM THE HOUSE.

Messages were referred, in concurrence, as follows:

Message from His Excellency the Governor recommending legislation relative to counterfeit and fraudulent documents (House, No. 4061); and

Message from His Excellency the Governor recommending legislation relative to manufacturing and trafficking of illegal drugs (House, No. 4068);
Severally to the committee on the Judiciary.

Message from His Excellency the Governor recommending legislation relative to National Guard compensation (House, No. 4069);
To the committee on Public Service.

Petitions were referred, in concurrence, as follows:

Petition (accompanied by bill, House, No. 4063) of Jay R. Kaufman and others (with the approval of the mayor and city council) relative to establishing a traffic commission in the city of Woburn; and

Petition (accompanied by bill, House, No. 4064) of Richard R. Tisei and another (with the approval of the mayor and city council) relative to health insurance of active and retired employees of the city of Melrose;
Severally to the committee on Municipalities and Regional Government.

A Bill relative to a certain parcel of land in the town of Shrewsbury (House, No. 2794,— on petition) [Local approval received],— **was read and, under Senate Rule 26, placed in the Orders of the Day for the next session.**

Reports

Of the committee on Economic Development and Emerging Technologies, asking to be discharged from further consideration

Of the petition (accompanied by bill, House, No. 3746) of Paul Kujawski regulating the payment of interest on advance rentals and security deposits,— and recommending that the same be referred to the committee on Housing.

Of the petition (accompanied by bill, House, No. 3801) of the Associated Industries of Massachusetts and others relative to the unemployment insurance system,— and recommending that the same be referred to the committee on Labor and Workforce Development.

Of the committee on Education, asking to be discharged from further consideration

Of the petition (accompanied by bill, House, No. 1019) of James R. Miceli relative to the listing of the amount of carbohydrates contained in food served in schools,— and recommending that the same be referred to the committee on Children and Families.

Of the petition (accompanied by bill, House, No. 1137) of Robert Edwards to prohibit the use of headers in soccer games sponsored by public and private schools and colleges,— and recommending that the same be referred to the committee on Public Health.

Of the committee on Elder Affairs, asking to be discharged from further consideration of the petition (accompanied by bill, House, No. 2914) of Kathi-Anne Reinstein and others relative to emergency aid for elderly and disabled residents of the Commonwealth,— and recommending that the same be referred to the committee on Children and Families.

Of the committee on Health Care Financing, asking to be discharged from further consideration of the petition (accompanied by bill, House, No. 2896) of Ronald Mariano for legislation to establish a direct care worker reserve fund,—and recommending that the same be referred to the committee on Elder Affairs.

Of the committee on Housing, asking to be discharged from further consideration of the petition (accompanied by bill, House, No. 3192) of Thomas P. Kennedy relative to regulating advertisements and solicitations for time-shares,— and recommending that the same be referred to the committee on Consumer Protection and Professional Licensure.

Of the committee on the Judiciary, asking to be discharged from further consideration

Of the petition (accompanied by bill, House, No. 1795) of Robert F. Fennell and others relative to the escrowing of withheld rent; and

Of the petition (accompanied by bill, House, No. 1844) of Arthur J. Broadhurst for legislation to provide for the mandatory escrowing of withheld rent to facilitate resolution of summary process cases;

And recommending that the same severally be referred to the committee on Housing.

Were severally considered forthwith, under Senate Rule 36, and accepted, in concurrence.

Resolutions.

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

Resolutions (filed by Mr. Brewer) “on the occasion of the retirement of Lieutenant Robert Riley”; and

Resolutions (filed by Mr. Brown) “commemorating Paraguay’s Independence from Spain in 1811.”

PAPERS FROM THE HOUSE.

Emergency Preamble Adopted.

An engrossed Bill providing for capital repairs to the Jim Roche Memorial Rink in the West Roxbury section of the city of Boston (see Senate, No. 2050), 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 13 to 0.

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

Orders Adopted.

The following House orders (severally approved by the committees on Rules of the two branches, acting concurrently) were severally considered forthwith and adopted, in concurrence, as follows, to wit:—

Ordered, That the committee on Community Development and Small Business and the committee on Municipalities and Regional Government be authorized to sit jointly for the purposes of conducting a public hearing, holding an executive session and reporting on Senate, No. 168 and House, No. 3544, relative to promoting land use reform in the Commonwealth; provided that, the adopted Rules of the committee on Community Development and Small Business shall govern the proceedings in all instances.

Ordered, That the committee on Community Development and Small Business and the committee on Housing be authorized to sit jointly for the purposes of conducting a public hearing, holding an executive session and reporting on Senate, No. 149, relative to smart growth zoning and housing production; provided that, the adopted Rules of the committee on Community Development and Small Business shall govern the proceedings in all instances.

Reports of Committees.

By Ms. Menard, for the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the Senate petition of Pamela P. Resor and Robert S. Hargraves for legislation to establish a sick leave bank for Dawn Heinle-Kimball, an employee of the Trial Court.

Senate Rule 36 was suspended, on motion of Mr. Berry, and the report was considered forthwith. Joint Rule 12 was suspended; and the petition (accompanied by bill) was referred to the committee on the Judiciary.

By Ms. Menard, for the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the Senate petition of Michael W. Morrissey for legislation regarding the eligibility of certain persons to participate in the civil service examination.

Senate Rule 36 was suspended, on motion of Mr. Berry, and the report was considered forthwith. Joint Rule 12 was suspended; and the petition (accompanied by bill) was referred to the committee on Public Service.

By Ms. Menard, for the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the Senate petition of Michael W. Morrissey and Thomas M. Stanley for legislation to allow employees affected by changes in the actuarial table to make elections of retirement options based on changes made.

Senate Rule 36 was suspended, on motion of Mr. Berry, and the report was considered forthwith. Joint Rule 12 was suspended; and the petition (accompanied by bill) was referred to the committee on Public Service.

By Ms. Menard, for the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the Senate petition of Michael W. Morrissey for legislation to expand penalties for non-payment of boat excise tax.

Senate Rule 36 was suspended, on motion of Mr. Berry, and the report was considered forthwith. Joint Rule 12 was suspended; and the petition (accompanied by bill) was referred to the committee on Revenue.

By Ms. Menard, for the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the Senate petition of Michael W. Morrissey, John J. Binienda and Brian S. Dempsey for legislation relative to the renewable energy portfolio.

Senate Rule 36 was suspended, on motion of Mr. Berry, and the report was considered forthwith. Joint Rule 12 was suspended; and the petition (accompanied by bill) was referred to the committee on Telecommunications, Utilities and Energy.

By Ms. Menard, for the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the Senate petition of Marc R. Pacheco to create the official shellfish of the Commonwealth.

Senate Rule 36 was suspended, on motion of Mr. Berry, and the report was considered forthwith. Joint Rule 12 was suspended; and the petition (accompanied by bill) was referred to the committee on Tourism, Arts and Cultural Development.

By Ms. Menard, for the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the Senate petition of Richard T. Moore and Peter J. Koutoujian for legislation relative to eligibility for a license to operate a motor vehicle.

Senate Rule 36 was suspended, on motion of Mr. Berry, and the report was considered forthwith. Joint Rule 12 was suspended; and the petition (accompanied by bill) was referred to the committee on Transportation. Severally sent to the House for concurrence.

Engrossed Bill Returned by Governor With His Objections Thereto.

The engrossed Bill enhancing regenerative medicine in the Commonwealth (see Senate, No. 2039, amended), which, on Thursday, May 19, 2005, had been laid before His Excellency the Governor for his approbation,— was returned to the Senate Clerk by His Excellency the Governor on Friday, May 27, 2005, at five minutes past twelve o'clock noon, with his objections thereto in writing [for message, see Senate, No. 2068].

The message (Senate, No. 2068) was read; and the Senate proceeded to reconsider the bill, in accordance with the provisions of Article LVI of the Amendments to the Constitution.

The question on passing the bill, the objections of His Excellency the Governor to the contrary notwithstanding, was determined by a call of the yeas and nays, as required by Chapter I, Section I, Article II, of the Constitution, at four minutes before two o'clock P.M., as follows, to wit (yeas 35 — nays 2) [Yeas and Nays No. 47]

YEAS.

Antonioni, Robert A.	Morrissey, Michael W.
Augustus, Edward M., Jr.	Murray, Therese
Baddour, Steven A.	Nuciforo, Andrea F., Jr.
Barrios, Jarrett T.	O'Leary, Robert A.
Berry, Frederick E.	Pacheco, Marc R.
Brewer, Stephen M.	Panagiotakos, Steven C.
Brown, Scott P.	Resor, Pamela
Buoniconti, Stephen J.	Rosenberg, Stanley C.
Chandler, Harriette L.	Spilka, Karen E.
Creedon, Robert S., Jr.	Tarr, Bruce E.
Fargo, Susan C.	Timilty, James E.
Hart, John A., Jr.	Tisei, Richard R.
Havern, Robert A.	Tolman, Steven A.
Hedlund, Robert L.	Travaglini, Robert E.
Joyce, Brian A.	Tucker, Susan C.
McGee, Thomas M.	Walsh, Marian

Menard, Joan M.	Wilkerson, Dianne —
	35.
Montigny, Mark C.	
	NAYS.
Knapik, Michael R.	Lees, Brian P. — 2.
	PAIRED.
	YEA. NAY.
Cynthia Stone Creem	Richard T. Moore
	<i>(present)</i> — 2.

The yeas and nays having been completed at one minute before two o'clock P.M., the bill was passed by the Senate, notwithstanding the objections of His Excellency the Governor, two-thirds of the members present and voting having approved the same.
Sent to the House for its action.

PAPERS FROM THE HOUSE.

A Bill relative to certain elections in the city of Medford (House, No. 3846,— on petition) [Local approval received] (Representative Creedon of Brockton dissenting),— was read.

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

Committee of Conference.

The House Bill making appropriations for the fiscal year 2006 for the maintenance of the departments, boards, commissions, institutions and certain activities of the Commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements (House, No. 4001),— came from the House with the endorsement that the House had NON-concurred in the Senate amendment (*amended by the Senate* on recommendation of the committee on Ways and Means by striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2101), and had asked for a committee of conference on the disagreeing votes of the two branches; and that Representatives DeLeo of Winthrop, St. Fleur of Boston and deMacedo of Plymouth had been appointed the committee on the part of the House.

On motion of Mr. Berry, the Senate insisted on its amendment and concurred in the appointment of a committee of conference; and Senators Murray, Panagiotakos and Knapik were appointed on the part of the Senate.
The bill was returned to the House endorsed accordingly.

Recess.

There being no objection, at five minutes past two o'clock P.M., the President declared a recess; and at two minutes before three o'clock P.M., the Senate reassembled, the President in the Chair.

PAPERS FROM THE HOUSE.

Engrossed Bill — Land Taking for Conservation, Etc.

An engrossed Bill providing for capital repairs to the Jim Roche Memorial Rink in the West Roxbury section of the city of Boston (see Senate, No. 2050) (which originated in the Senate), 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 one minute before three o'clock P.M., as follows, to wit (yeas 37 — nays 0) [**Yeas and Nays No. 48**]:

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

37.

NAYS — 0.

ABSENT OR NOT VOTING.

Creem, Cynthia Stone
— **1.**

The yeas and nays having been completed at six minutes past three 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 President and laid before the Governor for his approbation.

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 President and laid before the Governor for his approbation, to wit:

Authorizing the town of Abington to establish a capital improvement trust fund (see Senate, No. 2025); and

Relative to certain elections in the city of Medford (see House, No. 3846).

Order Adopted.

On motion of Mr. Berry,—

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

On motion of the same Senator, at eight minutes past three o’clock P.M., the Senate adjourned to meet on the following Thursday at eleven o’clock A.M.