

**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, October 27, 2005.*

Met at one minute past one o'clock P.M. (Mr. Tolman in the Chair).

#### *Communication.*

A communication from Wonderland Greyhound Park, Inc. (under the provisions of section 2 of Chapter 128C of the General Laws) submitting copies of simulcasting contracts entered into by Wonderland (received Tuesday, October 25, 2005),— **was placed on file.**

#### *Reports.*

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 second calendar quarter of 2005 (received Wednesday, October 26, 2005),— **was placed on file.**

A report of the Department of Public Health (under the provisions of Sections 5 and 20 of Chapter 111 of the General Laws) relative to inspection of the South Middlesex Pre-Release Center (received Wednesday, October 26, 2005),— **was read and sent to the House for its information.**

#### *Petitions.*

Petitions were presented and referred as follows:

By Mr. Havern, a petition (accompanied by bill, Senate, No. 2252) of Robert A. Havern and Charles A. Murphy (by vote of the town) for legislation relative to write-in candidates in the town of Burlington [Local approval received];  
**Under Senate Rule 20, to the committee on Election Laws.**

By the same Senator, a petition (accompanied by bill, Senate, No. 2253) of Robert A. Havern and Charles A. Murphy (by vote of the town) for legislation relative to roadways in the town of Burlington [Local approval received];  
**Under Senate Rule 20, to the committee on Municipalities and Regional Government.**  
**Severally sent to the House for concurrence.**

#### *Recess.*

There being no objection, at two minutes past one o'clock P.M., the Chair (Mr. Tolman) declared a recess subject to the call of the Chair; and, at twenty-four minutes before two o'clock P.M., the Senate reassembled, the President in the Chair.

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

The following prayer was offered by Father Bernard McLaughlin of St. Gerard's Parish in Canton:

We gather here once again to celebrate and to exercise our great gift from God: our freedom of ideas, of thought, of speech, of dreams and especially of dissent. It is our task to find the truth and always to respect the dissenting of others. With responsibility we will continue to be able to rebuild this great land of the free as well as this great and brave nation. Amen.

*Resolutions.*

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

Resolutions (filed by Ms. Wilkerson) “honoring the Bay State Banner on its fortieth anniversary.”

*Orders of the Day*

The Orders of the Day were considered, as follows:

The Senate Bill establishing a special commission on civic education and learning (Senate, No. 340) (its title having been changed by the committee on Bills in the Third Reading),— was read a third time.

After remarks, the question on passing it to be engrossed was determined by a call of the yeas and nays, at seventeen minutes before two o'clock P.M., on motion of Mr. Lees, as follows, to wit (yeas 38 — nays 0) [**Yeas and Nays No. 170**]:

**YEAS.**

|                          |                          |
|--------------------------|--------------------------|
| Antonioni, Robert A.     | Menard, Joan M.          |
| Augustus, Edward M., Jr. | Montigny, Mark C.        |
| Baddour, Steven A.       | Moore, Richard T.        |
| Barrios, Jarrett T.      | Morrissey, Michael W.    |
| Berry, Frederick E.      | Murray, Therese          |
| Brewer, Stephen M.       | Nuciforo, Andrea F., Jr. |
| Brown, Scott P.          | 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 —      |

**38.**

**NAYS — 0.**

**ABSENT OR NOT VOTING.**

Buoniconti, Stephen J. — **1.**

**The yeas and nays having been completed at eleven minutes before two o'clock P.M., the bill was passed to be engrossed. Sent to the House for concurrence.**

The Senate Bill facilitating homeowners in remediating heating oil spills (Senate, No. 538, amended) (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. Resor moved that the bill be amended, in section 7 (as corrected by the committee on Bills in the Third Reading) by striking out the words “December 31, 2008” and inserting in place thereof the following words:— “June 30, 2009”.

After debate, this amendment was **adopted**.

After further debate, Ms. Resor moved that the question on passing the bill to be engrossed be taken by a call of the yeas and the nays; and, it was so ordered.

**On motion of Mr. Lees, the further consideration thereof was postponed until the next session.**

The Senate Bill relative to organ and tissue donations (Senate, No. 2236),— was read a third time.

After remarks, the question on passing it to be engrossed was determined by a call of the yeas and nays, at two minutes before two o’clock P.M., on motion of Mr. Lees, as follows, to wit (yeas 39 —nays 0) [**Yeas and Nays No. 171**]:

### **YEAS.**

|                          |                          |
|--------------------------|--------------------------|
| Antonioni, Robert A.     | Menard, Joan M.          |
| Augustus, Edward M., Jr. | Montigny, Mark C.        |
| Baddour, Steven A.       | Moore, Richard T.        |
| Barrios, Jarrett T.      | Morrissey, Michael W.    |
| Berry, Frederick E.      | Murray, Therese          |
| Brewer, Stephen M.       | Nuciforo, Andrea F., Jr. |
| Brown, Scott P.          | O’Leary, Robert A.       |
| Buoniconti, Stephen J.   | Pacheco, Marc R.         |
| Chandler, Harriette L.   | Panagiotakos, Steven C.  |
| Creedon, Robert S., Jr.  | Resor, Pamela            |
| Creem, Cynthia Stone     | 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.        |
| Jehlen, Patricia D.      | Tolman, Steven A.        |
| Joyce, Brian A.          | Tucker, Susan C.         |
| Knapik, Michael R.       | Walsh, Marian            |
| Lees, Brian P.           | Wilkerson, Dianne —      |
| McGee, Thomas M.         | <b>39.</b>               |

### **NAYS — 0.**

**The yeas and nays having been completed at three minutes past two o’clock P.M., the bill was passed to be engrossed. Sent to the House for concurrence.**

The Senate Bill relative to rates of pilotage (Senate, No. 2204),— was considered; the main question being on ordering it to a third reading.

**Pending the motion, previously moved by Mr. Morrissey, to lay the matter on the table, on further motion of the same Senator, the further consideration thereof was postponed until Thursday, November 3.**

The Senate Bill providing further public information and strengthening petition anti-fraud safeguards for initiative and referendum questions (Senate, No. 2158),— was read a third time.

Pending the question on passing the bill to be engrossed, Mr. Augustus moved that the bill be amended by substituting a new draft with the same title (Senate, No. 2251).

Pending the question on adoption of the amendment, the same Senator moved that the proposed new draft be amended, in section 1, by striking out the words “objections under chapter 55B” and inserting in place thereof the following words:— “the nomination paper or petition with the state secretary”.

Pending the question on adoption of the further amendment, pending the question on substitution of the new draft and pending the main question on passing the bill to be engrossed, Mr. Tisei moved that the further consideration thereof be postponed for one week; and this motion was *negatived* by a vote of 6 to 14.

**The same Senator then moved that the matter be laid on the table; and, in accordance with the provisions of Senate Rule 24, the further consideration of the motion to lay on the table was postponed, without question, until the next session.**

*Matters Taken Out of the Notice Section of the Calendar.*

There being no objection, the following matters were taken out of the Notice Section of the Calendar as follows:

The House Bill establishing the Massachusetts principal and income act (House, No. 760),— was read a second time, ordered to a third reading and read a third time.

The question on passing the bill to be engrossed, in concurrence, was determined by a call of the yeas and nays, at twenty-one minutes past two o'clock P.M. on motion of Mr. Lees, as follows, to wit (yeas 38 — nays 0) [**Yeas and Nays No. 172**] :

YEAS.

Antonioni, Robert A. Knapik, Michael R.

Augustus, Edward M., Jr. Lees, Brian P.

Baddour, Steven A. McGee, Thomas M.

Barrios, Jarrett T. Menard, Joan M.

Berry, Frederick E. Montigny, Mark C.

Brewer, Stephen M. Moore, Richard T.

Brown, Scott P. Morrissey, Michael W.

Buoniconti, Stephen J. Murray, Therese

Chandler, Harriette L. Nuciforo, Andrea F., Jr.

Creedon, Robert S., Jr. O’Leary, Robert A.

Creem, Cynthia Stone Pacheco, Marc R.

Fargo, Susan C. Panagiotakos, Steven C.

Hart, John A., Jr. Resor, Pamela

Havern, Robert A. Rosenberg, Stanley C.

Hedlund, Robert L. Spilka, Karen E.

Jehlen, Patricia D. Tarr, Bruce E.

Joyce, Brian A. Timilty, James E.

Tisei, Richard R. Walsh, Marian

Tucker, Susan C. Wilkerson, Dianne — 38.

NAYS — 0.

ABSENT OR NOT VOTING.

Tolman, Steven A. — 1.

**The yeas and nays having been completed at twenty-seven minutes past two o'clock P.M., the bill was passed to be engrossed, in concurrence.**

The House Bill authorizing the town of Dedham to transfer land for senior center purposes (House, No. 4102),— was read a third time.

Pending the question on passing the bill to be engrossed, Ms. Walsh moved that the bill be amended by striking out all after the enacting clause and inserting in place thereof the following text:—

“SECTION 1. The town of Dedham may transfer the care, custody, management and control of a certain parcel of land, currently held for recreational purposes, from the parks and recreation commission to the board of selectmen, to be used for senior center purposes. This parcel is a portion of the Striar Property and is shown as ‘Parcel A, 122,861 Sq. Ft. 2.2 Acres’ on a plan entitled ‘Plan of Land Showing Proposed Change in Use/Care/Custody of a Portion of ‘Manor Estates,’ Sprague Street, Dedham, MA’, dated September 27, 2004, prepared by the Norfolk county engineering department.

SECTION 2. No document transferring care, custody, control or management of any portion of the property described in section 1 shall be valid unless such document provides that the property shall be used solely for the purposes of a senior center as described in section 1. This document shall include a reversionary clause that stipulates that the property will revert to the Dedham parks and recreation commission for public recreation purposes if the property ceases to be used for the express purposes for which it was transferred.”.

**After remarks, this amendment was adopted.**

**The bill 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 authorizing the city of Quincy to establish senior citizen safety zones (see Senate, No. 2022, 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 President and laid before the Governor for his approbation.**

*Paper from the House.*

The House Bill providing death benefits for survivors of volunteer firefighters and other volunteer public safety personnel (House, No. 4369, amended),— came from the House with the endorsement that the House had NON-concurred in the Senate amendment at the end thereof (as printed), by inserting after the last paragraph (inserted by amendment by the House), the following paragraph:

“(f) This section shall not apply to any city, town or district which opts not to accept it, in a municipality, by vote of the legislative body, subject to the charter of the municipality, or, in a district, by vote of the district at a district meeting. It shall be the policy of the general court that it will not act favorably on any future appropriation request by a municipality or district for accidental death benefits under another provision of law.”

The rules were suspended, on motion of Mr. Brewer, and the matter was considered forthwith.

After remarks, the question on the Senate receding from its amendment was determined by a call of the yeas and nays, at twenty-five minutes before three o'clock P.M., on motion of Mr. Brewer, as follows, to wit (yeas 39 — nays 0) **[Yeas and Nays No. 173]**:

YEAS.

Antonioni, Robert A. Menard, Joan M.  
Augustus, Edward M., Jr. Montigny, Mark C.  
Baddour, Steven A. Moore, Richard T.  
Barrios, Jarrett T. Morrissey, Michael W.  
Berry, Frederick E. Murray, Therese  
Brewer, Stephen M. Nuciforo, Andrea F., Jr.  
Brown, Scott P. O'Leary, Robert A.  
Buoniconti, Stephen J. Pacheco, Marc R.  
Chandler, Harriette L. Panagiotakos, Steven C.  
Creedon, Robert S., Jr. Resor, Pamela  
Creem, Cynthia Stone 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.  
Jehlen, Patricia D. Tolman, Steven A.  
Joyce, Brian A. Tucker, Susan C.  
Knapik, Michael R. Walsh, Marian  
Lees, Brian P. Wilkerson, Dianne — 39.  
McGee, Thomas M.

NAYS — 0.

**The yeas and nays having been completed at twenty minutes before three o'clock P.M., the Senate receded from its amendment.**

A Bill exempting the town of Winthrop from certain provisions of the civil service law (House, No. 4155,— on petition) [Local approval received],— was read.

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

*Report of a Committee.*

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 elevator license examinations (Senate, No. 2216).

Mr. Morrissey moved to suspend the rules to consider the matter forthwith; but objection was made thereto by Mr. Lees.

**Under the rules, placed in the Orders of the Day for the next session.**

*Recess.*

At a quarter before three o'clock P.M., at the request of Mr. Lees, for the purpose of a minority caucus, the President declared a recess; and, at a half past four o'clock P.M., the Senate reassembled, the President in the Chair.

*Reports of Committees.*

By Mr. Buoniconti, for the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the Senate petition of Paul LaCamera for legislation to provide protection against compelled disclosure of certain information by the news media.

**Senate Rule 36 was suspended, on motion of the same Senator, 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.**

**Sent to the House for concurrence.**

*Communication.*

The Clerk read the following communication:

COMMONWEALTH OF MASSACHUSETTS  
MASSACHUSETTS SENATE  
STATE HOUSE, BOSTON 02133-1053

October 27, 2005.

The Honorable William Welch

*Clerk*

Massachusetts State Senate

State House

Boston, MA 02133

Dear Mr. Clerk:

I write regarding a vote taken on October 27, 2005 to engross H. 760, which is entitled "An Act Establishing the Massachusetts Principal and Income Act." At the time the vote was taken, I was unfortunately called out of the Chamber and was unable to cast my vote. If I had been in the Chamber, I would have voted "Yes."

Thank you for your prompt attention to this matter.

Sincerely,

STEVEN A. TOLMAN,

*2nd Suffolk and Middlesex District.*

**On motion of Mr. Havern, the above communication was ordered printed in the Journal of the Senate.**

PAPER FROM THE HOUSE.

*Bill Returned with Recommendation of Amendment.*

A message from His Excellency the Governor, returning with recommendation of amendment the engrossed Bill increasing penalties for drunk drivers in the Commonwealth (see House, No. 4403, amended) [for message, see House, No. 4453],— came from the House with endorsement that the House adopted the amendment recommended by the Governor (as approved by committee on Bills in the Third Reading) as follows: By inserting after section 6 (as engrossed) the following section:

"SECTION 6A. Said paragraph (c) of said subdivision (1) of said section 24 of said chapter 90, as so appearing, is hereby further amended by striking out subparagraph (4) and inserting in place thereof the following subparagraph:—

(4) In any prosecution commenced pursuant to this section, introduction into evidence of a prior conviction or a prior finding of sufficient facts by either certified attested copies of original court papers, or certified attested copies of the defendant's biographical and informational data from records of the department of probation, any jail or house of corrections, the department of correction, or the registry, shall be prima facie evidence that the defendant before the court had been convicted previously or assigned to an alcohol or controlled substance education, treatment, or rehabilitation program by a court of the commonwealth or any other jurisdiction. Such documentation shall be self-authenticating and admissible, after the commonwealth has established the defendant's guilt on the primary offense, as evidence in any court of the commonwealth to prove the defendant's commission of any prior convictions described therein.' The commonwealth shall not be required to introduce any additional corroborating evidence, nor live witness testimony to establish the validity of such prior convictions.";

By striking out section 9 (as engrossed) and inserting in place thereof the following section:

"SECTION 9. Paragraph (f) of said subdivision (1) of said section 24 of said chapter 90, as so appearing, is hereby amended by striking out subparagraph (1) and inserting in place thereof the following subparagraph:—

(1) Whoever operates a motor vehicle upon any way or in any place to which the public has right to access, or upon any way or in any place to which the public has access as invitees or licensees, shall be deemed to have consented to submit to a chemical test or analysis of his breath or blood in the event that he is arrested for operating a motor vehicle while under the influence of intoxicating liquor; provided, however, that no such person shall be deemed to have consented to a blood test unless such person has been brought for treatment to a medical facility licensed under the provisions of section 50 of chapter 111; and provided, further, that no person who is afflicted with hemophilia, diabetes or any other condition requiring the use of anticoagulants shall be deemed to have consented to a withdrawal of blood. Any such test shall be administered at the direction of a police officer, as defined in section 1 of chapter 90C, having reasonable grounds to believe that the person arrested has been operating a motor vehicle upon such way or place while under the influence of an intoxicating substance. If the person arrested refuses to submit to such test or analysis, after having been informed that his license or permit to operate motor vehicles or right to operate motor vehicles in the commonwealth shall be suspended for at least a period of 180 days and up to a lifetime loss of license, no such test or analysis shall be made and he shall immediately have his license or right to operate suspended in accordance with the provisions of this paragraph for a period of 180 days; provided, however, that any person who is under the age of 21 or who has



previously been convicted of a violation under this section, subsection (a) of section 24G, subsection (b) of said section 24G if the ingestion of intoxicating liquor or operating under the influence thereof was a proven element of such offense, section 24L or subsection (a) of section 8 of chapter 90B, or section 8A or 8B of said chapter 90B, or a like violation by a court of any other jurisdiction, or who has previously refused a chemical test or analysis of his breath or blood shall have his license suspended for a period of one year for such refusal; provided further, that any person previously so convicted 2 or more times or who has previously refused a chemical test or analysis of his breath or blood 2 times shall have his license suspended forthwith for a period of 5 years for such refusal; and provided, further, that any person previously so convicted 3 or more times or who has previously refused a chemical test or analysis of his breath 3 times shall have his license suspended forthwith for life based upon such refusal. If any person refuses to submit to any such test or analysis after committing an offense that results in the bodily injury to another as defined in section 24L, then the person shall have their license or right to operate suspended for a period of 10 years. If any person refuses to submit to any such test or analysis after committing an offense that results in the death of another, then the registrar shall revoke the person's license or right to operate for life. If a person refuses to take a test under this paragraph, the police officer shall do the following:

- (i) immediately, on behalf of the registrar, take custody of such person's license or right to operate issued by the commonwealth;
- (ii) provide to each person who refuses such test, on behalf of the registrar, a written notification of suspension in a format approved by the registrar; and
- (iii) impound the vehicle being driven by the operator and arrange for the vehicle to be impounded for a period of 12 hours after the operator's refusal, with the costs for the towing, storage and maintenance of the vehicle to be borne by the operator.

The police officer before whom such refusal was made shall, within 24 hours, prepare a report of such refusal. Each report shall be made in a format approved by the registrar and shall be made under the penalties of perjury by the police officer before whom such refusal was made. Each report shall set forth the grounds for the officer's belief that the person arrested had been operating a motor vehicle on a way or place while under the influence of intoxicating liquor, and shall state that such person had refused to submit to a chemical test or analysis when requested by the officer to do so, such refusal having been witnessed by another person other than the defendant. Each report shall identify the police officer who requested the chemical test or analysis and the other person witnessing the refusal. Each report shall be sent forthwith to the registrar along with a copy of the notice of intent to suspend in a form, including electronic or otherwise, that the registrar deems appropriate. A license or right to operate which has been confiscated pursuant to this subparagraph shall be forwarded to the registrar forthwith. The report shall constitute prima facie evidence of the facts set forth therein at any administrative hearing regarding the suspension specified in this section.

The suspension of a license or right to operate shall become effective immediately upon receipt of the notification of suspension from the police officer. A suspension for a refusal of either a chemical test or analysis of breath or blood shall run consecutively and not concurrently, both as to any additional suspension periods arising from the same incident, and as to each other.

No license shall be restored under any circumstances, including a dismissal or acquittal on the criminal charges, and no restricted or hardship permits shall be issued during the suspension period imposed by this paragraph to any person who is under the age of 21 or who has previously been convicted of a violation under this section, subsection (a) of section 24G, subsection (b) of said section 24G if the ingestion of intoxicating liquor or operating under the influence thereof was a proven element of such offense, section 24L or subsection (a) of section 8 of chapter 90B, or section 8A or 8B of said chapter 90B, or a like violation by a court of any other jurisdiction, or who has previously refused a chemical test or analysis of his breath or blood; provided, however, that if the defendant is not under the age of 21, has not been previously convicted as provided in this paragraph, and has not previously refused a chemical test or analysis of his breath or blood, the defendant may immediately, upon entry of a not guilty finding or dismissal of all criminal charges under this section, section 24G or 24L, and in the absence of any other alcohol related charges pending against said defendant, apply for and be immediately granted a hearing before the court which took final action on the charges for the purpose of requesting restoration of said license. At said hearing, there shall be a rebuttable presumption that said license be restored, unless the commonwealth shall establish, by a fair preponderance of the evidence, that restoration of said license would likely endanger the public safety. In all such instances, the court shall issue written findings of fact with its decision.”;

In section 20 (as engrossed), by striking out the second sentence and inserting in place thereof the following sentence:— “The sentence of imprisonment imposed upon such person shall not be reduced to less than 5 years, nor suspended, nor shall any such person be eligible for probation, parole or furlough or receive a deduction from his sentence for good conduct until he shall have served 5 years of such sentence.”; and

By striking out section 9 and inserting in place thereof the following section:

“SECTION 9. Paragraph (f) of said subdivision (1) of said section 24 of said chapter 90, as so appearing, is hereby amended by striking out the subparagraph (1) and inserting in place thereof the following subparagraph:—

(1) Whoever operates a motor vehicle upon any way or in any place to which the public has right to access, or upon any way or in any place to which the public has access as invitees or licensees, shall be deemed to have consented to submit to a chemical test or analysis of his breath or blood in the event that he is arrested for operating a motor vehicle while under the influence of intoxicating liquor; provided, however, that no such person shall be deemed to have consented to a blood test unless such person has been brought for treatment to a medical facility licensed under the provisions of section 51 of chapter 111; and provided, further, that no person who is afflicted with hemophilia, diabetes or any other condition requiring the use of anticoagulants shall be deemed to have consented to a withdrawal of blood. Such test shall be administered at the direction of a police officer, as defined in section 1 of chapter 90C, having reasonable grounds to believe that the person arrested has been operating a motor vehicle upon such way or place while under the influence of intoxicating liquor. If the person arrested refuses to submit to such test or analysis, after having been informed that his license or permit to operate motor vehicles or right to operate motor vehicles in the commonwealth shall be suspended for a period of at least 180 days and up to a lifetime loss, for such refusal, no such test or analysis shall be made and he shall have his license or right to operate suspended in accordance with this paragraph for a period of 180 days; provided, however, that any person who is under the age of 21 years or who has been previously convicted of a violation under this section, subsection (a) of section 24G, operating a motor vehicle with a percentage by weight of blood alcohol of eight one-hundredths or greater, or while under the influence of intoxicating liquor in violation of subsection (b) of said section 24G, section 24L or subsection (a) of section 8 of chapter 90B, section 8A or 8B of said chapter 90B, or section 13½ of chapter 265 or a like violation by a court of any other jurisdiction shall have his license or right to operate suspended forthwith for a period of 3 years for such refusal; provided, further, that any person previously convicted of 2 such violations shall have his license or right to operate suspended forthwith for a period of 5 years for such refusal; and provided, further, that a person previously convicted of 3 or more such violations shall have his license or right to operate suspended forthwith for life based upon such refusal. If a person refuses to submit to any such test or analysis after having been convicted of a violation of section 24L, the registrar shall suspend his license or right to operate for 10 years. If a person refuses to submit to any such test or analysis after having been convicted of a violation of subsection (a) of section 24G, operating a motor vehicle with a percentage by weight of blood alcohol of eight one-hundredths or greater, or while under the influence of intoxicating liquor in violation of subsection (b) of said section 24G, of section 13½ of chapter 265, the registrar shall revoke his license or right to operate for life. If a person refuses to take a test under this paragraph, the police officer shall:

(i) immediately, on behalf of the registrar, take custody of such person's license or right to operate issued by the commonwealth;

(ii) provide to each person who refuses such test, on behalf of the registrar, a written notification of suspension in a format approved by the registrar; and

(iii) impound the vehicle being driven by the operator and arrange for the vehicle to be impounded for a period of 12 hours after the operators refusal, with the costs for the towing, storage and maintenance of the vehicle to be borne by the operator.

The police officer before whom such refusal was made shall, within 24 hours, prepare a report of such refusal.

Each report shall be made in a format approved by the registrar and shall be made under the penalties of perjury by the police officer before whom such refusal was made. Each report shall set forth the grounds for the officer's belief that the person arrested had been operating a motor vehicle on a way or place while under the influence of intoxicating liquor, and shall state that such person had refused to submit to a chemical test or analysis when requested by the officer to do so, such refusal having been witnessed by another person other than the defendant. Each report shall identify the police officer who requested the chemical test or analysis and the other person witnessing the refusal. Each report shall be sent forthwith to the registrar along with a copy of the notice of intent to suspend in a form, including electronic or otherwise, that the registrar deems appropriate. A license or right to operate which has been confiscated pursuant to this subparagraph shall be forwarded to the registrar forthwith. The report shall constitute prima facie evidence of the facts set forth therein at any administrative hearing regarding the suspension specified in this section.

The suspension of a license or right to operate shall become effective immediately upon receipt of the notification of suspension from the police officer. A suspension for a refusal of either a chemical test or analysis of breath or blood shall run consecutively and not concurrently, both as to any additional suspension periods arising from the same incident, and as to each other.

No license or right to operate shall be restored under any circumstances and no restricted or hardship permits shall be issued during the suspension period imposed by this paragraph; provided, however, that the defendant may immediately, upon the entry of a not guilty finding or dismissal of all charges under this section, section 24G, section 24L, or section 13½ of chapter 265, and in the absence of any other alcohol related charges pending against said defendant, apply for and be immediately granted a hearing before the court which took final action on the charges for the purpose of requesting the restoration of said license. At said hearing, there shall be a rebuttable presumption that said license be restored, unless the commonwealth shall establish, by a fair preponderance of the evidence, that restoration of said license would likely endanger the public safety. In all such instances, the court shall issue written findings of fact with its decision."

The message was read; and, under the provisions of Article LVI of the Amendments to the Constitution, the bill was before the Senate subject to amendment and re-enactment.

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

Pending the question on concurring with the House amendment, Messrs. Lees, Tarr, Tisei, Knapik, Hedlund, Brown and Barrios moved that the Senate concur with the House amendment, *with a further amendment*, striking out section 9 and inserting in its place thereof the following:—

“SECTION 9. Paragraph (f) of said subdivision (1) of said section 24 of said chapter 90, as so appearing, is hereby amended by striking out the subparagraph (1) and inserting in place thereof the following subparagraph:—

(1) Whoever operates a motor vehicle upon any way or in any place to which the public has right of access, or upon any way or in any place to which the public has access as invitees or licensees, shall be deemed to have consented to submit to a chemical test or analysis of his breath or blood in the event that he is arrested for operating a motor vehicle while under the influence of intoxicating liquor; provided, however, that no such person shall be deemed to have consented to a blood test unless he has been brought for treatment to a medical facility licensed under the provision of section 51 of chapter 111; and provided further, that no person with hemophilia, diabetes or any other condition requiring the use of anticoagulants shall be deemed to have consented to a withdrawal of blood. Such test shall be administered at the direction of a police officer, as defined in section 1 of chapter 90C, having reasonable grounds to believe that the person arrested has been operating a motor vehicle upon such way or place while under the influence of an intoxicating substance. If the person arrested refuses to submit to such test or analysis, after having been informed that his license or right to operate motor vehicles or right to operate motor vehicles in the commonwealth shall be suspended for at least a period of 180 days and up to a lifetime loss of license or right to operate, no such test or analysis shall be performed and the operator shall immediately have his license or right to operate suspended in accordance with this paragraph for a period of 180 days, unless otherwise provided in this section; provided, however, that any person who is under the age of 21 or who has been previously convicted of a violation under this section, subsection (a) of section 24G, subsection (b) of said section 24G if the ingestion of intoxicating liquor or operating under the influence thereof was an essential and proven element of such offense, section 24L or subsection (a) of section 8 of chapter 90B, or section 8A or 8B of said chapter 90B, or a like violation by a court of any other jurisdiction or has previously refused a chemical test or analysis of his breath or blood shall have his license or right to operate suspended forthwith for a period of 3 years for such refusal; provided further, that any person previously convicted of 2 or more such violations or who has previously refused a chemical test or analysis of his breath or blood 2 times shall have his license or right to operate suspended forthwith for a period of 5 years for such refusal; and provided further, that a person previously convicted of 3 or more such violations or who has previously refused a chemical test or analysis of his breath or blood 3 times shall have his license or right to operate suspended forthwith for life based upon such refusal. If a person refuses to submit to any such test or analysis after having been convicted of a violation of section 24L, the registrar shall suspend his license or right to operate for 10 years. If any person refuses to submit to any such test or analysis after committing an offense that results in the death of another, then the registrar shall revoke the person's license or right to operate for life. If a person refuses to take a test under this paragraph, the police officer shall do the following:

- (i) immediately, on behalf of the registrar, take custody of such person's license or right to operate issued by the commonwealth;
- (ii) provide to each person who refuses such test, on behalf of the registrar, a written notice of intent to suspend in a format approved by the registrar; and
- (iii) impound the vehicle being driven by the operator and arrange for the vehicle to be impounded for a period of 24 hours after the operator's refusal, with the costs for the towing, storage and maintenance of the vehicle to be borne by the operator.

The police officer before whom such refusal was made shall, within 24 hours, prepare a report of such refusal. Each report shall be made in a format approved by the registrar and shall be made under the penalties of perjury by the police officer before whom such refusal was made. Each report shall set forth the grounds for the officer's belief that the person arrested had been operating a motor vehicle on a way or place while under the influence of intoxicating liquor, and shall state that such person had refused to submit to a chemical test or analysis when requested by the officer to do so, such refusal having been witnessed by another person other than the defendant. Each report shall identify the police officer who requested the chemical test or analysis and the other person witnessing the refusal. Each report shall be sent forthwith to the registrar along with a copy of the notice of intent to suspend in a form, including electronic or otherwise, that the registrar deems appropriate. A license or right to operate which has been confiscated pursuant to this subparagraph shall be forwarded to the registrar forthwith. The report shall constitute prima facie evidence of the facts set forth therein at any administrative hearing regarding the suspension specified in this section.

No license shall be restored under any circumstances, including a dismissal or acquittal on the criminal charges, and no restricted or hardship permits shall be issued during the suspension period imposed by this paragraph to any person who is under the age of 21 or who has previously been convicted of a violation of this section, subsection (a) of section 24G, subsection (b) of said section 24G if the ingestion of intoxicating liquor or operating under the influence thereof was a proven element of such offense, section 24L or subsection (a) of section 8 of chapter 90B, or section 8A or 8B of said chapter 90B, or a like violation by a court of any other jurisdiction, or who has previously refused a chemical test or analysis of his breath or blood, the defendant may immediately, upon entry of a not guilty finding or dismissal of all criminal charges under this section, section 24G or 24L, and in the absence of any other alcohol related charges pending against said defendant, apply for and be immediately granted a hearing

before the court which took final action on the charges for the purpose of requesting restoration of said license. At said hearing, there shall be a rebuttable presumption that said license be restored, unless the commonwealth shall establish, by a fair preponderance of the evidence, that restoration of said license would likely endanger the public safety. In all such instances, the court shall issue written findings of fact with its decision.

There being no objection, during consideration and pending the question on adoption of the pending amendment (Lees, at el), at one minute before five o'clock P.M., the President declared a recess subject to the call of the Chair; and, at twenty-eight minutes past five o'clock P.M., the Senate reassembled, the President in the Chair.

At twenty-eight minutes past five o'clock P.M., Mr. Baddour doubted the presence of a quorum; and, a count of the Senate determined that a quorum was present.

#### PAPER FROM THE HOUSE.

The message from His Excellency the Governor, returning with recommendation of amendment the engrossed Bill increasing penalties for drunk drivers in the Commonwealth (see House, No. 4403, amended) [for message, see House, No. 4453],— was further considered, the question being on adoption of the pending further amendment (Lees, at al).

After debate, the question on adoption of the further amendment was then determined by a call of the yeas and nays at twenty-two minutes before six o'clock P.M., on motion of Mr. Tarr, as follows, to wit (yeas 7 — nays 32) [**Yeas and Nays No. 174**]:

#### YEAS.

Barrios, Jarrett T. Lees, Brian P.

Brown, Scott P. Tarr, Bruce E.

Hedlund, Robert L. Tisei, Richard R. — 7.

Knapik, Michael R.

#### NAYS.

Antonioni, Robert A. Montigny, Mark C.

Augustus, Edward M., Jr. Moore, Richard T.

Baddour, Steven A. Morrissey, Michael W.

Berry, Frederick E. Murray, Therese

Brewer, Stephen M. Nuciforo, Andrea F., Jr.

Buoniconti, Stephen J. 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. Timilty, James E.

Jehlen, Patricia D. Tolman, Steven A.

Joyce, Brian A. Travaglini, Robert E.

McGee, Thomas M. Tucker, Susan C.

Menard, Joan M. Walsh, Marian — 32.

ABSENT OR NOT VOTING.

Wilkerson, Dianne — 1.

The yeas and nays having been completed at nineteen minutes before six o'clock A.M., the further amendment was *rejected*.

After debate, the question on adoption of the House amendment was then determined by a call of the yeas and nays at twenty-four minutes past six o'clock P.M., on motion of Mr. Havern, as follows, to wit (yeas 38 — nays 0) [**Yeas and Nays No. 175**]:

YEAS.

Antonioni, Robert A. McGee, Thomas M.

Augustus, Edward M., Jr. Menard, Joan M.

Baddour, Steven A. Montigny, Mark C.

Barrios, Jarrett T. Moore, Richard T.

Berry, Frederick E. Morrissey, Michael W.

Brewer, Stephen M. Murray, Therese

Brown, Scott P. Nuciforo, Andrea F., Jr.

Buoniconti, Stephen J. 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 — 38.

NAYS — 0.

ABSENT OR NOT VOTING.

Wilkerson, Dianne — 1.

**The yeas and nays having been completed at twenty-eight minutes past six o'clock P.M., the House amendment was adopted, in concurrence.**

**Sent to the House for re-enactment.**

*Recess.*

There being no objection, at twenty-six minutes before seven o'clock P.M., the President declared a recess, subject to the call of the Chair; and at three minutes before seven o'clock P.M., the Senate reassembled, Mr. Rosenberg 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 increasing penalties for drunk drivers in the Commonwealth (see House, No. 4403, 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 (Mr. Rosenberg) and sent to the House for enactment.**

*Engrossed Bill.*

Mr. Baddour in the Chair (having been appointed by the President, under authority conferred by Senate Rule 4, to perform the duties of the Chair), an engrossed Bill increasing penalties for drunk drivers in the Commonwealth (see House, No. 4403, amended) (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 re-enacted and was signed by the Acting President (Mr. Baddour) and again laid before the Governor for his approbation.**

*Statement of the Honorable Bruce E. Tarr.*

This is a quiet moment in the Chamber, but a very significant one as this bill goes through its final act before going to the Governor's desk for his approbation. And I think it's very significant that the Powells are with us on the Senate floor as well as Ron Bersani. They have traveled a very long road through this democratic process and this marks five months to the day since they began traveling that path to make motor vehicle laws safer and stronger in the Commonwealth of Massachusetts.

It is sometimes said that this building no longer works the way it should and that individuals cannot have an influence. Mr. President, their presence here today and their work for the last five months confirms with a resounding yes, that they can make a difference, that they have made a difference and that this democracy can work as difficult as it may be at times and we have borne witness to that today, but that it can work and that individuals can make an incredible difference in the life of our Commonwealth. While I may have had some issues today, I am extraordinarily proud of them and I am extraordinarily grateful to my Senate colleague from the Merrimack Valley for his partnership as he and I have worked together to make sure we got to this day but I would dare say Mr. President, that we would not be here without the inspiration that this family, as well as, the Albertsons and Rosses and many others have given us. I am proud to be a member of the Senate at this moment in time and I want to express my appreciation for everything they have done. Thank you Mr. President.

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

*Statement of the Honorable Steven A. Baddour.*

I also rise with a great deal of sadness, but also a great deal of happiness. The Senator from Gloucester said it much more eloquently than I ever can, but this is a proud day in the Senate, it's a proud day for the membership and, more importantly, it's a

proud day for the Powells, for Mr. Bersani, as well as Mr. Melia who have been here for five months, just about everyday fighting for this bill and making sure and ensuring that final passage of this bill is worthy of a young woman who I didn't have an opportunity to meet but I am sure that the family is quite proud today to have her name on this bill. I can just say, as a father of two, when I first met with the Bersanis, with Ron and the Powells, I did not know what to say. The meeting was awkward for me. I am uncomfortable but I can only say thank you to them because they have really made a difference, a difference in the lives of so many others who they will never meet but who will be saved because of their actions. So Mr. President, I am just proud to be a member of this body tonight and I am proud and honored to know them and to know they have made a difference in all of our lives.

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

*Order Adopted.*

Mr. Rosenberg in the Chair, 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.

On motion of the same Senator, at thirteen minutes past seven o'clock P.M., the Senate adjourned to meet on the following Monday at eleven o'clock A.M.