

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, November 15, 2007.

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

Distinguished Guests.

There being no objection, during the consideration of the Orders of the Day, the President handed the gavel to Mr. O'Leary for the purpose of an introduction. Mr. O'Leary then introduced former Congressman Leon Panetta. Congressman Panetta served as a member of the United States House of Representatives for 26 years representing California's 16th District. He later served as the Chief of Staff to the President of the United States, Bill Clinton. Leon Panetta signed the guest book and withdrew from the Chamber.

There being no objection, during the consideration of the Orders of the Day, the President handed the gavel to Ms. Candaras for the purpose of an introduction. Ms. Candaras then introduced Richard Duffy, a Junior at Cathedral High School in Springfield, Massachusetts.

There being no objection, the President handed the gavel to Mr. Tolman for the purpose of an introduction. Mr. Tolman then introduced Mark Ciommo, who recently won the District 9 city council seat representing the Allston/Brighton area.

Communication.

A communication from the Honorable Richard R. Tisei, Senate Minority Leader, announcing his appointment of Senator Bruce E. Tarr (pursuant to Section 35EE of Chapter 61 of the Acts of 2007) as a member of the Board of Trustees of the Commonwealth Covenant Fund,— **was placed on file.**

Petition.

Mr. Brewer presented a petition (subject to Joint Rule 12) of Stephen M. Brewer for legislation relative to retirement buy back from the state board of retirement,— **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. Chandler, for the committee on Community Development and Small Business, on Senate, No. 133 and House, No. 189, a Bill relative to small business impact statements (Senate, No. 2413); and

By Ms. Wilkerson, for the committee on State Administration and Regulatory Oversight, on petition (accompanied by bill, Senate, No. 1891), a Bill ensuring a fair and reasonable administrative process (Senate, No. 2415);

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

By Mr. Joyce, for the committee on Tourism, Arts and Cultural Development, on petition, a Bill relative to designating volleyball as the official recreational and **team sport of Massachusetts (Senate, No. 2004);**
Read and, under Senate Rule 26, referred to the committee on Ethics and Rules.

Committee Discharged.

Mr. Downing, for the committee on Senate Ethics and Rules, reported, asking to be discharged from further consideration of the Senate Bill to ensure consumer choice of nurse practitioner services (Senate, No. 2399),— **and recommending that the same be referred to the Senate committee on Ways and Means.**
Under Senate Rule 36, the report was 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 twenty-five minutes past two o'clock P.M., the Senate reassembled, the President in the Chair.

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 severally considered forthwith and adopted, as follows:—
Resolutions (filed by Ms. Creem, Messrs. Augustus, Baddour, Brewer and Brown, Ms. Candaras, Ms. Chandler, Messrs. Creedon and Downing, Ms. Fargo, Mr. Galluccio, Ms. Menard, Mr. Moore, Ms. Murray, Messrs. O'Leary and Panagiotakos, Ms. Resor, Mr. Rosenberg, Ms. Spilka, Messrs. Tarr, Tisei and Tolman, Ms. Tucker, Ms. Walsh and Ms. Wilkerson) "commemorating the celebration of Chanukah"; and
Resolutions (filed by Ms. Murray and Mr. O'Leary) "recognizing a lifetime of contributions by Robert S. Mant."

Orders of the Day.

The Orders of the Day were considered, as follows:

Bills

Authorizing the city of Quincy to establish a neighborhood stabilization fund (Senate, No. 2160);
Approving the conveyance of property by the county of Nantucket (Senate, No. 2224);
Authorizing the town of Rockland to establish a school building capital trust fund (Senate, No. 2264);
Authorizing the town of Templeton to exchange a parcel of conservation land for a larger parcel to be held for conservation purposes (Senate, No. 2318);
Relative to property tax exemptions in the town of Swampscott (Senate, No. 2324);
Establishing a special fund in the town of Brimfield (Senate, No. 2328, changed);
Providing for the establishment of a strong fire chief in the town of Georgetown (Senate, No. 2343);
Authorizing the town of West Boylston to convey certain open space land (House, No. 4120);
Relative to the town manager in the town of North Andover (House, No. 4138); and
Exempting Kevin Farragher from the maximum age requirement for appointment as a firefighter in the town of North Andover (House, No. 4143);

Were severally read a second time and ordered to a third reading.

The Senate Bill authorizing the certification and eligibility as firefighters in the city of Taunton (Senate, No. 2154),— **was read a second time and ordered to a third reading.**

There being no objection, the rules were suspended, on motion of Ms. Jehlen, and the bill was read a third time and passed to be engrossed, its title having been changed by the committee on Bills in the Third Reading to read as follows: "An Act authorizing the certification and eligibility of Bradley Fitzgerald, James Cambra, Robert Chase, Steven Baptiste and Timothy Larkin as firefighters in the city of Taunton".
Sent to the House for concurrence.

The Senate Bill relative to provision of health insurance to surviving spouses of long-term employees of the town of Wareham (Senate, No. 2157),— **was read a second time and ordered to a third reading.**

There being no objection, the rules were suspended, on motion of Mr. Brewer, and the bill was read a third time and passed to be engrossed, its title having been changed by the committee on Bills in the Third Reading to read as follows: "An Act regulating provision of health insurance to surviving spouses of certain employees of the town of Wareham".
Sent to the House for concurrence.

The Senate Bill relative to the group insurance program of the town of Boxborough (Senate, No. 2297),— **was read a second time and ordered to a third reading.**

There being no objection, the rules were suspended, on motion of Ms. Fargo, and the bill was read a third time and passed to be engrossed, its title having been changed by the committee on Bills in the Third Reading to read as follows: "An Act further regulating the group insurance program of the town of Boxborough".
Sent to the House for concurrence.

The Senate Bill to amend the representative town meeting procedures in the town of Randolph (Senate, No. 2305),— **was read a second time and ordered to a third read.**

**There being no objection, the rules were suspended, on motion of Mr. Joyce, and the bill was read a third time and passed to be engrossed, its title having been changed by the committee on Bills in the Third Reading to read as follows: “An Act further amending the representative town meeting procedures in the town of Randolph”.
Sent to the House for concurrence.**

The Senate Bill authorizing the town of Hopedale to acquire certain property for municipal purposes (Senate, No. 2321),— **was read a second time and ordered to a third reading.**

**There being no objection, the rules were suspended, on motion of Mr. Moore, and the bill read a third time and passed to be engrossed.
Sent to the House for concurrence.**

The Senate Bill relative to the membership of the conservation commission of the town of Carver (Senate, No. 2326),— **was read a second time and ordered to a third reading.**

**There being no objection, the rules were suspended, on motion of Mr. Pacheco, and the bill was read a third time and passed to be engrossed.
Sent to the House for concurrence.**

The Senate Bill authorizing the city of Lowell to pay a certain court judgment (Senate, No. 2329),— **was read a second time and ordered to a third reading.**

**There being no objection, the rules were suspended, on motion of Mr. Panagiotakos, and the bill was read a third time and passed to be engrossed.
Sent to the House for concurrence.**

The Senate Bill relative to Gary J. Lopes, Jr. an employee of the town of Wareham (Senate, No. 2333),— **was read a second time and ordered to a third reading.**

**There being no objection, the rules were suspended, on motion of Mr. Pacheco, and the bill was read a third time and passed to be engrossed.
Sent to the House for concurrence.**

The House Bill authorizing the city of Fitchburg to convey a certain parcel of land in the city of Fitchburg for watershed purposes (House, No. 4216),— **was read a second time and ordered to a third reading.**

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

The Senate bills

Protecting the natural resources of the Commonwealth (Senate, No. 2388, amended) (its title having been changed by the committee on Bills in the Third Reading); and

To facilitate homeowner heating oil spill remediation (Senate, No. 2404);

Were severally read a third time and passed to be engrossed.

Severally sent to the House for concurrence.

The House Bill authorizing the Division of Capital Asset Management and Maintenance to convey a certain parcel of land in the city of Worcester (House, No. 4189),— **was read a third time and passed to be engrossed, in concurrence, with the amendment previously adopted by the Senate.**

Sent to the House for concurrence in the amendment previously adopted by the Senate.

The Senate Bill for a healthy Massachusetts safer alternatives to toxic chemicals (Senate, No. 2406),— was read a second time and was amended, as recommended by the committee on Ways and Means, in section 9, by striking out the last four sentences of the section.; and with further amendment, by striking section 10 and inserting a new section:

“SECTION 11. To provide for certain unanticipated obligations of the commonwealth, to provide for an alteration of purpose for current appropriations and to meet certain requirements of law, the sum set forth in this section is hereby appropriated from the General Fund unless specifically designated otherwise in this section for the several purposes and subject to the conditions specified in this section, and subject to the laws regulating the disbursement of public funds for the fiscal year ending June 30, 2008. This amount shall be in addition to any amounts previously appropriated and made available for the purposes of this item.

2020-0200 The secretary of energy and environmental affairs may expend not more than \$10,000,000 from revenues collected from fees under the Toxic Use Reduction Act; provided, that notwithstanding any general or special law to the contrary, for the purpose of accommodating timing discrepancies between the receipt of revenues and related expenditures, the department may incur expenses and the comptroller may certify for payment the amounts not to exceed the lower of this authorization or the most recent revenue estimate as reported in the state accounting system; provided further, that the department shall annually file a report with the house and senate committees on ways and means detailing the manner of expenditures under this item in the preceding fiscal year 10,000,000”.

After remarks and pending the question on ordering the bill to a third reading, on motion of Mr. Tarr the further consideration thereof was postponed until the next session.

The Senate Bill to establish standards for long term care insurance (Senate, No. 2367),— was read a third time.

Pending the question on passing the bill to be engrossed, Ms. Chandler moved to amend the bill in section 4, in the proposed section 4 of chapter 176R of the General Laws, by striking out the definition of “qualified long-term care insurance contract” or “federally tax qualified long-term care insurance contract” and inserting in place thereof the following definition:—

“Qualified long-term care insurance contract” or “federally tax-qualified long-term care insurance contract”, an individual or group insurance contract that meets the following requirements of section 7702B(b) of the Internal Revenue Code of 1986:

(1) The only insurance protection provided under the contract is coverage of qualified long-term care services. A contract shall not fail to satisfy the requirements of this definition by reason of payments being made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate;

(2) The contract does not pay or reimburse expenses incurred for services or items to the extent that the expenses are reimbursable under Title XVIII of the Social Security Act, as amended, or would be so reimbursable but for the application of a deductible or coinsurance amount. The requirements of this definition do not apply to expenses that are reimbursable under Title XVIII of the Social Security Act only as a secondary payer. No provision of law shall be construed or applied so as to prohibit the offering of a qualified long-term care insurance contract on the basis that the contract coordinates its benefits with those provided under such title. A contract shall not fail to satisfy the requirements of this definition by reason of payments being made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate;

(3) The contract is guaranteed renewable, within the meaning of section 77D2S(b)(1)(C) of the Internal Revenue Code of 1986;

(4) The contract does not provide for a cash surrender value or other money that can be paid, assigned, pledged as collateral for a loan, or borrowed clause (5);

(5) All refunds of premiums, and all policyholder dividends or similar amounts, under the contract are to be applied as a reduction in future premiums or to increase future benefits, except that a refund on the event of death of the insured or a complete surrender or cancellation of the contract cannot exceed the aggregate premiums paid under the contract; and

(6) The contract meets the consumer protection provisions set forth in section 7742B(g) of the Internal Revenue Code of 1986.

“Qualified long-term care insurance contract” or “federally tax-qualified long-term care insurance contract” shall also include that portion of a life insurance contract that provides long-term care insurance coverage by rider or as part of the contract and that satisfies the requirements of sections 7702B(b) and (e) of the Internal Revenue Code of 1986.”

This amendment was adopted.

Pending the question on passing the bill (Senate, No. 2367, amended) to be engrossed, Ms. Jehlen moved that the 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.

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 city of Salem to issue additional liquor licenses for the sale of wines and malt beverages not to be drunk on the premises (House, No. 4274),— **was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence, its title having been changed by the committee on Bills in the Third Reading to read as follows: “An Act authorizing the city of Salem to grant an additional liquor license for the sale of wines and malt beverages not to be drunk on the premises”.**

Report of a Committee.

By Mr. Augustus, for the committee on Election Laws, on petition, a Bill relative to the administration of elections to be held in the year 2008 (Senate, No. 2414).

The bill was read.

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

Pending the question on passing the bill to be engrossed, Mr. Morrissey moved that the bill be amended by adding the following section:—

SECTION 15. The state secretary shall cause the following non-binding question to be placed on all official ballots for the presidential primary election to be held in 2008:—

Do you support the establishment of up to 3 resort casinos in the commonwealth of Massachusetts?

The votes cast shall be received, sorted, counted, declared and transmitted to the state secretary, laid before the governor and council and, by them, opened and examined in accordance with the laws relating to votes for state officers so far as they apply, and the governor shall then communicate to the general court the total number of votes; cast in the affirmative and in the negative on the question, and likewise, shall communicate the same total number of votes arranged by senatorial and representative districts.

Pending the question on adoption of the amendment, Ms. Tucker arose to a point of order which, being stated, was that the amendment was beyond the scope of the bill.

The President stated the following:

- Amendments must concern the same subject matter under consideration.
- Senate Rule 50: “No motion ... of a subject different from that under consideration ... shall be admitted under the color of an amendment.”
- The initial petition — Senate No, 439, “An Act Changing the Date of the Biennial State Primaries” — changed the date of state primaries.
- The current bill — Senate No. 2414, “An Act Relative to the Administration of Elections to be Held in the Year 2008” — changes the date of the 2008 presidential primary and changes related administrative dates.
- An amendment placing a public policy question on the presidential primary ballot is wholly unrelated to the ministerial function of changing the dates of an election.
- This amendment is out of order as outside the scope of the initial petition.

Accordingly, the President ruled that the point of order was well taken; and the amendment was laid aside.

Messrs. Tisei, Tarr, Knapik, Hedlund and Brown moved to amend the bill by inserting at the end thereof the following new section:

“SECTION 15. The state secretary shall cause the following question to be placed on the official ballot for the presidential primary election to be held in 2008:—

“Shall the Commonwealth lease the state lottery and through the proceeds of any such lease create a dedicated stream of local aid that would be significant, stable and predictable?”

The votes cast shall be received, sorted, counted, declared and transmitted to the state secretary, laid before the governor and council and, by them, opened and examined in accordance with the laws relating to votes for state officers so far as they apply, and the governor shall then communicate to the general court the total number of votes cast in the affirmative and in the negative on the question, and likewise, shall communicate the same total number of votes arranged by senatorial and representative districts.

Pending the question on adoption of the amendment, Ms. Tucker arose to a point of order which, being stated, was that the amendment was beyond the scope of the bill.

The President ruled that the point of order was well taken; and the amendment was laid aside.

After debate, the question on passing the bill to be engrossed, was determined by a call of the yeas and nays, at twenty-two minutes past three o’clock P.M., on motion of Mr. Tisei, as follows, to wit (*yeas 33 — nays 5*) [**Yeas and Nays No. 137**]:

YEAS.

Antonioni, Robert A.
 Augustus, Edward M., Jr.
 Baddour, Steven A.
 Berry, Frederick E.
 Brewer, Stephen M.
 Buoniconti, Stephen J.
 Hart, John A., Jr.
 Jehlen, Patricia D.
 Joyce, Brian A.
 Knapik, Michael R.
 McGee, Thomas M.
 Menard, Joan M.
 Montigny, Mark C.
 Morrissey, Michael W.
 O’Leary, Robert A.
 Pacheco, Marc R.
 Panagiotakos, Steven C.

Candaras, Gale D.
 Chandler, Harriette L.
 Creedon, Robert S., Jr.
 Creem, Cynthia Stone
 Downing, Benjamin B.
 Galluccio, Anthony D.
 Petruccielli, Anthony
 Resor, Pamela
 Rosenberg, Stanley C.
 Spilka, Karen E.
 Timilty, James E.
 Tisei, Richard R.
 Tolman, Steven A.
 Tucker, Susan C.
 Walsh, Marian
 Wilkerson, Dianne — **33**.

NAYS.

Brown, Scott P.
 Fargo, Susan C.
 Hedlund, Robert L.
 Moore, Richard T.
 Tarr, Bruce E.— **5**.

The yeas and nays having been completed at twenty-eight minutes past three o’clock P.M., the bill was passed to be engrossed.

Sent to the House for concurrence.

Report of a Committee.

By Mr. Panagiotakos, for the committee on Ways and Means, on Senate, No. 2399, in part, a "Bill to establish the Massachusetts Commission on practice nursing" (Senate, No. 2418).

The bill was read. There being no objection, the rules were suspended, on motion of Ms. Fargo, and after remarks, the bill was read a second time, ordered to a third reading, read a third time and passed to be engrossed. Sent to the House for concurrence.

PAPERS FROM THE HOUSE.

Engrossed Bill — Land Taking for Conservation, Etc.

An engrossed Bill relative to the Grafton and South Grafton water districts (see House, No. 4241) (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 twenty-nine minutes before four o'clock P.M., as follows, to wit (*yeas 38 — nays 0*) [**Yeas and Nays No. 138**]:

YEAS.

Antonioni, Robert A.	Candaras, Gale D.
Augustus, Edward M., Jr.	Chandler, Harriette L.
Baddour, Steven A.	Creedon, Robert S., Jr.
Berry, Frederick E.	Creem, Cynthia Stone
Brewer, Stephen M.	Downing, Benjamin B.
Brown, Scott P.	Fargo, Susan C.
Buoniconti, Stephen J.	Galluccio, Anthony D.
Hart, John A., Jr.	Panagiotakos, Steven C.
Hedlund, Robert L.	Petrucelli, Anthony
Jehlen, Patricia D.	Resor, Pamela
Joyce, Brian A.	Rosenberg, Stanley C.
Knapik, Michael R.	Spilka, Karen E.
McGee, Thomas M.	Tarr, Bruce E.
Menard, Joan M.	Timilty, James E.
Montigny, Mark C.	Tisei, Richard R.
Moore, Richard T.	Tolman, Steven A.
Morrissey, Michael W.	Tucker, Susan C.
O'Leary, Robert A.	Walsh, Marian
Pacheco, Marc R.	Wilkerson, Dianne — 38.

NAYS — 0.

The yeas and nays having been completed at twenty-five minutes before four 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.

Petitions were referred, in concurrence, as follows:

Petition (accompanied by bill, House, No. 4371) of Walter F. Timilty and others relative to the payment of medical expenses for certain public employees injured in the performance of their official duties;

Under suspension of Joint Rule 12, to the committee on Public Service.

Petition (accompanied by bill, House, No. 4372) of James R. Miceli relative to the taxation of certain buildings and property

improvements;

Under suspension of Joint Rule 12, to the committee on Revenue.

Engrossed Bill.

An engrossed Bill relative to the assessment of taxes in the town of Uxbridge (see House, No. 4345) (which originated in the House), having been certified by the Senate Clerk to be rightly and truly prepared for final passage, was passed to be enacted and was signed by the President and laid before the Governor for his approbation.

The House Bill authorizing the conveyance of certain parcels of land in the city of Boston (House, No. 4185),— **came from the House with the endorsement that the House had NON-concurred in the Senate amendment striking out all after the enacting clause and inserting in place thereof the text contained in Senate document numbered 2347.**

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

On motion of Mr. Petrucci the Senate receded from its amendment.

Committee Discharged.

Mr. Panagiotakos, for the committee on Senate Ways and Means, reported, asking to be discharged from further consideration of the residue of the Senate Bill to ensure consumer choice of nurse practitioner services (Senate, No. 2399),— **and recommending that the same be referred to the committee on Ethics and Rules.**

Under Senate Rule 36, the report was considered forthwith and accepted.

Order Adopted.

On motion of Mr. Knapik,—

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 Mr. Brewer, at twenty-three minutes before four o'clock P.M., the Senate adjourned to meet on the following Monday at eleven o'clock A.M.