

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, January 29, 2009.

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

Distinguished Guests.

There being no objection, the President handed the gavel to Ms. Creem for the purpose of an introduction. Ms. Creem then introduced, in the rear of the Chamber, Newton resident Ms. Rosian Zerner. Ms. Zerner survived the Holocaust as a child in the Kovno Ghetto of Lithuania. She was only 6 years old when her parents dug a hole under the ghetto's barbed wire fence and pushed her to safety. Ms. Zerner lived in hiding during the remainder of World War II. Miraculously reunited with her parents after the war, they moved to the United States in 1951 where she was immersed into Newton High School. She is a remarkable woman who dedicated many years of service on behalf of all Holocaust survivors.

Reports.

The following reports were severally read and placed on file:

Report of the Massachusetts Clean Energy Center (pursuant to Section 1 of Chapter 307 of the Acts of 2008) relative to its investment rules and procedures as adopted by the Board of Directors on January 22, 2009 (received January 28, 2009);

Report of the Executive Office of Transportation (pursuant to Sections 12 and 13 of Chapter 86 of the Acts of 2008) submitting various reports (received January 28, 2009); and

Report of the Department of Transitional Assistance (under the provisions of line item 4403-2120, contained in the Commonwealth's budget for FY09) submitting its Projected DTA Budget Deficiency and Proposed Changes – Emergency Assistance (received January 28, 2009).

The following reports were severally read and sent to the House for its information:

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 Bay State Correctional Center (received January 26, 2009);

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 Berkshire County Jail and House of Correction (received January 26, 2009); and

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 Franklin County Jail and House of Correction (received January 26, 2009).

PAPERS FROM THE HOUSE.

A communication was received from the Clerk of the House of Representatives (pursuant to an order adopted by the House on January 28, 2009), informing the Senate that Representative Robert A. DeLeo of Winthrop has been elected Speaker of the House of Representatives to fill the vacancy created by the resignation of Salvatore F. DiMasi of Boston as a Representative in the General Court.

Notice was received from the House announcing the following appointment:

That the Minority Leader of the House of Representatives has made the following appointments:

That Representative Frost of Auburn will serve as the ranking member of the Minority Party on the House Committee on Rules; Representative Ross of Wrentham will serve as the ranking member of the Minority Party on the Joint Committee on Economic Development and Emerging Technologies; Representative Barrows of Mansfield will serve as the ranking member of the Minority Party on the Joint Committee on Bonding, Capital Expenditures and State Assets; and Representative Hargraves will serve as the ranking member of the Minority Party on the Joint Committee of Health Care Financing.

Recess.

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-three 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.

At twenty-four minutes past two o'clock P.M., Mr. Tisei doubted the presence of a quorum. The President, having determined that a quorum was not in attendance, then directed the Sergeant-at-Arms to secure the presence of a quorum.

Subsequently, at twenty-six minutes past two o'clock P.M., a quorum was declared present.

Communication.

The Clerk read the following communication:

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

January 29, 2009.

Mr. William Welch
Clerk of the Senate
State House, Room 335
Boston, MA 02133
Dear Mr. Clerk:

I will be out of state on official business at a quarterly meeting of the National Conference of State Legislatures' Executive Meeting. As you may recall, I have the privilege of serving as the organization's Vice President. Consequently, I will not be in attendance for the scheduled formal session. Any votes that I miss are entirely for this reason.

I respectfully request that a copy of this letter be printed in the Journal of the Senate.
Thank you in advance for your assistance.

Sincerely,
RICHARD T. MOORE,
State Senator,
Worcester and Norfolk District.

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

Report of a Committee.

Mr. Berry, for the special committee appointed to arrange the seats of the members of the Senate, reported, recommending the following:

On the President's Left.

1. Hon. Frederick E. Berry
2. Hon. Joan M. Menard

On the President's Right.

1. Hon. Stanley C. Rosenberg
2. Hon. Mark C. Montigny

- | | |
|--------------------------------|-------------------------------|
| 3. Hon. Marian Walsh | 3. Hon. Scott P. Brown |
| 4. Hon. Steven C. Panagiotakos | 4. Hon. Michael R. Knapik |
| 5. Hon. Stephen M. Brewer | 5. Hon. Richard R. Tisei |
| 6. Hon. Steven A. Tolman | 6. Hon. Bruce E. Tarr |
| 7. Hon. Harriette L. Chandler | 7. Hon. Robert L. Hedlund |
| 8. Hon. Steven A. Baddour | 8. Hon. Michael O. Moore |
| 9. Hon. John A. Hart, Jr. | 9. Hon. Patricia D. Jehlen |
| 10. Hon. Brian A. Joyce | 10. Hon. Robert A. O'Leary |
| 11. Hon. James B. Eldridge | 11. Hon. Kenneth J. Donnelly |
| 12. Hon. Stephen J. Buoniconti | 12. Hon. Richard T. Moore |
| 13. Hon. Karen E. Spilka | 13. Hon. Gale D. Candaras |
| 14. Hon. Benjamin B. Downing | 14. Hon. Susan C. Fargo |
| 15. Hon. Anthony W. Petrucci | 15. Hon. Sonia Chang-Diaz |
| 16. Hon. Cynthia Stone Creem | 16. Hon. Anthony D. Galluccio |
| 17. Hon. Susan C. Tucker | 17. Hon. James E. Timilty |
| 18. Hon. Jennifer L. Flanagan | 18. Hon. Marc R. Pacheco |
| 19. Hon. Thomas M. McGee | 19. Hon. Michael W. Morrissey |
| 20. Hon. Thomas P. Kennedy | 20. Vacant |

The rules were suspended, on motion of Mr. Knapik, and the report was considered forthwith and accepted.

Order Adopted.

Mr. Rosenberg offered the following order, to wit:

Ordered, That a special joint committee be established for the purpose of studying a new division of the Commonwealth into (a) Congressional districts under the United States Constitution, (b) 40 senatorial and 8 councillor districts under Section 2 of Article CI of the Amendments to the Constitution, as amended, and (c) 160 representative districts under section 1 of said Article CI. The committee shall consist of 7 senators to be appointed by the president, one of whom shall be a member of the minority party, and 21 representatives to be appointed by the speaker, of whom 4 shall be members of the minority party.

The committee may expend for legal, clerical and other necessary expenses such sums as may be appropriated therefor, shall be provided with quarters in the State House, and shall receive from the state secretary and municipal election officials such data and information in their possession as may be of assistance to the committee.

The committee may report from time to time the results of its study, and its recommendations, by filing them with the clerks of the Senate and House of Representatives.

Under the rules, referred to the temporary committee on Ethics and Rules.

Subsequently, Mr. Downing, for the said committee, reported, recommending that the order ought to be adopted.

The rules were suspended, on motion of Mr. Kennedy, and the order was considered forthwith.

Pending the question on adoption of the order, Messrs. Tisei, Tarr, Knapik, Hedlund and Brown moved that the order be amended by striking the text and inserting in place thereof the following:—

“An independent redistricting commission, herein referred to as the commission, shall be convened and shall divide the Commonwealth into congressional districts, 160 representative districts, 40 senatorial districts, and eight councilor districts. All districts shall comprise contiguous territory, shall be equal in population to the extent required by law, and shall comply with federal constitutional and statutory requirements. No district shall be drawn for the purpose or with the effect of diluting the voting strength of any group based on race, ethnicity or language minority status, or for the purpose of augmenting or diluting the voting strength of a political party, or any individual. In drawing district lines, the commission shall not consider residential address, party affiliation, or partisan voting history of any individual or groups of individuals, except to the extent necessary to avoid dilution of voting strength based on race, ethnicity or language minority status. In addition, to the maximum extent possible, district boundaries shall be drawn so as to: (1) maintain the unity of well-defined municipal neighborhoods; (2) observe municipal boundaries; (3) establish senatorial districts that follow representative district boundaries; (4) establish councilor districts that follow representative district boundaries and (5) promote geographic compactness of districts. If it is not possible to draw district boundaries that fully comply with these criteria while also complying with the mandatory requirements set forth

herein, then districts shall be drawn to optimize the criteria in the order of priority set forth hereinabove. The commission shall also consider communities of interest in determining which cities, towns, or neighborhoods thereof to aggregate into a single district.

The commission shall consist of seven member commissioners. On or before January 15 of the year following the commencement of the federal census, the following offices shall each appoint one member of the commission: the governor of the Commonwealth, who shall appoint a dean or professor of law or political science or government at an institution of higher learning in the Commonwealth; the attorney general of the Commonwealth, who shall appoint a retired justice who resides in the Commonwealth; and the secretary of the Commonwealth, who shall appoint an expert in civil rights law who is a resident of the Commonwealth.

By the same date, the house speaker, the house minority leader, the senate president, and the senate minority leader shall each nominate three individuals. The appointees chosen by the governor, attorney general, and secretary of the Commonwealth shall then select one of the three nominees named by each said official.

If nominations or appointments are not made by January 15 of such year, the office responsible for making the appointment or nominations shall forfeit its rights under this section and the remaining direct appointees shall then make an appointment to fill the vacancy. Nominations and appointments shall reflect the geographic, racial, ethnic, gender, and age diversity of the Commonwealth to the maximum extent feasible and shall be selected on the basis of civic involvement and knowledge of redistricting policy, civil rights, political science, demographics or statistics, election expertise, voting rights, community organizing, or law. No person nominated or appointed to the commission, in the five years preceding such nomination or appointment, shall have held Congressional, state legislative or statewide elective office, or shall have served as mayor or city councilor of a city in the Commonwealth, governor's councilor, or shall have been elected to a state or federal party committee; or shall be a current employee, agent or family member of any of the above; or, in the two years preceding such nomination or appointment, shall have been a legislative agent. The commissioners shall agree: (1) not to stand for election to the general court, congress, or the governor's council until districts are redrawn following the next census; (2) to apply the provisions of this article in an honest, independent, and impartial fashion; and (3) to act at all times so as to uphold public confidence in the integrity of the redistricting process.

The commission shall be convened no later than February 15 of the year following the commencement of the decennial census. The commission shall disband only upon final adoption and exhaustion of judicial review of challenges to representative, councilor, and senatorial districts.

The commission shall hire staff and may retain experts to assist it in the performance of its duties. The commission shall establish rules governing its operation and procedures. Commissioners may receive compensation for actual time spent on commission duties and shall be reimbursed for reasonable and necessary expenses. The budget of the Commonwealth shall provide adequate funding for the operation of the commission.

A member of the commission or an appointing authority may petition the supreme judicial court to remove a commissioner on the grounds of neglect, misconduct, or inability to perform the duties of a commissioner. A vacancy so created shall be filled by the office which appointed the removed commissioner or by the nomination and selection process set forth in section 6, as applicable.

All meetings of the commission shall be open to the public, consistent with the laws of the Commonwealth concerning open meetings as of the date of the adoption of this Article. All documents produced by or for the commission shall be public. The commission shall hold public hearings in at least five geographically disbursed counties. The public shall be afforded the opportunity to submit proposed maps for consideration by the commission and the commission shall make map-making software available for public use. The commission shall take all steps necessary to ensure that the public can exercise its right to review and comment on proposed district maps before they are approved and shall publish all preliminary and final plans in publicly accessible forums that are free of charge and that ensure wide public distribution. Proposed districts shall be presented in both graphic and narrative form.

Within 120 days of the completion of the decennial census, the commission shall prepare and publish for public comment a preliminary plan for representative, councilor, and senatorial districts. The public shall have a three-week period to comment on the preliminary district plan. The commission may revise the preliminary district plan in response to public comment and shall submit the revised plan to the general court, which shall vote on the revised plan. If the plan is rejected, the commission shall prepare, publish, revise, and submit a second-round preliminary district plan in the same manner as the first. Following the period for public comment, the commission shall submit the revised plan to the general court for a vote. If the general court votes to reject the second-round plan, the commission shall prepare, publish, revise, and submit a third-round preliminary district plan, in the same manner as the first. If the general court rejects the third-round plan, then the commission shall prepare, publish, and revise a fourth-round plan in the same manner. The plan, so revised, shall become law without submission to or approval by the General Court.

With respect to each plan the commission submits to the General Court for a vote, the vote must be taken within two weeks of submission. No amendments to the plan as submitted may be made. If the plan is approved by a majority of the members of the

house of representatives and the senate present and voting or if no vote is taken within the two-week period, then the plan as submitted shall become law.

The federal census shall be the basis for determining congressional districts for the ten year period beginning with the first Wednesday of the third January following the commencement of the taking of said census. All districts shall be drawn of contiguous territory, shall be equal in population to the extent required by law, and shall comply with federal constitutional and statutory requirements. No district shall be drawn for the purpose or with the effect of diluting the voting strength of a group based on race, ethnicity or language minority status, or for the purpose of augmenting or diluting the voting strength of a political party, or any individual. In drawing district lines, the commission shall not consider residential address, party affiliation, or partisan voting history of any individual or groups of individuals, except to the extent necessary to avoid dilution of voting strength based on race, ethnicity or language minority status. In addition, to the maximum extent possible, district boundaries shall be drawn so as to: (1) maintain the unity of well-defined municipal neighborhoods; (2) observe municipal boundaries; and (3) promote geographic compactness of districts. If it is not possible to draw district boundaries that fully comply with these criteria while also complying with the mandatory requirements set forth herein, then they shall be drawn to optimize the criteria in the order of priority set forth hereinabove. The commission shall also consider communities of interest in determining which cities, towns, or neighborhoods thereof to aggregate into a single district and if all other criteria are met. Original jurisdiction is hereby vested in the supreme judicial court upon the petition of any voter of the Commonwealth for judicial relief relative to the establishment of the congressional districts. The General Court may by law limit the time within which judicial proceedings may be instituted to challenge any redistricting map.”

During debate, at twenty minutes before three o’clock P.M., Mr. Tisei doubted the presence of a quorum; and, a count of the Senate determined that a quorum was present.

After further debate, the question on adoption of the amendment was determined by a call of the yeas and nays at seven minutes before four o’clock P.M., on motion of Mr. Tisei, as follows, to wit (*yeas 7— nays 28*) [**Yeas and Nays No. 7**]:

YEAS.	
Brown, Scott P.	Tarr, Bruce E.
Hedlund, Robert L.	Tisei, Richard R.
Jehlen, Patricia D.	Tucker, Susan C. — 7.
Knapik, Michael R.	
NAYS.	
Baddour, Steven A.	Hart, John A., Jr.
Berry, Frederick E.	Joyce, Brian A.
Brewer, Stephen M.	Kennedy, Thomas P.
Buoniconti, Stephen J.	Montigny, Mark C.
Candaras, Gale D.	Moore, Michael O.
Chandler, Harriette L.	Morrissey, Michael W.
Chang-Diaz, Sonia	O’Leary, Robert A.
Creem, Cynthia Stone	Pacheco, Marc R.
Donnelly, Kenneth J.	Panagiotakos, Steven C.
Downing, Benjamin B.	Petrucelli, Anthony
Eldridge, James B.	Rosenberg, Stanley C.
Fargo, Susan C.	Timilty, James E.

Flanagan, Jennifer L.	Tolman, Steven A.
Galluccio, Anthony D.	Walsh, Marian — 28.
ABSENT OR NOT VOTING.	
McGee, Thomas M.	Moore, Richard T.
Menard, Joan M.	Spilka, Karen E. — 4.

The yeas and nays having been completed at three minutes before four o'clock P.M., the amendment was rejected.
After further remarks, the order was adopted.
Sent to the House for concurrence.

Report of a Committee.

Mr. Downing, for the temporary committee on Ethics and Rules, reported, recommending proposed Senate Rules to be adopted as permanent rules of the Senate for 2009-2010 (Senate, No. 5).

The rules were suspended, on motion of Mr. Donnelly, and the report was considered forthwith.

Pending the question on adoption of the order, Messrs. Tisei, Knapik, Tarr, Hedlund and Brown moved that the proposed rules be amended in Rule 12A by inserting before the first sentence the following:— “There shall be a standing Committee on Ethics and Rules consisting of six members, three of whom shall be appointed by the Senate President and three of whom shall be appointed by the Senate Minority Leader in the beginning of the first year of the biennial session of the General Court”; and in proposed Rule 13 by adding at the beginning of the second sentence of paragraph (b), before the words “the President,” the following: — “Except as provided in Rule 12A.”

After debate, the amendment was rejected.

Messrs. Tisei, Knapik, Tarr, Hedlund and Brown moved that the proposed rules be amended in Rule 56 by striking out the fifth sentence.

After debate, the amendment was rejected.

Messrs. Brown, Tisei, Tarr, Knapik and Hedlund moved that the proposed rules be amended by striking, in Rule 7, after the words “to the public at least,” the word “two” and inserting in place thereof the following:— “three”.

The amendment was rejected.

Messrs. Brown and Morrissey moved that the proposed rules be amended by inserting, in Rule 12A, in the second sentence of the third paragraph, after the word “censure,” the following words:—“temporary or permanent”.

After debate, the question on adoption of the amendment was determined by a call of the yeas and nays at twenty-three minutes past four o'clock P.M., on motion of Mr. Brown, as follows, to wit (*yeas 35— nays 0*) [**Yeas and Nays No. 8**]:

YEAS.	
Baddour, Steven A.	Chandler, Harriette L.
Berry, Frederick E.	Chang-Diaz, Sonia
Brewer, Stephen M.	Creem, Cynthia Stone
Brown, Scott P.	Donnelly, Kenneth J.
Buoniconti, Stephen J.	Downing, Benjamin B.
Candaras, Gale D.	Eldridge, James B.
Fargo, Susan C.	O’Leary, Robert A.
Flanagan, Jennifer L.	Pacheco, Marc R.
Galluccio, Anthony D.	Panagiotakos, Steven C.
Hart, John A., Jr.	Petrucelli, Anthony
Hedlund, Robert L.	Rosenberg, Stanley C.

Jehlen, Patricia D.	Tarr, Bruce E.
Joyce, Brian A.	Timilty, James E.
Kennedy, Thomas P.	Tisei, Richard R.
Knapik, Michael R.	Tolman, Steven A.
Montigny, Mark C.	Tucker, Susan C.
Moore, Michael O.	Walsh, Marian — 35.
Morrissey, Michael W.	
NAYS — 0.	
ABSENT OR NOT VOTING.	
McGee, Thomas M.	Moore, Richard T.
Menard, Joan M.	Spilka, Karen E. — 4.

The yeas and nays having been completed at twenty-seven minutes past four o'clock P.M., the amendment was adopted.

Messrs Brown, Tisei, Tarr, Knapik and Hedlund moved that the proposed rules be amended by striking, in Rule 18A, the word “may” and inserting in place thereof the following: “shall”.

The amendment was rejected.

Messrs. Brown, Tisei, Tarr, Knapik and Hedlund moved that the proposed rules be amended by inserting, in Rule 59A, after the word “formal” the following:— “and informal”.

After remarks, the amendment was rejected.

Mr. Hedlund moved that the proposed rules be amended by inserting the following new rule:

“Senate Rule 68. The President shall establish a commission to examine past rules and practices of the Massachusetts State Senate.

This commission shall consist of three members: the Senate President pro tempore; the majority leader; and the minority leader; and shall examine and compare the current rules and practices of the Massachusetts State Senate with the body’s historic rules and practices. This examination and comparison may include but not be limited to matters of decorum, attendance, dress, and schedule.

The commission must report its findings and recommendations by September 1 of every odd numbered year.”

The amendment was adopted.

The proposed Senate Rules (Senate, No. 5, amended), were then adopted.

Communications.

The Clerk read the following communications:

A communication was received from the Honorable Therese Murray, President of the Senate, announcing that, effective today, after a vote of the caucus of the Majority Party in the Senate, we have nominated and elected the following members for the mentioned committees as listed below.

Senate Committee on Ethics and Rules:

Senator Frederick E. Berry — Chair

Senator Karen E. Spilka — Vice-Chair

Senator Joan M. Menard — member

Senator Steven A. Tolman — member.

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

A communication was received from the Honorable Richard R. Tisei, Minority Leader, announcing that, effective today, the following members are hereby appointed to the Senate Committee on Ethics & Rules:

Senator Michael R. Knapik of Second Hampden and Hampshire

Senator Bruce E. Tarr of First Essex and Middlesex.

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

Order Adopted.

On motion of Ms. Chandler,—

Ordered, That when the Senate adjourns today, it adjourn to meet again on Monday next eleven o'clock A.M.

Adjournment in Memory of Major Brian M. Mescall.

The Senator from Middlesex and Norfolk, Ms. Spilka, and the Senator from Middlesex, Mr. Panagiotakos, requested that when the Senate adjourns today, it adjourn in memory of Major Brian M. Mescall of Hopkinton.

Major Mescall died on January 9, 2009, at age 33, from a roadside bomb while serving in Afghanistan. Prior to his deployment in mid-2008 to Afghanistan, Major Mescall had completed two tours of duty in Iraq. Major Mescall was an avid chef, who particularly enjoyed cooking Italian and Korean recipes. He was a positive, caring husband and father who was fond of taking his son on camping trips. He is survived by his parents, wife, Chi-un, and son, Nathan.

Accordingly, as a mark of respect to the memory of Major Brian M. Mescall, at twenty minutes before five o'clock P.M., on motion of Mr. Brown, the Senate adjourned to meet again on Monday next at eleven o'clock A.M.