

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 5, 2009.

Met at four minutes past one o'clock P.M. (Mr. Rosenberg in the Chair).

Petitions.

Petitions were severally presented and referred, as follows:

By Mr. Brown, a petition (subject to Joint Rule 12) of Scott P. Brown, Jeffrey Davis Perry, F. Jay Barrows, Stephen L. DiNatale, Bruce E. Tarr and other members of the General Court for legislation to extend Good Samaritan protection from civil liability to defense of self and others;

By Ms. Chandler, a petition (subject to Joint Rule 12) of Harriette L. Chandler and John W. Scibak for legislation relative to financial services contracts for dental benefits corporations; and

By Mr. Michael O. Moore, a petition (subject to Joint Rule 12) of Michael O. Moore for legislation relative to the Glavin Regional Center Facility and Land Reuse Committee;

Severally, under Senate Rule 20, to the committees on Rules of the two branches, acting concurrently.

Reports of Committees.

By Mr. Morrissey, for the committee on Consumer Protection and Professional Licensure, on petition (accompanied by bill, Senate, No. 183), a Bill regulating secondary metals dealing (Senate, No. 2191);

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

By Mr. Richard T. Moore, for the committee on Health Care Financing, on petition, a Bill to finance health care through moral obligation bonds (Senate, No. 554) [Estimated cost — \$0];

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

PAPERS FROM THE HOUSE.

A petition (accompanied by bill, House, No. 4313) of Michael Costello and Stephen A. Baddour (by vote of the town) that the town of Salisbury be authorized to convert a seasonal liquor license to a annual license for the sale of all alcoholic beverages to be drunk on the premises,— **was referred, in concurrence, to the committee on Consumer Protection and Professional Licensure.**

Bills

Authorizing the lease of certain parcels of land to the town of Milton (House, No. 846,— on petition);

Establishing a sick leave for Deborah Kotarba, an employee of the Trial Court (House, No. 4269,— on petition);

Providing for saltwater fishing licenses (House, No. 4309,— on House, No. 797); and

Providing benefits to veterans and servicemembers (House, No. 4310, amended,— on Senate, Nos. 1995 and 2003 and House, Nos. 3400 and 4235);

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

A Bill relative to concurrent jurisdiction over the former Devens military base (House, No. 1996,— on petition), — **was read and, under Senate Rule 26, referred to the committee on Ethics and Rules.**

A Bill authorizing the town of Harwich to convey certain recreational land (House, No. 4314,— on House, No. 4087) [Local approval received on House, No. 4087],— **was read and, under Senate Rule 26, placed in the Orders of the Day for the next session.**

Recess.

There being no objection, at five minutes past one o'clock P.M., the Chair (Mr. Rosenberg) declared a recess subject to the call of the Chair; and, at twenty-two minutes before three 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 Mr. Berry) “congratulating the Salvation Army North Shore Corps on its one hundred and twenty-fifth anniversary”; and Resolutions (filed by Mr. Pacheco) “commemorating the fortieth anniversary of the death of Specialist Fourth Class Nikolaus Zozula.”

Communication.

The Clerk read the following communication:

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

November 5, 2009.

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

Dear Mr. Clerk:

I will be absent from the chamber today, Thursday, November 05, 2009, as I will be attending a legislative leaders conference in my official capacity as President-Elect of the National Conference of State Legislatures. Consequently, I will not be recorded on any roll call votes that occur during today's session.

Upon my return, it is my intention to file a similar communication indicating how I would have voted had I been present.

I respectfully request that a copy of this correspondence be printed in the Journal of the Senate. As always, I appreciate your assistance.

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

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

PAPERS FROM THE HOUSE.

Engrossed Bills — Land Takings for Conservation Etc.

An engrossed Bill authorizing the town of Norton to transfer certain park land (see House, No. 4136) (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-one minutes before three o'clock P.M., as follows, to wit (*yeas 35 — nays 0*) [**Yeas and Nays No. 145**]:

YEAS.

Baddour, Steven A. Flanagan, Jennifer L.
Brewer, Stephen M. Galluccio, Anthony D.
Brown, Scott P. Hart, John A., Jr.
Buoniconti, Stephen J. Hedlund, Robert L.
Candaras, Gale D. Jehlen, Patricia D.
Chandler, Harriette L. Joyce, Brian A.
Chang-Diaz, Sonia Knapik, Michael R.
Creem, Cynthia Stone McGee, Thomas M.
Donnelly, Kenneth J. Menard, Joan M.
Downing, Benjamin B. Montigny, Mark C.
Fargo, Susan C. Moore, Michael O.
Morrissey, Michael W. Tarr, Bruce E.
O'Leary, Robert A. Timilty, James E.
Pacheco, Marc R. Tisei, Richard R.
Panagiotakos, Steven C. Tolman, Steven A.
Petrucelli, Anthony Tucker, Susan C.
Rosenberg, Stanley C. Walsh, Marian — 35.
Spilka, Karen E.

NAYS — 0.

ABSENT OR NOT VOTING.

Berry, Frederick E. Kennedy, Thomas P.
Eldridge, James B. Moore, Richard T.— 4.

The yeas and nays having been completed at sixteen minutes before three o'clock P.M., the bill was passed to be enacted, two-thirds of the members present having agreed to pass the same, and it was signed by the President and laid before the Governor for his approbation.

An engrossed Bill authorizing the release of certain restrictions on a parcel of land in the town of Nantucket (see House, No. 4182, amended) (which originated in the House), having been certified by the Senate Clerk to be rightly and truly prepared for final passage,— was put upon its final passage; and, this being a bill providing for the taking of land or other easements used for conservation purposes, etc., as defined by Article XCVII of the Amendments to the Constitution, the question on passing it to be enacted was determined by a call of the yeas and nays, at a quarter before three o'clock P.M., as follows, to wit (*yeas 35 — nays 0*) [**Yeas and Nays No. 146**]:

YEAS.

Baddour, Steven A. McGee, Thomas M.
Brewer, Stephen M. Menard, Joan M.
Brown, Scott P. Montigny, Mark C.
Buoniconti, Stephen J. Moore, Michael O.
Candaras, Gale D. Morrissey, Michael W.
Chandler, Harriette L. O'Leary, Robert A.
Chang-Diaz, Sonia Pacheco, Marc R.
Creem, Cynthia Stone Panagiotakos, Steven C.
Donnelly, Kenneth J. Petrucelli, Anthony
Downing, Benjamin B. Rosenberg, Stanley C.
Fargo, Susan C. Spilka, Karen E.
Flanagan, Jennifer L. Tarr, Bruce E.
Galluccio, Anthony D. Timilty, James E.
Hart, John A., Jr. Tisei, Richard R.
Hedlund, Robert L. Tolman, Steven A.
Jehlen, Patricia D. Tucker, Susan C.
Joyce, Brian A. Walsh, Marian — 35.
Knapik, Michael R.

NAYS — 0.

ABSENT OR NOT VOTING.

Berry, Frederick E. Kennedy, Thomas P.
Eldridge, James B. Moore, Richard T.— 4.

The yeas and nays having been completed at twelve minutes before three o'clock P.M., the bill was passed to be enacted, two-thirds of the members present having agreed to pass the same, and it was signed by the President and laid before the Governor for his approbation.

Engrossed Bills.

The following engrossed bills (the first two of which originated in the Senate), having been certified by the Senate Clerk to be rightly and truly prepared for final passage, were severally passed to be enacted and were signed by the President and laid before the Governor for his approbation, to wit:

Exempting the office of chief of police of the town of Sandwich from the civil service law (see Senate, No. 2076);
Establishing a sick leave bank for Terry Howard, an employee of the Department of Public Health (see Senate, No. 2131, amended);

Relative to the development of certain town land in the town of Chatham (see House, No. 3823); and

Authorizing the Board of Assessors of the town of Newbury to grant a real estate tax abatement (see House, No. 4200).

Orders of the Day.

The Orders of the Day were considered, as follows:

The Senate Bill to authorize the town of Charlton to acquire dams within the town to make improvements to dams and to authorize the assessment of betterments to pay costs of the same (Senate, No. 2108),— **was read a second time and ordered to a third reading.**

The Senate Bill clarifying the requirements for licensing as a real estate broker or salesman (Senate, No. 121, amended) (its title having been changed by the committee on Bills in the Third Reading),— **was read a third time and, after remarks, was passed to be engrossed.**

Sent to the House for concurrence.

The Senate Bill establishing the interstate compact for juveniles (Senate, No. 2189),— **was read a third time and, after remarks, was passed to be engrossed.**

Sent to the House for concurrence.

The Senate Bill preserving publicly-assisted affordable housing (Senate, No. 2190),— **was read a third time.**

Pending the question on passing the bill to be engrossed, Mr. Panagiotakos moved that the bill be amended in section 1, in section 3 of the proposed chapter 40T of the General Laws, by adding the following subsection:—

“(f) Publicly-assisted housing shall be subject to this section for 4 years after the date of the last event or occurrence that constituted a termination; provided, however, that publicly-assisted housing for which the last event or occurrence that constituted a termination occurred prior to the effective date of this chapter shall not be subject to this section.”;

In said section 1, in section 4 of the proposed chapter 40T of the General Laws, by adding the following subsection:—

“(h) Publicly-assisted housing shall be subject to this section for 4 years after the date of the last event or occurrence that constituted a termination; provided, however, that publicly-assisted housing for which the last event or occurrence that constituted a termination occurred prior to the effective date of this chapter shall not be subject to this section.”;

In said section 1, by striking out section 5 of the proposed chapter 40T of the General Laws, and inserting in place thereof the following section:—

“Section 5. The disposition of real property by an affected municipality in accordance with chapter shall not be subject to section 16 of chapter 30B.”; and

By striking out section 4.

The amendment was adopted.

After remarks, the bill (Senate, No. 2190, amended) was then passed to be engrossed, in concurrence.

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 and considered, as follows:

The House Bill relative to the election of the members of the board of public works of the town of Hopkinton (House, No. 1909),— **was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence.**

The House Bill relative to the charter of the town of Orleans (House, No. 4086),— **was read a third time and passed to be engrossed, in concurrence.**

Reports of Committees.

By Mr. Berry, for the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the Senate petition of Gale D. Candaras for legislation relative to child abandonment.

Senate Rule 36 was suspended, on motion of Mr. Brewer, and the report was considered forthwith. Joint Rule 12 was

suspended; and the petition (accompanied by bill) was referred to the committee on Children, Families and Persons with Disabilities.

By Mr. Berry, for the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the Senate petition of Stanley C. Rosenberg for a legislative amendment to the Constitution to provide for the filling of congressional vacancies.

Senate Rule 36 was suspended, on motion of Mr. Brewer, and the report was considered forthwith. Joint Rule 12 was suspended; and the petition (accompanied by proposal) was referred to the committee on Election Laws.

By Mr. Berry, for the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the Senate petition of Michael W. Morrissey for legislation relative to the senior circuit breaker tax credit.

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

Severally sent to the House for concurrence.

Petitions.

On motion of Ms. Chandler, Senate Rule 20 and Joint Rule 12 were suspended on the petition, presented by Mr. Brewer (accompanied by bill) of Stephen M. Brewer for legislation to establish a sick leave bank for Valerie Desplaines, an employee of the Department of Developmental Services,— **and the same was referred to the committee on Public Service.**
Sent to the House for concurrence.

On motion of Mr. Downing, Senate Rule 20 and Joint Rule 12 were suspended on the petition, presented by Mr. Brewer (accompanied by bill) of Stephen M. Brewer for legislation to establish a sick leave bank for Lila Kate Smith, an employee of the Department of Developmental Services,— **and the same was referred to the committee on Public Service.**
Sent to the House for concurrence.

On motion of Mr. Buoniconti, Senate Rule 20 and Joint Rule 12 were suspended on the petition, presented by Mr. Kennedy (accompanied by bill) of Thomas P. Kennedy for legislation relative to a sick leave bank for Diane Hubbard, an employee of the Massachusetts Department of Industrial Accidents— **and the same was referred to the committee on Public Service.**
Sent to the House for concurrence.

On motion of Mr. Pacheco, Senate Rule 20 and Joint Rule 12 were suspended on the petition, presented by Ms. Candaras (accompanied by bill) of Gale D. Candaras for legislation to establish a sick leave bank for Kathleen Canning, an employee of the Department of Public Safety,— **and the same was referred to the committee on Public Service.**
Sent to the House for concurrence.

PAPERS FROM THE HOUSE.

Petitions were severally referred, in concurrence, as follows, to wit:

Petition (accompanied by bill, House, No. 4321) of Cleon Turner (by vote of the town) relative to the development of the Yarmouth Marina in the town of Yarmouth;

Under suspension of Joint Rule 7B, to the committee on Community Development and Small Business.

Petition (accompanied by bill, House, No. 4322) of Garrett J. Bradley (by vote of the town) authorizing the town of Cohasset to grant certain interests in land;

Under suspension of Joint Rule 7B, to the committee on Municipalities and Regional Government.

Report of a Committee.

By Mr. Panagiotakos, for the committee on Ways and Means, that the House Bill providing benefits to veterans and servicemembers (House, No. 4310, amended),— **ought to pass, with an amendment striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2193.**

Mr. Brewer moved that the rules be suspended so that the matter may be considered forthwith; but objection was made thereto by Mr. Knapik.

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

Recess.

For the purpose of a Democratic caucus, at eleven minutes past three o'clock P.M., the President declared a recess subject to the call of the Chair; and, at thirteen minutes before four o'clock P.M., the Senate reassembled, the President in the Chair.

Report of a Committee.

Ms. Spilka, 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 House Bill providing benefits to veterans and servicemembers (House, No. 4310, amended) (the committee on Ways and Means having recommended that the bill be amended by striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2193).

Mr. Brewer moved that the rules be suspended so that the matter may be taken up forthwith; and, on further motion of the same Senator, this question was determined by a call of the yeas and nays, at eleven minutes before four o'clock P.M., as follow, to wit (*yeas 29 – nays 5*) [**Yeas and Nays No. 147**]:

YEAS.

Baddour, Steven A. McGee, Thomas M.
Brewer, Stephen M. Menard, Joan M.
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. Petruccelli, Anthony
Fargo, Susan C. Rosenberg, Stanley C.
Flanagan, Jennifer L. Spilka, Karen E.
Galluccio, Anthony D. Timilty, James E.
Hart, John A., Jr. Tucker, Susan C.
Jehlen, Patricia D. Walsh, Marian— 29.
Joyce, Brian A.

NAYS.

Brown, Scott P. Tarr, Bruce E.
Hedlund, Robert L. Tisei, Richard R. —5.
Knapik, Michael R.

ABSENT OR NOT VOTING.

Berry, Frederick E. Moore, Richard T.
Eldridge, James B. Tolman, Steven A.— 5.
Kennedy, Thomas P.

The yeas and nays having been completed at seven minutes before four o'clock P.M., the rules were suspended, more than two-thirds of the members present and voting having voted in the affirmative, and the bill was read a second time.

After remarks, pending the question on adoption of the Ways and Means new text, and pending the main question on ordering the bill to a third reading, Mr. Donnelly moved that the proposed new text be amended by adding the following section:—

“SECTION XX: Notwithstanding any general or special law to the contrary, a temporary commission is hereby established to study the feasibility and costs of establishing a functional magnetic resonance imaging and neuropsychological cognitive testing program for all military forces of the commonwealth prior to and upon return from deployment.

The commission shall consist of: the secretary of veterans' services or a designee, who shall serve as chair of the commission; 3 members of the senate, 1 of whom shall be the president of the senate or a designee, 1 of whom shall be the minority leader of the senate or a designee, and 1 of whom shall be the chair of the joint committee on veterans and federal affairs or a designee; 3 members of the house of representatives, 1 of whom shall be the speaker or a designee, 1 of whom shall be the minority leader of the house of representatives or a designee, and 1 of whom shall be the chair of the joint committee on veterans and federal affairs; the adjutant general of the national guard or a designee; the secretary of the executive office of health and human services or a designee; the secretary of the executive office of administration and finance or a designee; and 2 persons to be appointed by the governor, who shall be honorably discharged veterans who are residents of the commonwealth. Each member shall serve without compensation.

Not later than November 11, 2010, the commission shall report to the general court the result of its investigation and study and its recommendations, if any, together with any drafts of legislation necessary to carry its recommendations into effect by filing the same with the clerks of the house of representatives and senate, who shall forward the same to the house and senate committees on ways and means and the joint committee on veterans and federal affairs.”

After remarks, the amendment was adopted.

Messrs. Tolman, Petruccelli and Brown moved that the proposed new text be amended by striking out sections 3 to 8, inclusive, and inserting in place thereof the following 2 sections:—

“SECTION 3. The third paragraph of section 95 of chapter 54 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:— Federal write-in absentee ballots shall be received and counted as provided in section 103 of the federal Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. section 1973ff-2, for any preliminary, primary or general election for federal, state, city, town, county or district office or any ballot question.

SECTION 4. Said section 95 of said chapter 54, as so appearing, is hereby further amended by adding the following 2 paragraphs:—

Federal write-in absentee ballots from absent uniformed services voters and overseas voters as defined in section 107 of said Uniformed and Overseas Citizens Absentee Voting Act that are transmitted by e-mail or facsimile as permitted by this section, shall be counted for federal, state, city, town, county or district offices at any preliminary, primary or general election or any ballot question so long as they were received by the city or town clerk before the hour fixed for closing the polls as provided in section 93, but only if no valid state ballot has been received from the same voter; provided, however, that section 99 shall apply to federal write-in absentee ballots sent by mail; and provided further, that a federal write-in absentee ballot shall be counted even if the voter has not applied for a state absent voter ballot or if the voter’s application was received after the thirtieth day before the election. The ballots shall be processed in the office of the registrars after the hour of the closing of the polls and the registrars shall amend each precinct tally sheet to include the counted federal write-in absentee ballots.

Absent uniformed services voters and overseas voters may mail, e-mail or send by facsimile, a completed federal write-in absentee ballot directly to local election officials or use transmission services provided and administered through the Federal Voting Assistance Program, or any successor program. E-mail or facsimile transmissions of a federal write-in absentee ballot shall include a completed form approved by the Federal Voting Assistance Program, or any successor program, declaring that the voter voluntarily waives the right to a secret ballot.”; and by inserting after section 26, the following section:—

“SECTION 26A. The state secretary shall immediately notify the program director or his designee of the Federal Voting Assistance Program or any successor program of all changes affecting absent uniformed services voters and overseas voters provided for in sections 14 and 15.”

After remarks, the amendment was adopted.

After further remarks, the proposed Ways and Means new text, as amended, was then adopted.

The bill, as amended, was then ordered to a third reading and read a third time.

After further remarks, the question on passing the bill to be engrossed, in concurrence, with the amendment, was determined by a call of the yeas and nays, at thirteen minutes past five o’clock P.M., on motion of Mr. Donnelly, as follows, to wit (*yeas 36 — nays 0*) [**Yeas and Nays No. 148**]:

YEAS.

Baddour, Steven A. McGee, Thomas M.
Brewer, Stephen M. Menard, Joan M.
Brown, Scott P. Montigny, Mark C.
Buoniconti, Stephen J. Moore, Michael O.
Candaras, Gale D. Morrissey, Michael W.
Chandler, Harriette L. Murray, Therese
Chang-Diaz, Sonia O’Leary, Robert A.
Creem, Cynthia Stone Pacheco, Marc R.
Donnelly, Kenneth J. Panagiotakos, Steven C.
Downing, Benjamin B. Petrucci, Anthony
Fargo, Susan C. Rosenberg, Stanley C.
Flanagan, Jennifer L. Spilka, Karen E.
Galluccio, Anthony D. Tarr, Bruce E.
Hart, John A., Jr. 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 — 36.

NAYS — 0.

ABSENT OR NOT VOTING.

Berry, Frederick E. Kennedy, Thomas P.
Eldridge, James B. Moore, Richard T.— 4.

The yeas and nays having been completed at sixteen minutes past five o’clock P.M., the bill was passed to be engrossed, in concurrence, with the amendment [For the text of the Senate amendment, see Senate, No. 2194, printed as amended].

Order Adopted.

On motion of Mr. O’Leary,—

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.

Moment of Silence.

At the request of the President, the members, guests and employees stood in a moment of silence and reflection to the memory of United States Marine Captain Eric A. Jones.

Adjournment in Memory of United States Marine Captain Eric A. Jones.

The Senator from Cape and Islands, Mr. O’Leary, and the Senator from Plymouth and Barnstable, Ms. Murray, requested that when the Senate adjourns today, it adjourn in memory of United States Marine Captain Eric A. Jones.

United States Marine Captain Eric A. Jones was killed in a helicopter collision in Southern Afghanistan on Monday, October 26th. Captain Jones had already completed two tours of duty in Iraq and was scheduled to return home from his tour in Afghanistan next month. Captain Jones was a graduate of Northeastern University with a degree in business. Following his graduation he was commissioned in the Marines in 2004. By October of 2008 he had been promoted to Captain and was the pilot of a revamped Vietnam-era UH-1N Huey Chopper. He will be sorely missed by his family and friends who describe Eric as a “role model,” and someone with “a deep sense of humor.” Eric is survived by his mother, Cynthia J. Jones, and his father, Kenneth A. Jones, both of Mashpee.

Accordingly, as a mark of respect to the memory of U.S. Marine Captain Eric A. Jones, at eighteen minutes past five o’clock P.M., on motion of Mr. Tisei, the Senate adjourned to meet again on Monday next at eleven o’clock A.M.