

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 19, 2012

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

Distinguished Guests.

There being no objection, the President handed the gavel to Ms. Candaras for the purpose of an introduction. Ms. Candaras then introduced, in the rear of the Chamber, Joey Yacavone from East Longmeadow. Joey is a 6th grader and honor student at Birchland Park Middle School in East Longmeadow and has an interest in politics. He was accompanied by his mother, Jennifer. The Senate welcomed them with applause and they withdrew from the Chamber.

There being no objection, the President handed the gavel to Mr. Kennedy for the purpose of an introduction. Mr. Kennedy then introduced, in the rear of the Chamber, his cousin Robert Kennedy from Brockton. He was accompanied by Rachel Thibeault. They were taking a tour of the State House. The Senate welcomed them with applause and they withdrew from the Chamber.

Petitions.

Petitions were severally presented and referred, as follows:

By Mr. Berry, a petition (subject to Joint Rule 12) of Frederick E. Berry for legislation to promote excellence in public schools;
and

By Mr. Hedlund, a petition (subject to Joint Rule 12) of Robert L. Hedlund for legislation relative to residential care facilities for frail elders and persons with disabilities;

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

By Mr. Wolf, a petition (subject to Joint Rule 7B) of Daniel A. Wolf for legislation relative to borrowing for and the term and apportionment of betterments and assessments for sewer projects in the town of Barnstable;

Under Senate Rule 20, to the committee on Ethics and Rules.

Reports of a Committee.

By Ms. Clark, for the committee on Public Service, on petition, a Bill further regulating the appointment of police officers (Senate, No. 1292);

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

By Ms. Clark, for the committee on Public Service, ought NOT to pass, on the petition (accompanied by bill, Senate, No. 1333) of Thomas M. McGee, Robert F. Fennel, Lori A. Ehrlich and Steven M. Walsh (with the approval of the mayor and city council) for legislation to adjust disability retirement benefits to Lynn police officer Gregory LeBlanc;

Referred, under Senate Rule 36, referred to the committee on Ethics and Rules

PAPER FROM THE HOUSE

Initiative petitions were severally referred, in concurrence, as follows, to wit:

Initiative petition of Arthur W. Kinsman and others for an initiative amendment to the Constitution for the passage of "An Act to protect motor vehicle owners and small businesses in repairing motor vehicles" (House, No. 3882) (having been transmitted by the Secretary of the Commonwealth to the Clerk of the House of Representatives as required by Article XLVIII of the Amendments to the Constitution, on Wednesday January 4, 2012);

To the committee on Consumer Protection and Professional Licensure.

Initiative petition of Jennifer Marie Rush and others for an initiative amendment to the Constitution for the passage of "An Act promoting excellence in public schools" (House, No. 3883) (having been transmitted by the Secretary of the Commonwealth to the Clerk of the House of Representatives as required by Article XLVIII of the Amendments to the Constitution, on Wednesday January 4, 2012);

To the committee on Education.

Initiative petition of Marcia Angell and others for an initiative amendment to the Constitution for the passage of "An Act relative to death with dignity" (House, No. 3884) (having been transmitted by the Secretary of the Commonwealth to the Clerk of the House of Representatives as required by Article XLVIII of the Amendments to the Constitution, on Wednesday January 4, 2012);

To the committee on the Judiciary.

Initiative petition of Richard Elliot Doblin and others for an initiative amendment to the Constitution for the passage of "An Act for the humanitarian medical use of marijuana" (House, No. 3885) (having been transmitted by the Secretary of the Commonwealth to the Clerk of the House of Representatives as required by Article XLVIII of the Amendments to the Constitution, on Wednesday January 4, 2012);

To the committee on Public Health.

A Bill making appropriations for the fiscal year 2012 to provide for supplementing certain existing appropriations and for certain other activities and projects (House, No. 3887,-- printed as amended),-- **was read and, under Senate Rule 27, referred to the committee on Ways and Means.**

There being no objection, at one minute past one o'clock P.M., the Chair (Ms. Clark) declared a recess subject to the call of the Chair; and, at two o'clock P.M., the Senate reassembled, the President in the Chair.

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

Resolutions.

The following resolutions (having been filed with the Clerk) were considered forthwith and adopted, as follows:-
Resolutions (filed by Messrs. Finegold and Baddour) "congratulating Isabel Melendez on her retirement from the Community Service Center of the Greater Lawrence Community Action Council."

Communication.

The Clerk read the following communication:

COMMONWEALTH OF MASSACHUSETTS
THE GENERAL COURT
STATE HOUSE, BOSTON 02133-1053

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

Dear Mr. Clerk:

On Thursday, October 6, 2011, I was unable to be present for the following votes relating to House Bill 3737: Roll Call #83; Roll Call #84; Roll Call #85; and Roll Call #86. Had I been present, I would have voted as follows:

Roll Call #83: (Negative)
Roll Call #84: (Negative)
Roll Call #85: (Affirmative)
Roll Call #86: (Affirmative)

I was also unable to be present for the following votes relating to Senate Bill 2015: Roll Call #87; Roll Call #88; and Roll Call #89; Roll Call #90; and Roll Call #91. Had I been present, I would have voted as follows:

Roll Call #87: (Negative)
Roll Call #88: (Negative)
Roll Call #89: (Negative)
Roll Call #90: (Affirmative)
Roll Call #91: (Affirmative)

I respectfully request that this letter be printed in the Senate Journal as part of the official record. Thank you for your assistance in this matter.

Saludos,
Sonia Chang-Díaz
Second Suffolk District

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

PAPERS FROM THE HOUSE

Engrossed Bills.

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

Requiring authorization by a town meeting vote of certain contracts made by the town of Middleborough regarding the sale by the town of water or wastewater treatment services (see Senate, No. 1948);

Authorizing the town of Becket to continue the employment of the Chief of Police, William Elovirta (see House, No. 3509, amended); and

Establishing a voting precinct in the city of Newburyport (see House, No. 3855).

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

Petition (accompanied by bill, House, No. 3890) of Jason M. Lewis and others for legislation to authorize municipalities to create stabilization funds for special education costs;

Under suspension of Joint Rule 12, to the committee on Municipalities and Regional Government.

Petition (accompanied by bill, House, No. 3891) of Martin J. Walsh for legislation to establish a sick leave bank for Richard Hughes, an employee of the Massachusetts Water Resources Authority;

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

Orders of the Day.

The Orders of the Day were considered, as follows:

The House Bill relative to enhancing the practice of nurse-midwives (House, No. 3815),-- **was passed to be engrossed.**

Matter Taken Out of the Orders of the Day.

There being no objection, the following matter was taken out of the Orders of the Day and considered, as follows:

The House Bill authorizing the town of Danvers to grant an additional license for the sale of wines and malt beverages to be drunk on the premises (House, No. 3699),-- **was read a third and passed to be engrossed.**

PAPERS FROM THE HOUSE

A Bill relative to voting precincts in the city of Revere (House, No. 3782,-- on petition) [Local approval received],-- **was read. There being no objection, the rules were suspended, on motion of Mr. Brewer, and the bill was read a second time and, after remarks, was ordered to a third reading, read a third time and passed to be engrossed, in concurrence.**

A Bill relative to a voting precinct in the City of Peabody (House, No. 3847,--on petition) [Local approval received],-- **was read. There being no objection, the rules were suspended, on motion of Ms. Spilka and the bill 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 relative to a voting precinct in the city of Peabody".**

Report of a Committee.

Mr. Brewer, for the committee on Ways and Means, on House, No. 3887, reported, in part, a "Bill making appropriations for fiscal year 2012 to provide for supplementing certain existing appropriations and for certain other activities and projects" (Senate, No. 2108).

The bill was read. There being no objection, the rules were suspended, on motion of Mr. Brewer, and the bill (Senate, No. 2108) was read a second time.

At nine minutes past two o'clock P.M., Mr. Tarr doubted the presence of a quorum; and at ten minutes past two o'clock P.M., the President declared that a quorum was present.

After debate and pending the question on ordering the bill to a third reading, Mr. Tarr moved that the bill be amended by inserting, after section__, the following new section:-

"SECTION__. Notwithstanding any general or special law to the contrary, for the days of March 18-23, 2012, an excise tax shall not be imposed upon meals purchased in restaurants, as those terms are defined in Section 6 of Chapter 64H of the General Laws, as appearing in the 2010 Official Edition.

Notwithstanding any general or special law to the contrary, for the days of March 18-23, 2012, a restaurant in the commonwealth shall not add to the sales price or collect from a customer an excise upon sales of meals. The commissioner of revenue shall not require any restaurant to collect and pay excise upon sales of meals purchased on March 18-23, 2012. An excise erroneously or improperly collected during the days of March 18-23, 2012 shall be remitted to the department of revenue.

Reporting requirements imposed upon restaurants by law or regulation, including, but not limited to, the requirements for filing returns required by chapter 62C of the General Laws, shall remain in effect for sales on the days of March 18-23, 2012.

On or before December 31, 2012, the commissioner of revenue shall certify to the comptroller the amount of sales tax forgone, as well as new revenue raised from person and corporate income taxes and other sources, pursuant to this section. The commissioner shall file a report with the joint committee on revenue and the house and senate committees on ways and means detailing by fund the amounts under general and special laws governing the distribution of revenues under Chapter 64H of the General Laws which would have been deposited in each fund, without this section.

The commissioner of revenue shall issue instructions or forms, or promulgate rules or regulations, necessary for the implementation of this section.

Eligible sales of meals purchased in restaurants are restricted to March 18-23, 2012.

The provisions of this section shall not be applicable to the local option meals excise tax under Section 1-6 of Chapter 64L of the General Laws, as appearing in the 2010 Official Edition, which shall remain in full force and effect on March 18-23, 2012."

Pending the question on adoption of the amendment, the President made a ruling on the amendment, as follows:

The Massachusetts Constitution says: "All money bills shall originate in the house of representatives...."

The parliamentary precedents of the Senate require the President to observe with meticulous care the constitutional prerogatives of the House of Representatives.

Without waiting for a point of order to be raised, she must see that the Senate does not originate a "money bill" in violation of the Constitution. A pending Senate amendment that would convert into a "money bill" a bill that was not a "money bill" it is out of order.

The pending amendment before the Senate, if adopted, would thus convert the bill into a "money bill". Therefore, the amendment is not in order, and was laid aside.

Mr. Tarr doubted the ruling of the Chair; and this motion was seconded by Mr. Knapik.

After debate, the question "Shall the ruling of the Chair stand?" was determined by a call of the yeas and nays, at eighteen minutes before three o'clock P.M., on motion of Mr. Tarr, as follows, to wit (*yeas 31 — nays 4*) [**Yeas and Nays No. 140**]:

YEAS

Baddour, Steven A.	Joyce, Brian A.
Brewer, Stephen M.	Keenan, John F.
Candaras, Gale D.	Kennedy, Thomas P.
Chandler, Harriette L.	McGee, Thomas M.
Chang-Diaz, Sonia	Montigny, Mark C.
Clark, Katherine M.	Moore, Michael O.
Creem, Cynthia Stone	Moore, Richard T.
DiDomenico, Sal N.	Pacheco, Marc R.
Donnelly, Kenneth J.	Petrucelli, Anthony
Downing, Benjamin B.	Rodrigues, Michael J.
Eldridge, James B.	Rush, Michael F.
Fargo, Susan C.	Spilka, Karen E.
Finegold, Barry R.	Timilty, James E

Flanagan, Jennifer L. Welch, James T.
Hart, John A., Jr. Wolf, Daniel A. — **31**.
Jehlen, Patricia D.

NAYS

Hedlund, Robert L. Ross, Richard J.
Knapik, Michael R. Tarr, Bruce E. — **4**.

ABSENT OR NOT VOTING

Berry, Frederick E. Rosenberg, Stanley C.
— **3**.
Donoghue, Eileen M.

The yeas and nays having been completed at fourteen minutes before three o'clock P.M., the ruling of the Chair stood and the amendment was laid aside.

Mr. Hart in the Chair, Mr. Tarr moved that the bill be amended by inserting, after section __, the following new section:-
“SECTION __. The executive office of housing and economic development shall analyze and project the costs and expenditures associated with the low income home energy assistance (LIHEAP) program in the commonwealth for fiscal year 2012, and shall submit a report to the General Court to include, but not be limited to, the following: the disbursement of available state and federal funds for heat and energy assistance prior to the implementation of this act; the projected funding needs for the program for the remainder of the fiscal year; and the determination of whether current appropriations and anticipated federal funds are currently sufficient to meet the resident demand for assistance from this program.
Said executive office shall submit a report to the executive office for administration and finance, house and senate committees on ways and means, and the clerks of the house and the senate on or before March 31, 2012.”

After remarks, the amendment was adopted.

Mr. Tarr moved that the bill be amended by inserting, after section __, the following new section:-
“SECTION __. Section 3A of chapter 23A of the General Laws, as so appearing, is hereby amended by striking, in line 139, the figure “35,000” and inserting in place thereof the following:- “20,000”.
The amendment was *rejected*.

Ms. Jehlen and Ms. Clark moved that the bill be amended in section 2 by adding the following item:
9110-1500..... \$2,600,000.
After debate, the amendment as *rejected*.

Mr. Keenan moved that the bill be amended in section 2A by adding after the number “4000-1700” as found in line 129 the following:-“4510-0616,”
After remarks, the amendment was *rejected*.

Mr. Tarr moved that the bill be amended by inserting, after section __, the following new section:-
“SECTION __. Notwithstanding any general or special law to the contrary, the Office of the State Auditor shall examine the Bureau of Special Investigations and furnish a report on cost-effective ways to enhance the mission of the bureau. The report shall include, but not be limited to, a review of current practices in other states, the relative value of additional funding to the bureau, impediments the bureau is facing in identifying fraud and recovering taxpayer dollars, and the extent of cooperation between the bureau and other agencies and employers who participate in programs with benefits made available by the Department of Transitional Assistance, the Department of Medical Assistance and the Department of Social Services. The report shall include any cost-effective recommendations that would improve the mission of the bureau and be filed with the chair and ranking minority member of the house committee on ways and means and the chair and ranking minority member of the senate committee on ways and means no later than April 30, 2012.”
After debate, the question on adoption of the amendment was determined by a call of the yeas and nays, at eight minutes past three o'clock P.M., on motion of Mr. Tarr, as follows, to wit (*yeas 7 — nays 28*) [**Yeas and Nays No. 141**]:

YEAS

Hedlund, Robert L. Ross, Richard J.
Knapik, Michael R. Tarr, Bruce E.
Moore, Michael O. Timilty, James E. — **7**.
Moore, Richard T.

NAYS

Baddour, Steven A.	Hart, John A., Jr.
Brewer, Stephen M.	Jehlen, Patricia D.
Candaras, Gale D.	Joyce, Brian A.
Chandler, Harriette L.	Keenan, John F.
Chang-Diaz, Sonia	Kennedy, Thomas P.
Clark, Katherine M.	McGee, Thomas M.
Creem, Cynthia Stone	Montigny, Mark C.
DiDomenico, Sal N.	Pacheco, Marc R.
Donnelly, Kenneth J.	Petrucelli, Anthony
Downing, Benjamin B.	Rodrigues, Michael J.
Eldridge, James B.	Rush, Michael F.
Fargo, Susan C.	Spilka, Karen E.
Finegold, Barry R.	Welch, James T.
Flanagan, Jennifer L.	Wolf, Daniel A. — 28.

ABSENT OR NOT VOTING

Berry, Frederick E.	Rosenberg, Stanley C. — 3.
Donoghue, Eileen M.	

The yeas and nays having been completed at twelve minutes past three o'clock P.M., the amendment was *rejected*.

Messrs. Tarr, Hedlund, Knapik and Ross moved that the bill be amended by inserting, after section __, the following new section:-

“SECTION __. Section 6 of chapter 14 of the General Laws, as appearing in the 2010 Official Edition, as updated by section 23 of chapter 68 of the Acts of 2011, is hereby amended by adding the following clause:-

10. Shall certify the maximum amount of sums available in the General Fund that were available to be spent on a bill making supplemental appropriations. The commissioner shall submit a copy of the certification to the governor, the chair and ranking minority member of the house committee on ways and means and the chair and ranking minority member of the senate committee on ways and means within 30 days of said bill becoming law.”

After debate, the amendment was *rejected*.

Mr. Tarr moved that the bill be amended by inserting, after section __, the following new section:-

“SECTION __. Section 1 of Chapter 275 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting at the end thereof the following words:- “;provided further, that any law enforcement officer, in the course of official business, shall be permitted to carry such weapons as are authorized by his appointing authority while in any state or county courthouse”.

As used in this section, “law enforcement officer” shall mean any state, county, or municipal police officer or special state police officer authorized to make arrests or serve criminal process.”

After debate, the amendment was *rejected*.

Mr. Tarr moved that the bill be amended by inserting, after section __, the following new section:-

“SECTION __. The operational services division shall analyze and report on the expenses associated with the fleet of vehicles owned by the commonwealth or operated by employees of the commonwealth. Said report shall include, but not be limited to, details on the costs incurred or loss of value of said vehicles through reasons other than regular maintenance and depreciation, and shall include information from records from fiscal year 2011 and from fiscal year 2012, but only through the date of the passage of this act. A final report shall be submitted to the clerks of the house and the senate on or before March 15, 2012. The amendment was rejected.

Messrs. Tarr and Hedlund moved that the bill be amended by inserting, after section __, the following new section:-

“SECTION __. Section 35T of chapter 10 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting at the end thereof the following:-

“(c) No new commuter line service shall be created unless and until a plan is submitted to the legislature on how the administration will pay for the proposed expansion and how such expansion will affect existing services and infrastructure.”

After debate, the question on adoption of the amendment was determined by a call of the yeas and nays, at twenty minutes past four o'clock P.M., on motion of Mr. Tarr, as follows, to wit (*yeas 31 — nays 3*) [**Yeas and Nays No. 142**]:

YEAS

Baddour, Steven A.	Joyce, Brian A.
Brewer, Stephen M.	Keenan, John F.
Candaras, Gale D.	Kennedy, Thomas P.
Chandler, Harriette L.	Knapik, Michael R.
Chang-Diaz, Sonia	Moore, Michael O.
Clark, Katherine M.	Moore, Richard T.
Creem, Cynthia Stone	Petrucelli, Anthony
DiDomenico, Sal N.	Rodrigues, Michael J.
Donnelly, Kenneth J.	Ross, Richard J.
Downing, Benjamin B.	Rush, Michael F.
Fargo, Susan C.	Spilka, Karen E.
Finegold, Barry R.	Tarr, Bruce E.
Flanagan, Jennifer L.	Timilty, James E.
Hart, John A., Jr.	Welch, James T.
Hedlund, Robert L.	Wolf, Daniel A. — 31.
Jehlen, Patricia D.	

NAYS

Eldridge, James B.	Pacheco, Marc R. —3.
Montigny, Mark C.	

ABSENT OR NOT VOTING

Berry, Frederick E.	McGee, Thomas M.
Donoghue, Eileen M.	Rosenberg, Stanley C.
	—4.

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

Mr. Rodrigues moved that the bill be amended by inserting after section 3 the following section:-

“SECTION 3A. The first paragraph of section 27C of chapter 9 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out the fourth sentence and inserting in place thereof the following 3 sentences:- If a determination of adverse effect has been made on any property, site or structure listed in the state register of historic places, the state body undertaking the project or the private entity proposing the project shall adopt all prudent and feasible means to eliminate, minimize or mitigate the adverse effects. If a determination of adverse effect has been made on any property, site or structure not listed in the state register of historic places, the state body undertaking the project or the private entity proposing the project shall consider, but need not adopt, the commission’s recommendations to eliminate, minimize or mitigate any adverse effects the commission has determined to exist, if such recommendations are issued within 30 days of such determination. Under no circumstances shall such a state body or private entity be required to adopt the commission’s recommendations relative to a site or structure not listed in the state register of historic places.”; and by inserting after section 49 the following section:-

“SECTION 49A. Section 3A shall apply to projects to which the Massachusetts historical commission has received notice under section 27C of chapter 9 of the General Laws before the effective date of this act and which are not listed in the state register of historic places.”

The amendment was adopted.

Mr. Brewer moved that the bill be amended by striking out section 54 and inserting in place thereof the following section:-

“SECTION 54. Section 16 shall apply to all certificates of approval granted within 12 months prior to the effective date of this act.”

The amendment was adopted.

The bill (Senate, No. 2108, amended) was then ordered to a third reading and read a time.

After remarks, the question on passing the bill to be engrossed was determined by a call of the yeas and nays at twenty-nine minutes past four o'clock P.M., on motion of Mr. Tarr, as follows, to wit (*yeas 35 — nays 0*) [**Yeas and Nays No. 143**]:

YEAS

Baddour, Steven A.	Keenan, John F.
Brewer, Stephen M.	Kennedy, Thomas P.
Candaras, Gale D.	Knapik, Michael R.
Chandler, Harriette L.	McGee, Thomas M.
Chang-Diaz, Sonia	Montigny, Mark C.
Clark, Katherine M.	Moore, Michael O.
Creem, Cynthia Stone	Moore, Richard T.
DiDomenico, Sal N.	Pacheco, Marc R.
Donnelly, Kenneth J.	Petrucelli, Anthony
Downing, Benjamin B.	Rodrigues, Michael J.
Eldridge, James B.	Ross, Richard J.
Fargo, Susan C.	Rush, Michael F.
Finegold, Barry R.	Spilka, Karen E.
Flanagan, Jennifer L.	Tarr, Bruce E.
Hart, John A., Jr.	Timilty, James E.
Hedlund, Robert L.	Welch, James T.
Jehlen, Patricia D.	Wolf, Daniel A. — 35.
Joyce, Brian A.	

NAYS — 0.

ABSENT OR NOT VOTING

Berry, Frederick E.	Rosenberg, Stanley C.
	— 3.
Donoghue, Eileen M.	

The yeas and nays having been completed at twenty-six minutes before five o'clock P.M., the bill was passed to be engrossed [For text of bill, printed as amended, see Senate, No. 2112].
Sent to the House for concurrence.

Order Adopted.

On motion of Mr. McGee,--

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 printed of a calendar.

On motion of the Mr. Petrucelli, at twenty-five minutes before five o'clock P.M., the Senate adjourned to meet again on Monday next at eleven o'clock A.M.