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UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



JOURNAL OF THE SENATE.

Wednesday, April 15, 2015.

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

Distinguished Guests.

There being no objection, during consideration of the Orders of the Day, the President handed the gavel to Mr. Kennedy for the purpose of an introduction. Mr. Kennedy then introduced, in the rear of the Chamber, former Representative Albert Herren and his wife Robin. Representative Herren represented the 6th Bristol District in the House of Representatives from 1985–1997. The Senate welcomed them with applause and they withdrew from the Chamber.

Communication.

The following communications were severally received and placed on file, to wit:

Communication from the Honorable Stanley C. Rosenberg, President of the Senate, announcing the appointment Senator Michael O. Moore to the Financial Literacy Task Force (received April 14, 2015); and
Communication from the Massachusetts College of Art and Design submitting its 2014 Performance Report (received April 10, 2015) (a copy having been forwarded to the Senate Chair of the Joint Committee on Education).

Report.

Report of the Department of Elementary and Secondary Education (pursuant to Section 94(p) of Chapter 71 of the General Laws) submitting a report entitled: Commonwealth of Massachusetts Virtual Schools - Fiscal Year 2014 (received April 13, 2015) (a copy having been forwarded to the Senate chair on the joint committee on Education,-- **was placed on file.**

Petitions.

Petitions were severally presented and referred as follows:

By Mr. Tarr, a petition (accompanied by bill, Senate, No. 46) of Bruce E. Tarr and Ann-Margaret Ferrante (by vote of the town) for legislation relative to the granting of wine and malt alcoholic beverages licenses to be consumed on the premises by the town of Rockport [Local approval received];

**Under Senate Rule 20, to the committee on Election Laws.
Sent to the House for concurrence.**

By Mr. Lewis (by request), a petition (accompanied by bill) (subject to Joint Rule 12) of Norma Powell for legislation to reform the judicial system;

By the same Senator (by request), a petition (accompanied by bill) (subject to Joint Rule 12) of Caroline Mallary for legislation to protect children from excessive force;

By the same Senator (by request), a petition (accompanied by bill) (subject to Joint Rule 12) of Caroline Mallary for legislation to ensure due process in mental health facilities; and

By the same Senator (by request), a petition (accompanied by bill) (subject to Joint Rule 12) of Caroline Mallary for legislation to reduce conflict-of-interest in child abuse investigations;

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

PAPERS FROM THE HOUSE.

A Bill establishing a sick leave bank for Steven Goler, an employee of the Department of Transportation (House, No. 3205,-- on petition),-- **was read and, under Senate Rule 27, referred to the committee on Ways and Means.**

A Bill exempting the position of deputy police chief in the city of Haverhill from the civil service law (House, No. 3330,-- on petition) [Local approval received],-- **was read and, under Senate Rule 26, placed in the Orders of the Day for the next session.**

There being no objection, at five minutes past two o'clock P.M., the Chair (Mr. Pacheco) declared a recess subject to the call of the Chair; and, at eighteen minutes before three 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 severally considered forthwith and adopted, as follows:-

Resolutions (filed by Mr. Hedlund) "congratulating Adam N. Benson on his elevation to the rank of Eagle Scout";
Resolutions (filed by Mr. Ross and Ms. Creem) "congratulating Duncan Alexander Crow of the town of Wellesley on his elevation to the rank of Eagle Scout";
Resolutions (filed by Mr. Ross and Ms. Creem) "congratulating Alexander George Izikson of the town of Wellesley on his elevation to the rank of Eagle Scout";
Resolutions (filed by Mr. Ross and Ms. Creem) "congratulating William George Luzaitis of the town of Wellesley on his elevation to the rank of Eagle Scout";
Resolutions (filed by Mr. Ross and Ms. Creem) "congratulating William Thomas Maynard of the town of Wellesley on his elevation to the rank of Eagle Scout";
Resolutions (filed by Mr. Ross and Ms. Creem) "congratulating Brendan Kevin Monagle of the town of Wellesley on his elevation to the rank of Eagle Scout";
Resolutions (filed by Mr. Ross and Ms. Creem) "congratulating Brady William O'Leary of the town of Wellesley on his elevation to the rank of Eagle Scout";
Resolutions (filed by Mr. Ross and Ms. Creem) "congratulating Carl Stanford Richardson of the town of Wellesley on his elevation to the rank of Eagle Scout";
Resolutions (filed by Mr. Ross and Ms. Creem) "congratulating Stephen Charles Selvidge of the town of Wellesley on his elevation to the rank of Eagle Scout";
Resolutions (filed by Mr. Ross and Ms. Creem) "congratulating William M. Skelly of the town of Wellesley on his elevation to the rank of Eagle Scout"; and
Resolutions (filed by Ms. Spilka) "congratulating Danny Cunis of the town of Ashland on his elevation to the rank of Eagle Scout";

PAPER FROM THE HOUSE

Emergency Preamble Adopted.

An engrossed Bill establishing a sick leave bank for James O'Brien, an employee of the Department of Developmental Services (see Senate, No. 18), having been certified by the Senate Clerk to be rightly and truly prepared for final passage and containing an emergency preamble,-- **was laid before the Senate; and, a separate vote being taken in accordance with the requirements of Article LXVII of the Amendments to the Constitution, the preamble was adopted in concurrence, by a vote of 6 to 0. The bill was signed by the President and sent to the House for enactment.**

Adjournment in Memory of the Boston Marathon Victims.

Senators Donnelly, Forry, Tarr and Rosenberg, requested that when the Senate adjourns today, it adjourn in memory of the victims of the Boston Marathon bombings.

Exactly two years ago today, Krystle Campbell of Arlington, Martin Richard of Dorchester and Lingzi Lu of Shenyang, China joined thousands of others to cheer on runners at the finish line at the 117th Boston Marathon.

Minutes before 3:00 P.M., all three lives were tragically cut short by explosions that shattered the festive and joyful atmosphere of that day.

Their lives, along with those who were injured, the first responders, and families of those affected by this heinous act, were forever changed.

Days later, in the midst of an unprecedented manhunt, MIT Police Officer Sean Collier of Wilmington lost his life in an unprovoked attack at the hands of the same terrorists.

In the two years following those tragic and chaotic days, our Commonwealth witnessed the pain endured by the families of Kystle, Martin, Lingzi, Sean, and more than 260 people who were severely injured by the bombings.

Though much was lost that day, what was gained is more telling of who we are as a community: stories of perseverance in the face of insurmountable loss, endurance in spite of suffering, and courage in the face of unspeakable hardship.

These stories will withstand the test of time.

Though not even a guilty verdict can restore what was taken on April 15th, we hope that the families of those killed and those who were gravely injured can take a small measure of comfort knowing that the people of the Commonwealth stand strong with them - and the Commonwealth is stronger because of them.

Moment of Silence.

At eleven minutes before three o'clock P.M., at the request of the President, the members, guests and staff stood in a moment of silence and reflection to the memory of the victims of the Boston Marathon bombings.

Orders Adopted.

Mr. Joyce offered the following order, to wit:

Ordered, that a Senate Special Committee to Improve Government shall be appointed for the purpose of examining and evaluating performance, efficiency, service-delivery and transparency across all public agencies, quasi-public entities and municipalities throughout the commonwealth and matters related thereto. The committee shall seek to identify and recommend measures that will result in increased savings, improved performance and enhanced outcomes for the commonwealth, its political subdivisions and its citizens and may conduct other activities reasonably necessary to carry out its charge. The committee may report legislation to carry out its responsibilities, and the Clerk shall then refer this legislation to the committee on ways and means or on rules, as the case may be. The committee may also, from time to time, report other recommendations by filing them with the Clerk.

Under the rules, referred to the committee on Rules.

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

The rules were suspended, on motion of Mr. Joyce, and the order was considered forthwith and, after remarks, was adopted.

The President announced that the membership of the committee would be Senators Joyce (Chair), Tarr (Vice-Chair), Barrett, Brownsberger, deMacedo, Humason, Lewis and Ross.

Mr. Montigny offered the following order, to wit:

Ordered, that the Senate Committee on Rules shall develop an implementation plan to withdraw from the existing joint committee structure and to establish separate Senate committees to receive, hear and report on all legislative matters which may come before the Senate. The Committee shall draw upon best practices from the forty-six states that employ separate branch committees to develop a system that is transparent, responsive and efficient. In forming the implementation plan, the Committee shall consider: the total number, titles, jurisdictions, and members of the Senate committees; the need to replicate reporting and other deadlines; the allocation of personnel, space and other resources; procedures for joint hearings by separate branch committees; and any changes that may be needed to the Senate Rules or state statutes to facilitate a smooth transition (Senate, No. 47).

Under the rules, referred to the committee on Rules.

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

The rules were suspended, on motion of Mr. Tarr, and the order (Senate, No. 47) was considered forthwith.

After remarks, the question on adoption of the order (Senate, No. 47) was determined by a call of the yeas and nays; at one minute before three o'clock P.M., on motion of Mr. Montigny, as follows, to wit (*yeas 39 –nays 0*) [**Yeas and Nays No. 16**]:

YEAS.

Barrett, Michael J.	Lesser, Eric P.
Brownsberger, William N.	Lewis, Jason M.
Chandler, Harriette L.	L'Italien, Barbara
Chang-Diaz, Sonia	Lovely, Joan B.
Creem, Cynthia Stone	McGee, Thomas M.
deMacedo, Viriato M.	Montigny, Mark C.
DiDomenico, Sal N.	Moore, Michael O.
Donnelly, Kenneth J.	O'Connor Ives, Kathleen
Donoghue, Eileen M.	Pacheco, Marc R.
Downing, Benjamin B.	Petrucelli, Anthony
Eldridge, James B.	Rodrigues, Michael J.
Fattman, Ryan C.	Rosenberg, Stanley C.
Flanagan, Jennifer L.	Ross, Richard J.
Forry, Linda Dorcena	Rush, Michael F.
Gobi, Anne M.	Spilka, Karen E.
Hedlund, Robert L.	Tarr, Bruce E.
Humason, Donald F., Jr.	Timilty, James E.
Jehlen, Patricia D.	Welch, James T.
Joyce, Brian A.	Wolf, Daniel A. – 39.
Keenan, John F.	

NAYS – 0.

ABSENT OR NOT VOTING.

The yeas and nays having been completed at two minutes past three o'clock P.M., the order was adopted.

PAPER FROM THE HOUSE.

A Bill authorizing the town of Scituate to establish the date of its annual town election (printed in House, No. 55,-- being a message from his Excellency the Governor),-- **was read.**

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

Orders of the Day.

The Orders of the Day were considered as, follows:

The House Bill providing for an employee retirement incentive program (House, No. 3189, amended),-- **was read a second time.** After remarks, and pending the question on adoption of the amendment previously recommended by the committee on Ways and Means, and pending the main question on ordering the bill to a third reading, Mr. Moore moved that the proposed new text be amended in section 3, by striking out subsections (b) and (c) and inserting the following two subsections:-

“(b) To be considered eligible by the state board of retirement for any of the benefit options under the retirement incentive program, an employee shall: (i) be a member in service of the state employees’ retirement system pursuant to clause (i) of paragraph (a) of subdivision (1) of section 3 of chapter 32 of the General Laws as of the effective date of this act; (ii) be classified in Group 1 or Group 2 of the state employees’ retirement system pursuant to paragraph (g) of subdivision (2) of said section 3 of said chapter 32 as of the effective date of this act; (iii) be eligible to receive a superannuation retirement allowance in the absence of the retirement incentive program pursuant to subdivision (1) of section 5 of said chapter 32 or subdivision (1) of section 10 of said chapter 32 as of the effective date of this act; and (iv) file a timely application with the board pursuant to said section 4.

(c) Notwithstanding subsections (a) and (b), the following employees shall not be eligible to receive any benefit from the retirement incentive program: (i) elected officials; (ii) employees who are eligible for the retirement incentive program established pursuant to section 40 of chapter 79 of the acts of 2014; and (iii) employees or members of the state employees’ retirement system who, as of the effective date of this act, are not contributing to the retirement system pursuant to section 90G3/4 of chapter 32 of the General Laws or have not completed reinstatement pursuant to section 105 of said chapter 32.”. After remarks, the amendment was *rejected*.

Ms. Donoghue moved that the proposed new text be amended in section 10, by adding the following 2 sentences:- “The report shall also detail the anticipated direct payroll savings from the retirement incentive program based on the number of applications received or anticipated to be received on or before May 29, 2015. If the anticipated direct payroll savings is less than \$325,100,000 or if the anticipated net savings is less than \$171,900,000 in fiscal year 2016, the report shall describe in detail which additional measures, including implementation of clauses (i), (ii) and (iv) of subsection (b) of section 2, shall immediately be instituted so that the total direct payroll savings shall equal or exceed a net savings of \$171,900,000 in fiscal year 2016.”. After remarks, the amendment was **adopted**.

Mr. Rodrigues moved that the proposed new text be amended in section 3, line 55, by striking out the word “not.” The amendment was *rejected*.

Mr. Donnelly moved that the proposed new text be amended by striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 48, relative to cost benefit analysis. After remarks, the amendment was *rejected*.

Messrs. Rush and Keenan moved that the proposed new text be amended by striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 49, relative to comprehensive early retirement program. After debate, the amendment was *rejected*.

Mr. Keenan moved that the proposed new text be amended in section 3, in line 48, by striking out the words “capital appropriation, federal grants, or”;

In section 3, in line 48, by striking the words “each is”; and

By inserting at the end of section 9 the following new paragraph:-

“The refilling of positions vacated by employees from federal accounts pursuant to the retirement incentive program shall not be subject to the limitations set forth in the retirement incentive program; provided further, that agencies with positions vacated from federal and trust accounts shall first fill such positions with qualified persons currently employed by the commonwealth and paid with state funds; provided, however, that if no such qualified personnel are currently employed by the commonwealth, agencies

may hire new employees to backfill such positions vacated from federal and trust accounts.”
The amendment was *rejected*.

Mr. Keenan moved that the proposed new text be amended in section 1, in lines 4-6, by striking out the following words:-
““Agency” the office of the governor, an executive office established in section 2 of chapter 6A of the General Laws or an agency, bureau, department, office or division of the commonwealth within or reporting to such executive office.”;
In said section 1, in line 10, by striking out the following words:- ““Executive department employee”, a person who is employed by an agency.”;
In section 3, in line 32, by striking out the following words:- “for executive department employees”;
In section 3, by striking out the words “be an executive department employee” in lines 36-37, and inserting in place thereof the following:-“shall be an employee of the commonwealth”;
In section 5, by striking the words “5 years” in line 75, and inserting in place thereof the words:- “3 years”;
By striking out section 9 and inserting in place thereof the following section:-
“SECTION 9. A position vacated as a result of participation by an eligible employee in the retirement incentive program may be filled with the approval of the secretary of administration and finance; provided, however, that the total annualized cost of regular compensation paid out by the commonwealth in fiscal year 2016 for all refilled positions shall not exceed 20 per cent of the total annualized cost of regular compensation that would have been paid out by the commonwealth during fiscal year 2016 for positions vacated pursuant to the retirement incentive program had the positions not been vacated; provided further, that the total annualized cost of regular compensation paid out by the commonwealth in fiscal year 2017 for all refilled positions shall not exceed 20 per cent of the total annualized cost of regular compensation which would have been paid out by the commonwealth during fiscal year 2017 for positions vacated pursuant to the retirement incentive program had the positions not been vacated.”;
and
In section 12, in line 175, by striking out the following words:-“of the executive department”.
The amendment was *rejected*.

Mr. Keenan moved that the proposed new text be amended in section 3, by inserting after the word “contrary” in line 31, the following text:- “, and not before receiving the report and notice required under subsections (c) and (d) of section 2 of this act”.
After remarks, the amendment was **adopted**.

Mr. Keenan moved that the proposed new text be amended in section 3, subsection (c), by striking out the word “and” in line 51, and inserting after the words “chapter 32” in line 54, the following text:- “; and (v) employees whose annual rate of compensation as of April 27, 2015 exceeds \$125,000”.
The amendment was *rejected*.

Messrs. Keenan and Barrett moved that the proposed new text be amended in section 1 by striking the definition of “Critical position” and inserting in place thereof the following definition:-
“‘Critical position’, a position that is important to an agency’s ability to carry out its mission, as determined for each agency by the secretary of the relevant executive office.”; and by inserting after the word “positions” in line 21 the following:- “, as identified by each secretary pursuant to section 1 of this act.”.
The amendment was *rejected*.

Messrs. Keenan and Barrett moved that the proposed new text be amended by striking the word “may” in line 20, and inserting in place thereof the word:- “shall”.
The amendment was *rejected*.

Mr. Keenan moved that the proposed new text be amended by striking the word “may” in line 31, and inserting in place thereof the word:- “shall”.
The amendment was *rejected*.

Mr. Keenan moved that the proposed new text be amended in section 1, by adding the following definition:-
““Priority fill position”, a position that is important to an agency’s ability to carry out its mission as determined for each agency by the secretary of the relevant executive office and, if vacated under this act, may be considered a priority to be refilled pursuant to section 9.”;
In section 2, by striking out, in lines 22 to 23, inclusive, the words “shall file with the house and senate committees on ways and means and the state board of retirement a report listing the critical positions by agency” and inserting in place thereof the following words:- “priority fill positions. Not later than April 24, 2015, the secretary of administration and finance shall file with the house and senate committees on ways and means and the state board of retirement a report listing the critical and priority fill positions by agency”; and
In section 9, by inserting after the word “vacated”, in line 147, the following words:- “; and provided further, that when filling vacated positions the secretary of administration and finance shall ensure that priority fill positions are filled to the maximum extent possible within the cost constraints of this section before the secretary approves the filling of any other position that is not a priority fill position”.
After remarks, the amendment was **adopted**.

Mr. Keenan moved that the proposed new text be amended by striking the words “or (iv)” in line 17 and inserting in place thereof the following:-

“(iv) retiring employees in accordance with section 16 of chapter 32 who as of April 27, 2015 are eligible for retirement and whose total normal yearly amount of retirement allowance as of that date, as determined pursuant to said section 5 of said chapter 32, will be equal to four fifths of the average annual rate of his regular compensation received during any period of three consecutive years of creditable service for which such rate of compensation was the highest or on the average annual rate of regular compensation received by such member during the period or periods, whether or not consecutive, constituting his last three years of creditable service preceding retirement, whichever is the greater; or (v);” and by striking the words “and (iv) in lines” 27, 29, and 164, and inserting in place thereof, in each instance, the following:- “, (iv) and (v)”

The amendment was *rejected*.

Mr. Keenan moved that the proposed new text be amended in section 2, by inserting after the figure “\$325,100,000”, in line 12, the following words:- “or net savings of not less than \$171,900,000”.

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

Mr. Keenan moved that the proposed new text be amended by striking the words “80 per cent” in line 79 and inserting in place thereof the words “four fifths”.

The amendment was **adopted**.

Ms. Chang-Diaz moved that the proposed new text be amended in section 2, by inserting after subsection (d) the following:-

“(e) The secretary of administration and finance shall, not later than April 27, 2015, file with the house and senate committees on ways and means a report detailing roughly what proportion of the aggregate 4,500 staff reductions identified in subsection (b) each agency is able to absorb without compromising service.

(f) This Act shall have an effective date of one week following the receipt of the report described in subsection (e).”

After remarks, the amendment was *rejected*.

Ms. Spilka moved that the proposed new text be amended in section 2, by striking out, in lines 18 and 19, the words “eligible employees who retire, resign or are laid off” and inserting in place thereof the following words:- “executive department employees that may be reduced”;

In said section 2, by striking out, in lines 20 and 24, the figure “27” and inserting in place thereof the following figure:- “24”;

In said section 2, by striking out, in line 26 and in lines 28 and 29, the words “employees anticipated to separate from state service” and inserting in place thereof the following words:- “executive department employees reduced”;

In section 3, by striking out, in line 34, the words “length of creditable service with lengthier service receiving priority” and inserting in place thereof the following words:- “total creditable service as of June 30, 2015 with participants who have the greater total length of service receiving priority”;

In said section 3, by striking out, in lines 50 to 51, inclusive, the words “(iii) employees who are eligible for the retirement incentive program established pursuant to section 40 of chapter 79 of the acts of 2014; and (iv)” and inserting in place thereof the following words:- “and (iii)”;

In said section 3, in subsection (c), by adding the following sentence:- “An employee who receives any benefit under this act shall not be eligible for the provisions of section 40 of chapter 79 of the acts of 2014.”; and

In section 7, by striking out, in line 114, the figure “60” and inserting in place thereof the following figure:- “90”.

The amendment was **adopted**.

The Ways and Means amendment, as amended, was then adopted.

The bill, as amended, was then ordered to a third reading, read a third time and, after debate, was passed to be engrossed, in concurrence, with the amendment [For text of Senate amendments, see Senate, No. 50, printed as amended].

Sent to the House for concurrence in the amendment.

PAPER FROM THE HOUSE

Engrossed Bill.

An engrossed Bill establishing a sick leave bank for James O’Brien, an employee of the Department of Developmental Services (see Senate, No. 18) (which originated in the Senate), having been certified by the Senate Clerk to be rightly and truly prepared for final passage, was passed to be enacted and signed by the President and laid before the Governor for his approbation.

Order Adopted.

On motion of Mr. Tarr,--

Ordered, That when the Senate adjourns today, it adjourn to meet again tomorrow next at eleven o’clock A.M., and that the Clerk be directed to dispense with the printing of a calendar.

As a mark of respect to the memory of the victims of the Boston Marathon Bombing, at a quarter before five o’clock P.M., on motion of the same Senator, the Senate adjourned to meet again tomorrow at eleven o’clock A.M.