

Senate Journal

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UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



JOURNAL OF THE SENATE.

Monday, March 23, 2009.

Met at two minutes past at eleven o'clock A.M. (Mr. Petruccelli in the Chair).

The Chair (Mr. Petruccelli), members, guests and employees then recited the pledge of allegiance to the flag.

Communication.

A communication from the Honorable Therese Murray, President of the Senate, announcing the appointment of Senator Gale D. Candaras as the Massachusetts Senate appointment to the Massachusetts Birth to School-Age Task Force,— **was placed on file.**

Petitions.

Petitions were presented and referred as follows:

By Mr. Michael O. Moore, a petition (accompanied by bill, Senate, No. 2020) of Michael O. Moore (with approval of the mayor and city council) for legislation concerning the adoption of funding schedules by the city of Worcester Retirement Board [Local approval received]; and By Mr. Michael O. Moore, a petition (accompanied by bill, Senate, No. 2021) of Michael O. Moore and Harriette L. Chandler (with approval of the mayor and city council) for legislation to provide for the work force reduction of the city of Worcester through an early retirement

incentive program for employees [Local approval received];
Severally, under Senate Rule 20, to the committee on Public Service.
Severally sent to the House for concurrence.

Report of a Committee.

By Mr. Buoniconti, for the committee on Financial Services, on Senate, No. 461 and House, Nos. 888 and 1053, a Bill relative to an appeal process of insurance premium surcharges under managed competition (Senate, No. 2022);

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

Message from the Governor.

A message from His Excellency the Governor recommending legislation to mobilize economic recovery in Massachusetts (Senate, No. 2019) (received in the office of the Clerk of the Senate on Friday, March 20, 2009 at four o'clock P.M.),— was referred to the committee on the Economic Development and Emerging Technologies.

Recess.

There being no objection, at nine minutes past eleven o'clock A.M., the Chair (Mr. Petrucci) declared a recess subject to the call of the Chair; and, at twenty-one minutes past three o'clock P.M., the Senate reassembled, Mr. Petrucci in the Chair.

Report of a Committee.

By Mr. Baddour, for the committee on Transportation, on petition, a Bill modernizing the transportation systems of the Commonwealth (Senate, No. 10);

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

Orders Adopted.

Mr. Panagiotakos offered the following order, to wit:

Ordered, That notwithstanding Senate Rule 7, or any other rule to the contrary, the Senate Bill modernizing the transportation systems of the Commonwealth (Senate, No. 10), to be reported by the committee on Ways and Means on Tuesday, March 24, 2009, with a recommended amendment, shall be placed in the Orders of the Day for consideration of its second reading on Wednesday, March 25, 2009.

All amendments to the bill shall be filed electronically in the office of the Clerk of the Senate by 7 P.M. on Tuesday, March 24, 2009. All such amendments shall be second-reading amendments, but further amendments in the third degree to such amendments shall be in order. The Clerk shall further specify the procedure and format for filing all amendments, consistent with this order.

After the bill as amended is ordered to a third reading, it shall immediately be read a third time and the question shall then immediately be on passing it to be engrossed, and no amendments shall be in order at the third reading of the bill unless recommended by

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JOURNAL OF THE SENATE.

Tuesday, March 24, 2009

Met at two minutes past at eleven o'clock A.M. (Mr. Rosenberg in the Chair).

The Senator from Essex and Middlesex, Mr. Tarr, led the Chair (Mr. Rosenberg), members, guests and employees in the recitation of the pledge of allegiance to the flag.

Committee Discharged.

Mr. Kennedy, for the committee on Election Laws, reported, asking to be discharged from further consideration

Of the petition (accompanied by bill, Senate No. 342) of Benjamin B. Downing for legislation relative to protecting consumers during a state of emergency, - **and recommending that the same be referred to the committee on Consumer Protection and Professional Licensure; and**

Of the petition (accompanied by bill, Senate No. 349) of Anthony D. Galluccio and Karen E. Spilka for legislation relative to an employment marketability curriculum, - **and recommending that the same be referred to the committee on Education;**

Under Senate Rule 36, the reports were severally considered forthwith and accepted.

Severally sent to the House for concurrence.

Resolutions.

The following resolutions (having been filed with the Clerk) were severally considered forthwith and adopted, as follows:-

Resolutions (filed by Mr. Brown) "congratulating the New England Center for the Performing Arts on its celebration of March as Arts Education Month".

Reports of a Committee.

By Mr. Panagiotakos, for the committee on Ways and Means, that the Senate Bill relative to an appeal process of insurance premium surcharges under managed competition (Senate, No. 2022),— **ought to pass, with an amendment** in section 1, in the first paragraph of the proposed section 7A of chapter 175E of the General Laws, by striking out the last sentence.

The rules were suspended, on motion of Mr. Tarr, and the bill was read a second time and was amended, as recommended by the committee on Ways and Means.

The bill (Senate, No. 2022, amended) was then ordered to a third reading.

By Mr. Panagiotakos, for the committee on Ways and Means, that the Senate Bill modernizing the transportation systems of the Commonwealth (Senate, No. 10),— **ought to pass, with an amendment substituting a new draft with the same title (Senate, No. 2023) (Senator Spilka dissenting).**

Under the provisions of an order previously adopted by the Senate, the bill was placed in the Orders of the Day for a second reading, with the amendment pending.

Recess.

There being no objection, at twenty-five minutes past eleven o'clock A.M., the Chair (Mr. Rosenberg) declared a recess subject to the call of the Chair; and, at twenty-three minutes before three o'clock P.M., the Senate reassembled, the President in the Chair.

At twenty-three 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 not present.

Subsequently, at twenty minutes before three o'clock P.M., the President declared that a quorum was present.

PAPER FROM THE HOUSE.

Engrossed Bill.

An engrossed Bill extending the Commonwealth's authority to guarantee obligations of the Massachusetts Turnpike Authority (see House Bill, printed in House, No. 100, amended) (which originated in the House), having been certified by the Senate Clerk to be rightly and truly prepared for final passage, - **was laid before the Senate for its final passage.**

Mr. Montigny moved that the engrossed bill be laid on the table; and, in accordance with the provisions of Senate Rule 24, the consideration of the motion to lay on the table was postponed, without question, until the next session.

Recess.

There being no objection, at six minutes before three o'clock P.M., the President declared a recess subject to the call of the Chair; and, at three minutes past four o'clock P.M., the Senate reassembled, the President in the Chair.

At three minutes past four o'clock P.M., Mr. Tisei doubted the presence of a quorum; and, a count of the Senate determined that a quorum was not present. Subsequently, at nine minutes past four o'clock P.M., the President declared that a quorum was present.

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 Senate Bill relative to an appeal process of insurance premium surcharges under managed competition (Senate, No. 2022, amended),-- was read a third time.

Pending the question on passing the bill to be engrossed, Mr. Hart moved that the bill be laid on the table; and, in accordance with the provisions of Senate Rule 24, the consideration of the motion to lay on the table was postponed, without question, until the next session.

Order Adopted.

On motion of Mr. Chandler,--

Ordered, That when the Senate adjourns today, it adjourn to meet again tomorrow at a half past twelve o'clock noon, in a full formal session.

On motion of Mr. Tisei, at eleven minutes past four o'clock P.M., the Senate adjourned to meet again tomorrow at a half past twelve o'clock noon.

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JOURNAL OF THE SENATE.

Wednesday, March 25, 2009.

Met at a half past at twelve o'clock noon (Mr. Rosenberg in the Chair).

Distinguished Guest.

There being no objection, during consideration of the Orders of the Day, the President handed the gavel to Mr. Tarr for the purpose of recognizing the achievement of one of Mr. Tarr's staff. Mr. Tarr then recognized Daniel Pawson, a member of his staff, for his success in being a winning contestant on the game show Jeopardy.

Petition.

Mr. Eldridge presented a petition (subject to Joint Rule 12) of James B. Eldridge, Harriette L. Chandler, Carolyn Dykema, Harold P. Naughton, Jr. and other members of the General Court for legislation to establish a special commission on the reuse of Westborough State Hospital,— **and the same was referred, under Senate Rule 20, to the committees on Rules of the two branches, acting concurrently.**

Recess.

There being no objection, at twenty-nine minutes before one o'clock P.M., the Chair (Mr. Rosenberg) declared a recess subject to the call of the Chair; and, at twenty minutes before

statewide.

The amendment was adopted.

There being no objection, during consideration of the Orders of the Day, the following matters were taken out of order, and considered as follows:

The Senate Bill relative to an appeal process of insurance premium surcharges under managed competition (Senate, No. 2022, amended), was considered, the question being on passing the bill to be engrossed.

The pending motion, previously moved by Mr. Hart, to lay the matter on the table was considered; and it was negatived.

Mr. Hart moved that the bill be amended by adding the following section:—

“SECTION 3. The commissioner of insurance shall file a report with the joint committee on financial services no later than July 1, 2009, or within 90 days of the effective date of this act, providing a summary of efforts made to facilitate the transition of exclusive representative producers to voluntary agents and the outcome of those efforts, including the remaining number of non-appointed agents in the market. The report shall further examine private passenger automobile insurance premium payment plans and down payments required by insurers in the voluntary and residual market. The commissioner shall meet with all exclusive representative producers and insurers writing private passenger automobile insurance in the commonwealth who request such a meeting to provide agents with technical assistance and encourage voluntary contracts between agents and insurers. The meetings shall take place within 30 days of the effective date of this act.”

After remarks, the amendment was rejected.

Mr. Buoniconti doubted the vote, and asked for a standing vote; subsequently by a standing vote of 10 to 0, the amendment was adopted.

After further remarks, the question on passing the bill to be engrossed was determined by a call of the yeas and nays, at sixteen minutes past four o'clock P.M., on motion of Mr. Hart, as follows, to wit (yeas 39 — nays 0) [Yeas and Nays No. 21]:

YEAS.

Baddour, Steven A. Knapik, Michael R.
Berry, Frederick E. McGee, Thomas M.
Brewer, Stephen M. Menard, Joan M.
Brown, Scott P. Montigny, Mark C.
Buoniconti, Stephen J. Moore, Michael O.
Candaras, Gale D. Moore, Richard T.
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
Eldridge, James 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 — 39.
Kennedy, Thomas P.

NAYS — 0.

The yeas and nays having been completed at twenty minutes past four o'clock P.M., the bill (Senate, No. 2022, amended) was passed to be engrossed.
Sent to the House for concurrence.

The engrossed Bill extending the Commonwealth's authority to guarantee obligations of the Massachusetts Turnpike Authority (see House Bill, printed in House, No. 100, amended) (which originated in the House), having been certified by the Senate Clerk to be rightly and truly prepared for final passage, — was laid before the Senate for its final passage. After debate, the pending motion, previously moved by Mr. Montigny, to lay the matter on the table was considered; and it was negatived.

After further debate, Mr. Montigny moved that the engrossed bill be laid on the table; and, in accordance with the provisions of Senate Rule 24, the consideration of the motion to lay on the table was postponed, without question, until the next session.

The Senate Bill modernizing the transportation systems of the Commonwealth (Senate, No. 10), was further considered, the main question being on ordering it to a third reading.

Mr. Pacheco moved that the bill be amended in section 5, of proposed section 70 of chapter 7 by striking out the following words, "the commission's written approval of a request for proposal for design-build-finance-operate-maintain or design-build-operate-maintain services shall be deemed to satisfy the requirements of sections 52 to 55, inclusive of chapter 7."; and inserting after paragraph 6 in said section 70 the following:—

In order to submit the commission's written approval of a request for proposal for design-build-finance-operate-maintain or design-build-operate-maintain services to the state auditor, the commission's process shall be sufficient to satisfy the requirements of sections 52 to 55, inclusive of chapter 7."

The amendment was adopted.

Ms. Spilka, Ms. Creem, Messrs. McGee, Eldridge, Petruccelli, Brown and Michael O. Moore moved that the bill be amended, in SECTION 20, be amended by inserting after the words "the acts of 1995;" in line 1526, the following: "and provided, that the authority shall continue the toll discount program created on June 28, 2002 and apply that discount to all increases in tolls charged and collected after the effective date of section 45 of chapter 246 of the acts of 2002."

The amendment was adopted.

Ms. Spilka, Ms. Creem, Messrs. Brown, McGee, Eldridge, Petruccelli, and Downing moved that the bill be amended in SECTION 25 by adding at the end thereof the following words: "provided further, that the authority shall not increase tolls without first providing, at a public hearing, a written evaluation of the funding shortfall facing the authority and all feasible statewide revenue options at its disposal; and provided further, that the authority shall not authorize a toll increase that amounts, in the aggregate, to more than 15 percent of the identified funding shortfall unless such restriction shall violate a binding covenant of an

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JOURNAL OF THE SENATE:

Wednesday, April 8, 2009.

Met according to adjournment (Mr. Rosenberg in the Chair).

Distinguished Guests.

There being no objection, the President handed the gavel to Mr. McGee for the purpose of an introduction. Mr. McGee then introduced Alexander Singer, a student at Saugus High School. Alexander was invited to spend the day with Senator McGee as part of the Town of Saugus Shadow Day. The Senate welcomed him with applause and he withdrew from the Chamber.

There being no objection, the President handed the gavel to Mr. Joyce for the purpose of an introduction. Mr. Joyce then introduced the Milton High School Division 2 Boys Basketball Championship team. The team had an astounding victory with an 81-44 win over Hoosac Valley to win the Division 2 State Championship last month. The members of the team are: Cody Clark, Marshall Kennedy, Coleman Durgin, Captain Marcus McDermott, Tom Ranton, Captain Gabe Blanchette, Captain Tim Potts, Tom Carten, Joe Renehan, Owen Flanagan, Nasara Hassan, Daniel Santos, Ben St. Gerard and Emanuel Hutcherson. The team was accompanied by Head Coach Sean LoPresti, Milton High School Principal John Drotter and Superintendent Mary Gormley.

Committee Discharged.

Mr. Berry, for the committee on Ethics and Rules, reported, asking to be discharged from further consideration of the Senate Bill relative to pandemic and disaster preparation and response in the Commonwealth (Senate, No. 2028),— and recommending that the same be referred to the Senate committee on Ways and Means.

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

PAPERS FROM THE HOUSE.

A petition (accompanied by bill, House, No. 4050) of Robert J. Nyman and Michael W. Morrissey (by vote of the town) that the town of Rockland be authorized to set a supplementary tax assessment in said town,— was referred, in concurrence, to the committee on Revenue.

A Bill establishing a sick leave bank for Paulette Wojtowicz (House, No. 2604— on petition),— was read and, under Senate Rule 27, referred to the committee on Ways and Means.

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 seventeen minutes before two o'clock P.M., the Senate reassembled, the President in the Chair.

The President, members, guests and employees 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. Pacheco) “congratulating Sean Mahoney upon his elevation to the rank of Eagle Scout”;

Resolutions (filed by Mr. Pacheco) “congratulating Dan Somerville upon his elevation to the rank of Eagle Scout”; and

Resolutions (filed by Mr. Timilty) “congratulating Walpole High School on its one hundredth anniversary.”

PAPERS FROM THE HOUSE.

The Senate Bill relative to an appeals process of insurance (Senate, No. 2022, amended),— came from the House passed to be engrossed, in concurrence with an amendment in section 2 striking out the sentence contained in lines 15 to 18, inclusive and inserting in place thereof the following sentence: “If the board finds that the insurer’s application to the safe driver insurance plan, merits rating plan or determination of fault was not in accordance with those standards and provisions, it shall order the insurer to make the appropriate premium adjustment and the insurer shall notify the merit rating board and any other data collection agency the insurer reported the surcharge or at fault accident to, to remove the insured’s corresponding surcharge points and at fault determination.”. The rules were suspended, on motion of Mr. Buoniconti, and the House amendment was

considered forthwith, and adopted.

Mr. Tisei doubted the vote and asked for a call of the yeas and nays; and a sufficient number having arisen, the yeas and nays were ordered.

The question on concurring in the House amendment was determined by a call of the yeas and nays, at thirteen minutes before two o'clock P.M., on motion of Mr. Tisei, as follows, to wit (yeas 37 — nays 0) [Yeas and Nays No. 30]:

YEAS.

Baddour, Steven A. Creem, Cynthia Stone
Brewer, Stephen M. Donnelly, Kenneth J.
Brown, Scott P. Benjamin B..
Buoniconti, Stephen J. Eldridge, James B..
Candaras, Gale D. Flanagan, Jennifer L.
Chandler, Harriette L. Galluccio, Anthony D.
Chang-Diaz, Sonia Hart, John A., Jr.
Hedlund, Robert L. Pacheco, Marc R.
Jehlen, Patricia D. Panagiotakos, Steven C.
Joyce, Brian A. Petruccelli, Anthony
Kennedy, Thomas P. Rosenberg, Stanley C.
Knapik, Michael R. Spilka, Karen E.
McGee, Thomas M.. Tarr, Bruce E.
Menard, Joan M. Timilty, James E.
Montigny, Mark C.. Tisei, Richard R.
Moore, Michael O. Tolman, Steven A.
Moore, Richard T. Tucker, Susan C.
Morrissey, Michael W. Walsh, Marian — 37.
O'Leary, Robert A.

NAYS — 0.

ABSENT OR NOT VOTING.

Berry, Frederick E. Fargo, Susan C. — 2.

The yeas and nays having been completed at ten minutes before two o'clock P.M., the House amendment was adopted, in concurrence. (as corrected BTR).

A Bill relative to the charter in the town of Auburn (House, No. 4049,— on petition) [Local approval received],— was read.

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

Engrossed Bill.

An engrossed Bill authorizing the city of Beverly to grant 2 additional licenses for the sale of certain alcoholic beverages to be drunk on the premises (see House, No. 3795) (which originated in the House), having been certified by the Senate Clerk to be rightly and truly

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JOURNAL OF THE SENATE.

Thursday, April 9, 2009.

Met at one minute past eleven o'clock A.M. (Mr. Petruccelli in the Chair) (having been appointed by the President, under authority conferred by Senate Rule 4, to perform the duties of the Chair).

The Chair (Mr. Petruccelli), members, guests and employees then recited the pledge of allegiance to the flag.

Distinguished Guests.

There being no objection, the Chair (Mr. Petruccelli) handed the gavel to Mr. Brown for the purpose of an introduction. Mr. Brown then introduced the Wellesley High School Boys Alpine Skiing Team. The team was recognized for being the 2009 State Champions. The Senate applauded their accomplishments and they withdrew from the Chamber.

Communication.

A communication from the Honorable Richard R. Tisei, Senate Minority Leader, announcing the appointment of Senator Robert L. Hedlund to the Special Commission established (pursuant to Chapter 9 of the Resolves of 2008) relative to designating 1,000 great places in the Commonwealth, — was placed on file.

Report of a Committee.

Mr. Morrissey, for the committee on Consumer Protection and Professional Licensure, on petition, a Bill authorizing the town of Bellingham to grant additional licenses for the sale of alcohol. (Senate, No. 152) [Local approval received];
Read and, under Senate Rule 26, placed in the Orders of the Day for the next session.

Communication.

The Clerk read the following communication:

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

April 9, 2009.

William Welch, Clerk
Massachusetts State Senate
State House, Room 335
Boston, MA 02133

Dear Mr. Clerk:

I was unable to attend the Senate session on April 8, 2009. Had I been present, I would have voted in favor of the following:

* Concurrence with a House amendment to Senate Bill, No. 2022, An Act Relative to an Appeal Process of Insurance Premium Surcharges Under Managed Competition.

I respectfully request that a copy of this letter be printed in the Senate Journal as part of the official record for April 8, 2009.

Thank you in advance for your attention to this important matter.

Sincerely,
Frederick E. Berry,
Majority Leader.

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

Petition.

On motion of Mr. Brown, Senate Rule 20 and Joint Rule 12 were suspended on the petition, presented by Mr. Brewer (accompanied by bill) of Stephen M. Brewer and Anne M. Gobi for legislation to designate a certain bridge in the town of Barre as the Howard W. Dahart Memorial Bridge,— and the same was referred to the committee on Transportation.
Sent to the House for concurrence.

PAPERS FROM THE HOUSE.
Emergency Preamble Adopted.

An engrossed Bill relative to an appeal process of insurance premium surcharges under managed competition (see Senate, No. 2022, amended), 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 2 to 0.
The bill was signed by the Acting President (Mr. Petruccelli) and sent to the House for enactment.

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 Acting President (Mr. Petruccelli) and laid before the Governor for his approbation, to wit:
Relative to an appeal process of insurance premium surcharges under managed competition (see Senate, No. 2022, amended); and
Relative to the charter in the town of Auburn (see House, No. 4049).

Order Adopted.

On motion of Mr. Brown,—

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

On motion of the same Senator, at twenty-seven minutes past eleven o'clock A.M., the Senate adjourned to meet again on Monday next at eleven o'clock A.M.