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UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



JOURNAL OF THE SENATE.

Tuesday, July 14, 2009.

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

Petitions.

Petitions were presented and referred, as follows:

By Mr. Buoniconti, a petition (subject to Joint Rule 12) of Stephen J. Buoniconti, James T. Welch, Scott P. Brown, Michael R. Knapik and other members of the General Court for legislation to promote responsible and effective transitional assistance;

By Mr. Richard T. Moore, a petition (subject to Joint Rule 12) of Richard T. Moore for legislation to designate a certain bridge in the town of Uxbridge as the Titus Ebbeling Memorial Bridge;

By Mr. Richard T. Moore, a petition (subject to Joint Rule 12) of Richard T. Moore for legislation to designate a certain area of the Blackstone River and Canal Heritage State Park as the Spaulding R. Aldrich Recreation Area; and

By Mr. O'Leary, a petition (subject to Joint Rule 12) of Robert A. O'Leary for legislation to establish the Massachusetts Center for Hurricane Research;

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

Report of a Committee

By Mr. Morrissey, for the committee on Telecommunications, Utilities and Energy, on petition; a Bill relative to reliability on Cape Cod (Senate, No. 1529);

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

Committee Discharged

Mr. Galluccio, for the committee on Higher Education, reported, asking to be discharged from further consideration of the petition (accompanied by bill, Senate, No. 609) of Richard T. Moore for legislation relative to the qualifying student health insurance program,-- and recommending that the same be referred to the committee on Health Care Financing.

**Under Senate Rule 36, the report was considered forthwith and accepted.
Sent to the House for concurrence.**

PAPERS FROM THE HOUSE.

A message from His Excellency the Governor (under the provisions of Section 8 of Article LXXXIX of the Amendments to the Constitution) relative to validating a certain vote passed by the town of Foxborough (House, No. 4161),-- **was referred, in concurrence, to the committee on Election Laws.**

A petition (accompanied by bill, House, No. 1913) of John W. Scibak and Stanley C. Rosenberg (by vote of the town) for legislation to establish a department of public works in the town of Hadley,-- **was referred, in concurrence, to committee on Municipalities and Regional Government**

A Bill relative to establish a sick leave bank for Gayle Tickel, an employee of the Department of Correction (House, No. 1155, amended,- on petition),-- **was read and, under Senate Rule 27, referred to the committee on Ways and Means**

Bills

Authorizing the city of Gardner to convey certain park land (House, No. 612,- on petition) [Local approval received];

Establishing the Arlington Redevelopment Board as the Board of Survey (House, No. 3471,- on petition) [Local Approval received]; and

Authorizing the town of Hanover to establish another post employment benefit trust fund (House, No. 3819,- on petition) [Local approval received];

Were severally read and, under Senate Rule 26, placed in the Orders of the Day for the next session.

Recess.

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

PAPERS FROM THE HOUSE.

A Bill further regulating appropriations for the fiscal year 2010 (House, No. 4160,- on House, No. 4155, in part),- **was read.**

There being no objection, the rules were suspended, on motion of Mr. Panagiotakos, and the bill was read a second time, ordered to a third reading and read a third time .

After debate, the question on passing the bill to be engrossed was determined by a call of the yeas and nays, at twenty-eight minutes before four o'clock P.M. on the motion of Mr. Montigny as follows, to wit (yeas 30 – nays 7) [Yeas and Nays No. 88]:

INSERT ROLL CALL "88"

The yeas and nays having been completed at twenty-two minutes before four o'clock P.M., the bill was passed to be engrossed, in concurrence.

A Bill relating to economic recovery through broadband initiatives in Massachusetts (House, No. 4158,- on petition),- was read.

There being no objection, the rules were suspended, on motion of Mr. Downing, 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 providing for economic recovery through broadband initiatives".

Matter Taken Out of the Notice Section of the Calendar.

There being no objection, the following matter was taken out of the Notice Section of the Calendar and considered as follows:

The House Bill authorizing the city of Woburn to convey certain land (House, No. 1112),-- was 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 authorizing the exchange of parcels of land in the city of Woburn".

Report of a Committee.

By Mr. Panagiotakos, for the committee on Ways and Means, that the Senate Bill to establish a sick leave bank for Kathleen Ginn, and employee of the Department of Mental Retardation (Senate, No. 2089),— ought to pass.

There being no objection, the rules were suspended, on motion of Mr. Brewer, and the bill was read a second time, ordered to a third reading, read a third time and was passed to be engrossed, its title having been changed by the committee on Bills in the Third Reading to read as follows: "An Act establishing a sick leave bank for Kathleen Ginn, and employee of the Department of Developmental Services".
Sent to the House for concurrence.

PAPERS FROM THE HOUSE

Engrossed Bill—Land Taking for Conservation Etc.

An engrossed Bill relative to the Charlestown Navy Yard (see House, No. 4075) (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 of 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 nineteen minutes before four o'clock P.M., as follows, to wit (yeas 37 - nays 0) [Yeas and Nays No. 89]:

INSERT ROLL CALL [89]

The yeas and nays having been completed at quarter before four 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.

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

A petition (accompanied by bill, House, No. 1914) of Robert F. Fennell for legislation to establish a sick leave bank for Jocelyn Burns, and employee of the Trial Court;
Under suspension of Joint Rule 12, to the committee on the Judiciary.

A petition (accompanied by bill, House, No. 1915) of Jennifer M. Callahan and Richard T. Moore for legislation to establish a sick leave bank for Bruce Bagdasarian, an employee of the Westborough State

Hospital;

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

Report of a Committee.

By Mr. Panagiotakos, for the committee on Ways and Means, that the Senate Bill to regulate the sport of mixed martial arts (Senate, No. 998),— **ought to pass.**

There being no objection, the rules were suspended, on motion of Mr. Timilty, and the bill was read a second time and ordered to a third reading.

PAPERS FROM THE HOUSE

Emergency Preambles Adopted.

An engrossed Bill providing for economic recovery through Broadband Initiatives (see House, No. 4158), 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 3 to 0.

The bill was signed by the President and sent to the House for enactment.

An engrossed Bill relative to certain appropriations by the Commonwealth (see House, No. 4160), 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 5 to 0.

The bill was signed by the President and sent to the House for enactment.

The House Bill preventing oil spills in Buzzards Bay (House, No. 4119),—came from the House with the endorsement that the House had NON-concurred in the Senate amendments in section 1, in line 9, striking out the words “denies boarding to” and inserting in place thereof the words: “fails to request”; in section 2, in lines 25 to 29), inclusive, (as changed by the Senate committee on Bills in the Third Reading), inclusive, striking out all after the words “equipped with:” and inserting in place thereof the following:—“(i) twin radar displays equipped with ECDIS or ARPA capable of integrating AIS; (ii) a towing winch and associated wire and gear capable of towing, at minimum, a 470 foot fully loaded tank vessel; and (iii) fire fighting equipment as determined adequate by the commissioner pursuant to subsection (c) of section 6.”; inserting after section 3, the following four sections:

“SECTION 3A. Section 8 of said chapter 21M is hereby amended by striking out the words ‘rescue tugs dispatched under section 9’, inserted by section 6 of chapter 268 of the acts of 2008, and inserting in place thereof the following words:- state-provided tugboat escorts dispatched under section 9.

SECTION 3B. Subsection (c) of said section 8 of said chapter 21M, as amended by section 7 of said chapter 268, is hereby further amended by striking out clause (1) and inserting in place thereof the following clause:- (1) A uniform oil spill response and prevention fee in an amount not exceeding \$.05 for each barrel of petroleum product shall be imposed upon a person owning petroleum products at the time the petroleum products are received at a marine terminal within the commonwealth by means of a vessel from a point of origin outside the commonwealth; provided, however, that the fee shall be remitted to the department of revenue on the thirtieth day of each month based upon the number of barrels of petroleum products received during the preceding month; provided, further, that on or after July 1, 2015, if the commissioner calculates that the financial burden placed upon the commonwealth by the increase of covered vessels under the state escort tug program is sufficiently greater than the resources provided by the fee, the commissioner may increase the fee to not more than \$.07 for each barrel of petroleum product; and provided further, that the

commissioner submit a report justifying an increase to a rate higher than \$.05 per barrel to the house and senate committees on ways and means and to the joint committee on environment, natural resources and agriculture at least 90 days before the effective date of the increase.

SECTION 3C. Clause (10) of subsection (d) of said section 8 of said chapter 21M, added by section 10 of said chapter 268 of the acts of 2008, is hereby amended by striking out the words 'rescue tugs' and inserting in place thereof the following words:- state-provided tugboat escorts.

SECTION 3D. Subclause (vii) of clause (1) of subsection (f) of said section 8 of said chapter 21M, added by section 12 of said chapter 268 of the acts of 2008, is hereby amended by striking out the words 'rescue tugs' and inserting in place thereof the following words:- state-provided tugboat escorts."; and striking out section 4 and inserting in place thereof the following section:-

"SECTION 4. Said chapter 21M is hereby further amended by striking out section 9, inserted by section 13 of chapter 268; and inserting in place thereof the following section:-

Section 9. (a) An owner or operator of a tank vessel carrying 6,000 or more barrels of oil may provide 24-hour notice to the department, in a manner to be determined by the department, of the owner or operator's intent to enter or operate such vessel in Buzzards Bay.

(b) If 24-hour notice is given, pursuant to subsection (a) and the tank vessel is unaccompanied by a tugboat escort, the commissioner shall dispatch a state pilot, if requested by the owner or operator, to the towing vessel.

(c) The commissioner shall dispatch a state-provided tugboat escort in Buzzards Bay to escort a tank vessel carrying 6,000 or more barrels of oil entering or operating in Buzzards Bay and otherwise unaccompanied by a tugboat escort.

(d) The state pilot or operator of the state-provided tugboat escort shall report to the commissioner all near and actual navigational incidents that could potentially lead to an oil spill including, but not limited to, the following: tank vessels traveling outside of the designated vessel route as appearing on the National Oceanic and Atmospheric Administration chart for Buzzards Bay; failure to use AIS; near or actual collisions, allisions or groundings; steering or engine failures; and towing gear failures. The commissioner shall record, make available to the public and keep on file these reports for not less than 10 years.

(e) Notwithstanding subsections (b) and (c), the commissioner shall not dispatch a state-provided tugboat escort and state pilot if the department determines that exigent circumstances exist. No such determination shall be construed to relieve or otherwise limit the liability of an owner or operator of a tank vessel for any release of oil that occurs while the tank vessel enters or operates in Buzzards Bay. The commissioner shall report annually on January 1, to the joint committee on the environment, natural resources and agriculture and in the Environmental Monitor, a publication of the executive office of energy and environmental affairs, the number of occasions that such exemptions were authorized.

(f) The commissioner shall adopt regulations for the implementation and enforcement of this section including, but not limited to, the dispatching of state pilots, manning requirements and the dispatching of state-provided tugboat escorts.

(g) The commissioner, after a competitive bidding process, may evaluate such bids and may enter into contracts with companies to dispatch and provide state-provided tugboat escorts, which meet or exceed the standards required under this section.", and had asked for a committee of conference on the disagreeing votes of the two branches; and that Representatives Strauss of Mattapoisett, Rodrigues of Westport and Gifford of Wareham had been appointed the committee on the part of the House.

On motion of Mr. Montigny, the Senate insisted on its amendment and concurred in the appointment of a committee of conference; and Senators Petruccelli, Montigny and Tarr were appointed on the part of the Senate.

The bill was returned to the House endorsed accordingly.

Engrossed Bill Returned with Recommendation of Amendment.

A message from His Excellency the Governor, returning with recommendation of amendment the engrossed Bill relative to establishing a Commonwealth transportation fund. (see House, No. 4141, - amended) [being the text of section 21 of the General Appropriations Bill H4129] [for message, see attachment D of House, No. 4139, — came from the House with the endorsement that the House had *rejected* the amendment recommended by the Governor, and had adopted the following amendment, striking out all after the enacting clause and inserting in place thereof the following:

“SECTION 1. Chapter 29 of the General Laws is hereby amended by striking out section 2ZZZ, inserted by section 35 of chapter 25 of the acts of 2009, and inserting in place thereof the following section:-

Section 2ZZZ. (a) There shall be established and set up on the books of the commonwealth a separate fund to be known as the Commonwealth Transportation Fund, which shall be used exclusively for financing transportation-related purposes. There shall be credited to the fund all fees received by the registrar of motor vehicles pursuant to section 34 of chapter 90, all receipts paid into the treasury of the commonwealth and directed to be credited to the Commonwealth Transportation Fund pursuant to chapters 64A, 64E, 64F and any other applicable general or special law and all amounts appropriated into the fund by the general court. The fund shall be subject to appropriation and shall be used for transportation related expenses of the executive office of transportation or any successor agency or authority, including to pay or reimburse the General Fund for payment of debt service on bonds issued by, or otherwise payable pursuant to a lease or other contract assistance agreement by, the commonwealth for transportation purposes.

(b) Notwithstanding subsection (a), the crediting of receipts from the tax imposed pursuant to chapter 64A to the fund shall not affect the obligations of the commonwealth relating to notes issued pursuant to sections 9 to 10D, inclusive, of chapter 11 of the acts of 1997 and the pledge of receipts from the portion of the tax per gallon imposed pursuant to said chapter 64A equal to 10 cents per gallon, to secure the payment of such bonds under the circumstances described in the trust agreements relating to such notes is hereby ratified and confirmed in all respects and shall remain in full force and effect as long as any such notes issued as of July 1, 2009 remain outstanding in accordance with their terms and secured by funds in the fund.

(c) In addition to those revenues credited to the fund pursuant to subsection (a) there shall be credited to the fund all monies received by the commonwealth equal to .385 percent of the receipts from sales, as defined by chapter 64H, and .385 per cent of the sales price of purchases, as defined by chapter 64I, from that portion of the taxes imposed under said chapters 64H and 64I as excises upon the sale and use at retail of tangible property or of services, and upon the storage, use or other consumption of tangible property, or of services, including interest thereon or penalties, but not including any portion of the taxes that constitute special receipts within the meaning of subsection (b ½) of section 10 of chapter 152 of the acts of 1997 or within the meaning of said subsection (b ½); provided, however, that if in a fiscal year the amount credited to the fund under this subsection is less than \$275,000,000, then the comptroller shall transfer an amount from the General Fund to make up the difference between the amount credited to the fund and \$275,000,000, not later than September 1 of the following fiscal year.

(d) Not less than the following amounts shall annually be distributed from the fund to the Massachusetts Bay Transportation Authority and regional transit authorities:

(1) \$160,000,000 to the Massachusetts Bay Transportation Authority or any fund controlled by the authority in each fiscal year; and

(2) \$15,000,000 to regional transit authorities organized under chapter 161B or predecessor statutes in each fiscal year.

SECTION 2. Subsections (c) and (d) of section 2ZZZ of chapter 29 of the General Laws, as appearing in section 1, shall take effect on July 1, 2010.

SECTION 3. Subsection (b) of section 27 of chapter 304 of the acts of 2008, as amended by section 6 of chapter 10 of the acts of 2009, is hereby further amended by striking out, in line 1, the words “Within 15 days of the date of the written certification” and inserting in place thereof the following words: - Prior to the date of execution of the guaranty.

SECTION 4. Section 32 of said chapter 304 is hereby further amended by striking out the words "June 30", inserted by section 8 of said chapter 10 of the Acts of 2009, and inserting in place thereof the following words:- November 1.

SECTION 5. Sections 1 and 2 shall take effect as of July 1, 2009.

SECTION 6. Sections 3 and 4 shall take effect as of June 30, 2009."

The message was read; and, under the provisions of Article LVI of the Amendments to the Constitution, the bill was before the Senate subject to amendment and re-enactment.

There being no objection, the rules were suspended, on motion of Mr. Hart.

The Governor's amendment was then rejected.

The House amendment was considered; and it was adopted, in concurrence (as corrected BTR).

Sent to the House for re-enactment.

Recess.

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

PAPERS FROM THE HOUSE

Engrossed Bills.

The following engrossed Bills (both of which originated in the House), 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:

Providing for economic recovery through Broadband Initiatives (see House, No. 4158); and
Relative to certain appropriations by the Commonwealth (see House, No. 4160).

Engrossed Bill—Land Taking for Conservation Etc.

An engrossed bill authorizing the exchange of certain parcels of land in the city of Woburn (see House, No. 1112) (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 of 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 nineteen minutes past five o'clock P.M., as follows, to wit (yeas 36 - nays 0) **[Yeas and Nays No. 90]:**

INSERT ROLL CALL [90]

The yeas and nays having been completed at twenty-three minutes past five 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.

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 Marine Lance Corporal Patrick J. Coughlin.

PAPERS FROM THE HOUSE

Emergency Preamble Adopted.

An engrossed Bill establishing a Commonwealth Transportation Fund (see House, No. 4141, 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 6 to 0.

The bill was signed by the President and sent to the House for enactment.

Subsequently, the bill, which originated in the House, came from the House with the endorsement that it had been enacted in that branch.

Pending the question on passing the engrossed bill to be re-enacted, 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.

Order Adopted.

On motion of Mr. Morrissey,—

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

Adjournment in Memory of Marine Lance Corporal Patrick J. Coughlin

The Senator from Norfolk, Bristol and Plymouth, Mr. Joyce, requested that when the Senate adjourns today, it adjourn in memory of Marine Lance Corporal Patrick J. Coughlin.

Lance Corporal Patrick J. Coughlin, 1st Battalion of the 4th Marine Division's 25th Regiment, U.S.M.C., the beloved son of Joseph M., and Patricia C. (Coppens) Coughlin of Milton and brother of Paul, Kellie, Kevin and Natalie, died tragically on Friday June, 19th at Quincy's Fullers Quarry when he slipped during an impromptu reunion with friends. A veteran of Iraq, Lance Corporal Coughlin defined what it meant to be a Marine by his every day actions to Semper Fi, "always faithful." Nicknamed, "little brother" by fellow Marines, Pat's larger than life personality and infectious smile were a beacon to safety for so many in times of trouble. Lance Corporal Coughlin loved his country and the Marines but, above all, his family. He will be missed by his friends and family. May he rest in peace.

Accordingly, as a mark of respect to the memory of Marine Lance Corporal Patrick J. Coughlin, at twenty-five minutes before six o'clock P.M., on motion of Mr. Tarr, the Senate adjourned to meet again tomorrow at eleven o'clock A.M.