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UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



JOURNAL OF THE SENATE.

Wednesday, March 29, 2006.

Met at eighteen minutes past one o'clock P.M.

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

Distinguished Guests.

There being no objection, during the consideration of the Orders of the Day, several distinguished guests were recognized: The President handed the gavel to Mr. Joyce for the purpose of an introduction. Mr. Joyce then introduced Tiffany Kelly, Miss Massachusetts for 2006. Miss Kelly was the guest of Senator Joyce, Senator Morrissey and Representative Driscoll. Miss Kelly briefly addressed the Senate, signed the guest book and withdrew from the Chamber.

There being no objection, the President handed the gavel to Mr. Timilty for the purpose of an introduction. Mr. Timilty then introduced, in the rear of the Chamber, Keith Jackson, Attleboro Fire Captain, his wife Kate Jackson, a former city councilor and their grandson, Tucker, from the city of Attleboro. The Jackson family opened their home to Ray and Helen Albarado, victims of Hurricane Katrina.

The President introduced Ms. Walsh for the purpose of an introduction. Ms. Walsh then introduced, in the rear of the Chamber, Kathy Williams and Maria Luddy. Ms. Williams, a West Roxbury resident, is the manager of the circulation services and bibliographer of Irish Studies at Boston College. Ms. Maria Luddy is a visiting professor at Boston College from the University of Warwick in England.

The President handed the gavel to Mr. Tarr for the purpose of an introduction. Mr. Tarr then introduced, in the rear of the Chamber, Stephen McNeil and Harold Theriault, two members of the Legislative Assembly of Nova Scotia. Stephen McNeil and Harold Theriault signed the guest book and withdrew from the Chamber.

Communications.

A communication from the Honorable Robert E. Travaglini, President of the Senate, announcing the appointments of Senators Joan M. Menard and John A. Hart, Jr. to the special commission established (pursuant to Chapter 1 of the Resolves of 2006) to make an investigation and study of the siting and use of liquefied natural gas facilities in the Commonwealth.

A communication from the Honorable Brain P. Lees, Minority Leader, announcing the appointment of Senator Robert L. Hedlund to the special commission established (pursuant to Chapter 1 of the Resolves of 2006) to make an investigation and study of the siting and use of liquefied natural gas facilities in the Commonwealth.

Reports of Committees.

By Mr. Augustus, for the committee on Election Laws, on petition, a Bill relative to the administration of political action committees organized by not-for-profit corporations, trade unions, trade associations or chambers of commerce (Senate, No. 438, changed in section 1, by inserting after the word "commerce;," in line 7, the following words "provided that such costs shall not exceed thirty per cent of the political action committee's annual expenditures"; and by adding the following new section:—

"SECTION 2. Section 8 of Chapter 55 of the Massachusetts General Laws is hereby amended by inserting after the word 'party', in line 14, the following: '; except for cost to establish, administer, or maintain a political action committee organized by a not-for-profit corporation, trade union, trade association or chamber of commerce provided that such costs shall not exceed thirty percent of the political action committee's expenditures'."");

By Mr. Nuciforo, for the committee on Financial Services, on petition, a Bill relative to standardizing insurance forms (Senate, No. 646);

By Ms. Jehlen, for the committee on Public Service, on petition (accompanied by bill, Senate, No. 1580), a Bill relative to binding arbitration (Senate, No. 2459);

By Mr. Hart, for the committee on Tourism, Arts and Cultural Development, on petition, a Bill establishing the public libraries fund (Senate, No. 2357);

By the same Senator, for the same committee, on petition (accompanied by bill, Senate, No. 1840), a Bill prohibiting the exhibition of exotic animals (Senate, No. 2457);

By Mr. Brewer, for the committee on Veterans and Federal Affairs, on petition, a Bill relative to unlawful discrimination (Senate, No. 1978);

By the same Senator, for the same committee, on petition, a Bill to establish the Soldiers' Home in Massachusetts capital maintenance trust fund and the Soldiers' Home in Holyoke capital maintenance trust fund (Senate, No. 1990, changed in section 1 by striking out the number "2000", in line 1, and inserting in place thereof the number "2004");

By the same Senator, for the same committee, on petition, a Bill relative to veterans' burial benefits (Senate, No. 2010, changed in section 1 by striking out the number "2002", in line 2, and inserting in place thereof the number "2004");

By the same Senator, for the same committee, on petition, a Bill providing for completion of the Korean War Memorial of Central Massachusetts and a walkway of honor recognizing Massachusetts' fallen war heroes and Gold Star families (Senate, No. 2323);

By the same Senator, for the same committee, on petition (accompanied by bill, Senate, No. 1989), a Bill relative to the retention of certain revenues by the Soldiers' Home in Holyoke (Senate, No. 2466);

By the same Senator, for the same committee, on petition (accompanied by bill, Senate, No. 2001), a Bill prohibiting the sale of abandoned military medals and decorations (Senate, No. 2467); and

By the same Senator, for the same committee, on petition (accompanied by bill, Senate, No. 2017), a Bill relative to the veteran status of Michael L. Buckley (Senate, No. 2468);

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

By Mr. Brewer, for the committee on Veterans and Federal Affairs, on petition, a Bill relating to claim for personal injury and property damage in the National Guard (Senate, No. 1979, changed in section 1 by striking out the number "2002", in line 2, and inserting in place thereof the number "2004"); and

By the same Senator, for the same committee, on petition, Resolutions to the United States Congress relative to the advertising of drugs by pharmaceutical companies (Senate, No. 2011, changed by striking out lines 6 through 8 and lines 37 through 54 in their entirety);

Severally read and, under Senate Rule 26, referred the committee on Ethics and Rules.

By Mr. Barrios, for the committee on Public Safety and Homeland Security, on petition, a Bill allowing the narrows in Glen Echo Lake to increase motorboating speeds (Senate, No. 2238, changed in section 1, by striking out the words "160 feet", in line 5, and inserting in place thereof the words "120 feet") [Local approval received];

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

By Mr. Hart, for the committee on Tourism, Arts and Cultural Development, ought NOT to pass:

On the petition (accompanied by resolve, Senate, No. 1850) of Marc R. Pacheco and Alex Poulos that provision be made for an investigation and study by a special commission (including members of the General Court) relative to the U.S.S. Massachusetts; and

On the petition (accompanied by bill, Senate, No. 2123) of Michael Frishman for legislation concerning tobacco use in broadcasts; and

By Mr. Brewer, for the committee on Veterans and Federal Affairs, ought NOT to pass:

On the petition (accompanied by bill, Senate, No. 2003) of Richard T. Moore for legislation to enhance the educational assistance program of the National Guard; and

On the petition (accompanied by bill, Senate, No. 2015) of Marian Walsh for legislation relative to the definition of World War II veteran;

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

Committees Discharged.

Mr. Buoniconti, for the committees on Rules of the two branches, acting concurrently, reported, asking to be discharged from further consideration of the Senate Order relative to authorizing the joint committee on Election Laws to make an investigation and study of certain current Senate documents relative to matters dealing with election laws (Senate, No. 2455),— **and recommending that the same be referred to the Senate committee on Ethics and Rules. Under Senate Rule 36, the report was considered forthwith and accepted.**

PAPER FROM THE HOUSE.

Notice was received from the House announcing the following appointments: That Representative Correia of Fall River and Representative O’Flaherty of Chelsea have been appointed by the Speaker to the Special Commission established (pursuant to House, No. 4449) to make investigation and study of the siting and use of liquefied natural gas facilities in the Commonwealth.

Resolutions.

The following resolutions (having been filed with the Clerk) were severally considered forthwith and adopted, as follows:— Resolutions (filed by Ms. Chandler and Mr. Augustus) “congratulating Abby’s House of Worcester on its thirtieth anniversary”; Resolutions (filed by Messrs. Hedlund, Tarr, Baddour, Barrios, Brewer, Brown, Creedon, Montigny and Morrissey, Ms. Murray, Ms. Resor, Ms. Spilka, Mr. Tisei, Ms. Walsh and Mr. Lees) “honoring Ron Bersani for his dedication and advocacy in preventing drunk driving in the Commonwealth of Massachusetts”; and Resolutions (filed by Mr. O’Leary) “congratulating Gwendolyn C. Pelletier on the occasion of her retirement.”

PAPERS FROM THE HOUSE.

Emergency Preambles Adopted.

An engrossed Bill modifying the schedule for deposits of revenue for the service of civil process by constables (see House, No. 3576), 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.**

An engrossed Bill establishing a sick leave bank for Ellen E. Briggs, an employee of the Trial Court (see House, No. 4634), 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.

Orders of the Day.

The Orders of the Day were considered, as follows:

Bills

Relative to the Massachusetts Water Resources Authority employees’ retirement system (Senate, No. 1501);
Authorizing the Dukes County contributory retirement system to grant certain retirement benefits (Senate, No. 1572);
Providing relief for premises used for gang related activity in the city of Lynn (Senate, No. 2223);
To authorize an easement or lease of land by the conservation commission of the town of Falmouth (Senate, No. 2319);
Relative to illegal dumping and the imposition of court order fines in the city of Brockton (Senate, No. 2325);
Releasing certain land in Amherst from the operation of an agricultural preservation restriction (Senate, No. 2359);
Relative to the charter of the town of Walpole (Senate, No. 2365);
Relative to a tax abatement filing for the National Plastics Center and Museum in Leominster (Senate, No. 2386); and
Relative to the historic district commission of the town of Sudbury (House, No. 4390);
Were severally read a second time and ordered to a third reading.

The House Bill releasing certain land in the city of Northampton from the operation of an agricultural preservation restriction (House, No. 1270),— **was read a third time and passed to be engrossed, in concurrence.**

The Senate Bill relative to the Essex Regional Retirement System (Senate, No. 2263),— **was read a second time and ordered to a third reading.**

The Senate Bill amending the toxics use reduction act (Senate, No. 2250) (its title having been changed by the committee on Bills in the Third Reading),— **was read a third time.**

After remarks, the question on passing it to be engrossed was determined by a call of the yeas and nays, at twenty-three minutes before two o'clock P.M., on motion of Ms. Resor, as follows, to wit (yeas 38 — nays 0) [**Yeas and Nays No. 236**]:

YEAS.

Antonioni, Robert A.	Menard, Joan M.
Augustus, Edward M., Jr.	Montigny, Mark C.
Baddour, Steven A.	Moore, Richard T.
Barrios, Jarrett T.	Morrissey, Michael W.
Berry, Frederick E.	Murray, Therese
Brewer, Stephen M.	Nuciforo, Andrea F., Jr.
Brown, Scott P.	O'Leary, Robert A.
Buoniconti, Stephen J.	Pacheco, Marc R.
Chandler, Harriette L.	Panagiotakos, Steven C.
Creedon, Robert S., Jr.	Resor, Pamela
Creem, Cynthia Stone	Rosenberg, Stanley C.
Fargo, Susan C.	Spilka, Karen E.
Havern, Robert A.	Tarr, Bruce E.
Hedlund, Robert L.	Timilty, James E.
Jehlen, Patricia D.	Tisei, Richard R.
Joyce, Brian A.	Tolman, Steven A.
Knapik, Michael R.	Tucker, Susan C.
Lees, Brian P.	Walsh, Marian
McGee, Thomas M.	Wilkerson, Dianne —

38.

NAYS — 0.

ABSENT OR NOT VOTING.

Hart, John A., Jr. — **1.**

The yeas and nays baying been completed at nineteen minutes before two o'clock P.M., the bill was passed to be engrossed.

Sent to the House for concurrence.

The Senate Bill establishing a campus rape and sexual assault advisory council (Senate, No. 2460) (its title having been changed by the committee on Bills in the Third Reading),— **was read a third time and, after remarks, was passed to be engrossed.**

Sent to the House for concurrence.

The Senate Bill further regulating the consignment of fine art (Senate, No. 2461),— **was read a third time.**

Pending the question on passing the bill to be engrossed, on motion of Mr. Havern, the further consideration thereof was postponed until Wednesday, April 5.

The Senate Bill designating the garter snake as the official reptile of the Commonwealth (printed as House, No. 3453),— **was read a third time and, after remarks, was passed to be engrossed.**

Sent to the House for concurrence.

The House Bill relative to mercury management (House, No. 4670),— **was read a third time.**

Pending the question on passing the bill to be engrossed, Ms. Resor moved that the bill be amended in section 7, by inserting in the first sentence of proposed subsection (d) of section 6C, after the words "mercury-added vehicle switches", the following words:— " , unless a manufacturer implements an alternative plan under subsection (n) of section 6C. If a manufacturer implements an alternative plan, no person shall crush, cause to be crushed or otherwise arrange for an end-of-life motor vehicle to be crushed after the implementation of the alternative plan without first having removed any mercury-added components, including, but not limited to, mercury-added vehicle switches".

After remarks, the amendment was adopted.

Mr. Barrios moved that the bill be amended in section 7, by striking out proposed subsection (n) of section 6C.

The amendment was rejected.

Mr. Barrios moved that the bill be amended in section 7, in proposed section 6C, by adding the following subsection:—“(s) Participants who flatten, crush or otherwise process automobile bodies under an alternate plan approved under this section shall, before delivering or selling automobile bodies to automobile shredder recycling facilities, certify that all mercury-containing switches have been removed and shall indemnify and hold harmless automobile shredder facilities from all liabilities, costs or marketplace penalties or losses stemming from any failure to fully remove mercury-containing switches.”

After remarks, the amendment was adopted.

Ms. Resor moved that the bill be amended in section 4, in the definition of “Manufacturer”, by adding the following sentence:—“This definition shall not apply to a distributor as defined in section 1 of chapter 93B.”

After remarks, the amendment was adopted.

Mr. Barrios moved that the bill be amended in section 7, in proposed clause (B) of paragraph 1 of subsection (n) of section 6C, by striking out the figure “50” and inserting in place thereof the following figure:— “70”.

After remarks, the amendment was adopted.

After further remarks, the question on passing the bill be engrossed was determined by a call of the yeas and nays, at ten minutes past two o’clock P.M., on motion of Ms. Tucker, as follows, to wit (yeas 38 — nays 0) [Yeas and Nays No. 237]:

YEAS.

Antonioni, Robert A.	Menard, Joan M.
Augustus, Edward M., Jr.	Montigny, Mark C.
Baddour, Steven A.	Moore, Richard T.
Barrios, Jarrett T.	Morrissey, Michael W.
Berry, Frederick E.	Murray, Therese
Brewer, Stephen M.	Nuciforo, Andrea F., Jr.
Brown, Scott P.	O’Leary, Robert A.
Buoniconti, Stephen J.	Pacheco, Marc R.
Chandler, Harriette L.	Panagiotakos, Steven C.
Creedon, Robert S., Jr.	Resor, Pamela
Creem, Cynthia Stone	Rosenberg, Stanley C.
Fargo, Susan C.	Spilka, Karen E.
Havern, Robert A.	Tarr, Bruce E.
Hedlund, Robert L.	Timilty, James E.
Jehlen, Patricia D.	Tisei, Richard R.
Joyce, Brian A.	Tolman, Steven A.
Knapik, Michael R.	Tucker, Susan C.
Lees, Brian P.	Walsh, Marian
McGee, Thomas M.	Wilkerson, Dianne —

38.

NAYS — 0.

ABSENT OR NOT VOTING.

Hart, John A., Jr. — 1.

The yeas and nays having been completed at seventeen minutes past two o’clock P.M., the bill was passed to be engrossed, in concurrence, with the amendments. [For text of Senate amendments, see Senate, No. 2470, printed as amended.] Sent to the House for concurrence in the amendments.

The engrossed Bill relative to certain motor vehicle violations (see Senate, No. 2132, amended) (which originated in the Senate), having been certified by the Senate Clerk to be rightly and truly prepared for final passage,— **was considered, the question being on passing the engrossed bill to be enacted.**

Pending the motion, previously moved by Mr. Lees, to lay the engrossed bill on the table, and pending the main question on passing the bill to be enacted, on motion of Mr. Lees, the further consideration thereof was postponed until Tuesday, April 4.

Matter Taken Out of the Notice Section of the Calendar.

There being no objection, during consideration of the Orders of the Day, Mr. Lees moved that the motion to postpone until Wednesday, April 19, the Senate Bill relative to rates of pilotage (Senate, No. 2391, amended),— **be withdrawn so that the matter could be taken up forthwith.**

The motion prevailed; and the bill was considered as follows:

The Senate Bill relative to rates of pilotage (Senate, No. 2391, amended) was considered; the main question being on passing the bill to be engrossed.

The pending amendment, previously moved by Mr. McGee, striking out section 3,— **was considered; and it was adopted.**

The bill (Senate, No. 2391, amended) was then passed to be engrossed.

Sent to the House for concurrence.

Orders of the Day.

The Orders of the Day were further considered, as follows:

The Senate Bill promoting school nutrition (Senate, No. 2373),— **was considered, the question being on passing it to be engrossed.**

On motion of Mr. Moore, the further consideration thereof was postponed until Wednesday, April 12.

The Senate Bill further regulating intermunicipal agreements (Senate, No. 1174),— **was considered, the question being on passing it to be engrossed.**

Ms. Fargo, Ms. Creem and Mr. Timilty moved that the bill be amended in section 1, by striking out, in lines 12 to 13, the words “Board of Selectmen” and inserting in place thereof the following words:— “town meeting”; and in said section 1, by adding the following sentence:— “In a town that accepts this provision, approval of this agreement may be by a vote of the board of selectmen.”

Pending the question on adoption of the amendment, and pending the main question on passing the bill to be engrossed, on motion of Mr. Lees, the further consideration thereof was postponed until Wednesday, April 5.

Mr. Rosenberg in the Chair, the Senate Bill allowing creditable service for certain state contract employees (Senate, No. 2462),— **was read a third time and passed to be engrossed.**

Sent to the House for concurrence.

Communication.

The Clerk read the following communication:

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

March 29, 2006.

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

Dear Mr. Clerk:

Today I will be unable to attend the Senate Formal Session. Please note if I were present, I would vote affirmatively on the Senate Bill 2464, An Act Relative to Mercury Management.

I would appreciate if this could be printed in the Senate Journal.

Thank you.

Sincerely,
JOHN A. HART, JR.
State Senate.

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

Recess.

There being no objection, at twenty-nine minutes past two o'clock P.M., at the request of Mr. Lees, for the purpose of a minority caucus, the Chair (Mr. Rosenberg) declared a recess; and, at four minutes past three o'clock P.M., the Senate reassembled, the President in the Chair.

PAPERS FROM THE HOUSE.

The Senate Bill relative to student records (Senate, No. 2206, amended),— **came from the House passed to be engrossed, in concurrence with an amendment in section 1, in line 45, by striking out the word “registered” and inserting in place thereof the word “certified”.**

The rules were suspended, on motion of Mr. Berry, and the House amendment was considered forthwith and adopted, in concurrence.

Bill Returned with Recommendation of Amendment.

A message from His Excellency the Governor, returning with recommendation of amendment the engrossed Bill to authorize Benjamin Joress to file a civil service application for the position of police officer, notwithstanding the minimum age requirements (see House, No. 4352) [for message, see House, No. 4684],— came from the House with endorsement that the House adopted the amendment as approved by the committee on Bills in the Third Reading by striking out all after the enacting clause and inserting in place thereof the following:—

“Section 1. Notwithstanding section 58 of chapter 31 of the General Laws, chapter 12 of the acts of 2005, or any other general or special law to the contrary, the personnel administrator of the human resources division within the executive office of administration and finance shall accept applications for the April 2005 civil service re-examination for police officers; provided however the applicant shall have reached his or her 21st birthday on or before the date of the re-examination hereunder.

Section 2. The human resources division shall hold a re-examination for the said April 2005 examination on or before May 31, 2006. Applicants eligible under section 1 of this act shall apply with the human resources division for the re-examination no later than April 30, 2006.” and

By striking out the title and inserting in place thereof the following title: “An Act relative to the police civil service examination.” **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.**

The rules were suspended, on motion of Ms. Fargo, and the House amendment was considered forthwith and adopted, in concurrence.

Sent to the House for re-enactment.

Order — Amended.

The following House Order (approved by the committees on Rules of the two branches, acting concurrently) was considered forthwith, as follows:

Ordered, That notwithstanding the provisions of Joint Rule 10, the committee on Tourism, Arts and Cultural Development shall be granted until Wednesday, March 29, 2006 within which to report on Senate document numbered 1851, “An Act to designate basketball as the official state sport.”

Pending the question on adoption of the order, Mr. Hart presented an amendment striking out the words “Wednesday, March 29, 2006” and inserting in place thereof the words “Thursday, April 6, 2006”.

The amendment was adopted.

The order, as amended, was then adopted.

Sent to the House for concurrence in the amendment.

Engrossed Bills.

The following engrossed bills (all 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:

Addressing the special education needs of children with autism spectrum disorder (see House, No. 1123);

Modifying the schedule for deposits of revenue for the service of civil process by constables (see House, No. 3576); and

Establishing a sick leave bank for Ellen E. Briggs, an employee of the Trial Court (see House, No. 4634).

A petition (accompanied by bill, House, No. 4815) of Dianne Wilkerson and others relative to designating a certain parcel of land in the city of Boston as the Frank Jordan Memorial Rose Garden,— was referred, in concurrence, under suspension of Joint Rule 12, to the committee on Municipalities and Regional Government.

A Bill extending simulcasting for the horse and greyhound racing industry in the Commonwealth (House, No. 4804,— on Senate, No. 2227, in part),— **was read.**

There being no objection, the rules were suspended, on motion of Mr. Morrissey, and the bill was read a second time.

Pending the question on ordering the bill to a third reading, Messrs. Morrissey and Lees moved that the bill be amended by striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2469.

Pending the question on adoption of the amendment, Messrs. Pacheco and Creedon moved that the amendment (Morrissey-Lees)

be amended by adding the following 2 sections:—

“SECTION 13. Section 2 of chapter 128C of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by striking out, in lines 45 and 46, the words ‘and 2 interstate running horse simulcasts prior to 4:00 p.m.’ and inserting in place thereof the following words:— unlimited interstate running horse simulcasts.

SECTION 14. Said section 2 of said chapter 128C, as so appearing, is hereby further amended by striking, in line 88, the figure ‘3’ and inserting in place thereof the following figure:— 6.”

The amendment was *rejected*.

The pending amendment (Morrissey-Lees) was then considered; and it was adopted.

The bill, as amended, was then ordered to a third reading, read a third time and passed to be engrossed, in concurrence, with the amendment.

Sent to the House for concurrence in the amendment.

Recess.

There being no objection, at a quarter past three o’clock P.M., at the request of Mr. Lees, for the purpose of a minority caucus, the President declared a recess; and, at seven minutes past four o’clock P.M., the Senate reassembled, Ms. Menard in the Chair.

Order Adopted.

On motion of Mr. Lees,

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.

On motion of the same Senator, at eight minutes past four o’clock P.M., the Senate adjourned to meet on the following day at eleven o’clock A.M.