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Senate Session Summary - Saturday, July 11, 2020

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Senate Republicans insisted on more time to analyze and negotiate the branch's nearly week-old police reform legislation, and the minority caucus again postponed consideration of the 73-page bill during a Saturday morning session. Debate might now start on Monday, when the Senate is scheduled to meet at 11 a.m. Sen. Will Brownsberger said during Saturday's session that he didn't mind the delay imposed by the GOP's procedural motions which gave senators more time to mull over the wide-ranging legislation, but the Belmont Democrat added that "delay is the enemy of success" as lawmakers edge closer to the scheduled end of sessions on July 31. For the third consecutive day, Sen. Ryan Fattman made the motion to delay consideration, citing "the spirit of more time and the spirit of more dialogue." The Sutton Republican's two prior motions had been to table debate, although Saturday Fattman invoked a different request that will require the bill's nearly 130 amendments to be published in the printed calendar for Monday's session. - Sam Doran

To track a bill's legislative history or view its text, [click here](#) and enter the bill number. The News Service features gavel-to-gavel summaries of all sessions and audio of formal sessions on our web page: <http://www.statehousenews.com>.

Session Audio: [10:08 a.m.-11:06 a.m.](#)

CONVENES: The Senate convened at 10:08 a.m. with President Spilka of Ashland presiding. Sen. Brownsberger of Belmont was also present.

PLEDGE: Members and staff pledged allegiance to the U.S. Flag.

RECESS: President Spilka declared a brief recess at 10:08 a.m.

Sens. Tarr of Gloucester and O'Connor of Weymouth arrived in the chamber at 10:10 a.m.

RETURNS: President Spilka gaveled the Senate to order at 10:11 a.m.

ORDERS OF THE DAY: There was no objection to proceeding with the orders of the day.

CHARLTON GAS TAX: Question came on ordering to a third reading S 1672 authorizing the town of Charlton to establish an additional excise on sales of gasoline and diesel fuel.

RECESS/RETURNS: Sen. Tarr moved for a brief recess and consulted with an aide. The Senate returned to order at 10:11 a.m.

CHARLTON GAS TAX: The Senate ordered to a third reading S 1672 authorizing the town of Charlton to establish an additional excise on sales of gasoline and diesel fuel.

FALL RIVER RETIREMENT: The Senate ordered to a third reading S 2257 authorizing employees of the city of Fall River the ability to apply with the Fall River Retirement Board to purchase credible service for military service.

EAST BRIDGEWATER RECALL ELECTIONS: The Senate ordered to a third reading S 2290 providing for recall elections in the town of East Bridgewater.

CONCORD TRANSFER FEE: The Senate ordered to a third reading S 2318 establishing a real estate transfer fee upon the transfer of property in the town of Concord.

SCITUATE TOWN ELECTION: The Senate ordered to a third reading S 2497 authorizing the town of Scituate to establish the date of its annual town election.

HAVERHILL FIREFIGHTER: The Senate ordered to a third reading S 2561 authorizing Nikos Sofronas to take the civil service examination for the position of firefighter in the city of Haverhill notwithstanding the maximum age requirement.

HAVERHILL FIREFIGHTER: The Senate ordered to a third reading S 2562 authorizing Diana Grullon to take the civil service examination for the position of firefighter in the city of Haverhill notwithstanding the maximum age requirement.

NORTHAMPTON HOUSING AUTHORITY: The Senate ordered to a third reading H 3685 relative to the Northampton Housing Authority.

CHELSEA AFFORDABLE HOUSING: The Senate ordered to a third reading H 4155 city of Chelsea Affordable Housing Trust Fund Board.

HANOVER LIQUOR: The Senate ordered to a third reading H 4312 authorizing the town of Hanover to grant 13 additional licenses for the sale of alcoholic beverages to be drunk on the premises.

CLINTON LIQUOR: The Senate ordered to a third reading H 4336 authorizing the town of Clinton to grant a license for the sale of all alcoholic beverages to Super Sumit, Inc.

CLINTON LIQUOR: The Senate ordered to a third reading H 4337 authorizing the town of Clinton to grant a license for the sale of all alcoholic beverages to 1044 Main Street Clinton LLC.

WESTFORD LIQUOR: The Senate ordered to a third reading H 4339 authorizing the town of Westford to grant two additional licenses for the sale of alcoholic beverages to be drunk on the premises.

CHARLESTOWN AFFORDABLE HOUSING: The Senate ordered to a third reading H 4438 relative to certain affordable housing in the Charlestown section of the city of Boston.

BOSTON LIQUOR: The Senate ordered to a third reading H 4549 authorizing the city of Boston to grant an additional license for the sale of alcoholic beverages to be drunk on the premises.

POLICE REFORM: The chair heard pass on S 2800 to reform police standards and shift resources to build a more equitable, fair and just commonwealth that values Black lives and communities of color.

Returning to the item previously passed over, question came on ordering to a third reading S 2800 to reform police standards and shift resources to build a more equitable, fair and just commonwealth that values Black lives and communities of color.

Sen. Tarr rose to speak to the matter currently pending.

Question was on ordering the bill to a third reading coming first on a motion to lay the matter on the table. The motion did not prevail. Recurring question came on ordering the bill to a third reading.

Sen. Tarr said the instant matter is something of critical importance to each and every member of this chamber. Madam President, it speaks volumes about this body that we are in a position to be able to consider this type of legislation. It speaks volumes about your leadership and your focus and your priorities in saying the Senate should take up something of the nature of S 2800. Madam President you have summoned us to this task

and we have all responded. And we all wish, I would dare say, despite some of the difficulty and some of the gut-wrenching conversations that have happened over the last several days, every single member of this Senate - and I don't wish to speak for them but I will - is ready, willing, and eager, I dare say, to address the task to which you have called us and to which we all seek to make an impact. Madam President, it is unfortunate that these days have been as difficult as they are and have been, for the members of this body. There have been difficult conversations, there have been difficult things said, and Madam President the climate we are in is, to say the very least, challenging. Madam President, I will offer my humble apology for any role I have played in saying anything that has been considered offensive by anyone in this chamber. That being said, Madam President, yesterday, we heard very eloquent remarks on this Senate floor. We heard them from the gentleman from Quincy who helped to bring his experience to this issue, in trying to look at multiple dimensions. And I am not going to say both sides, Madam President. Because there aren't just two sides to this issue, there are multiple dimensions and that is what makes it so complicated and so difficult to navigate. And yet, what the gentleman from Quincy said is something I think is an absolute truism. That we need to make sure we have the appropriate time to navigate through these issues that are before us. Not to run away from them, not to sidetrack them. But to say that because we collectively as a Senate have accepted the challenge of responding to the priorities we have heard, that we also owe the folks who have helped us to establish those priorities, on all sides, we owe them the time to make sure they can have input and discussion and that we do it right. Now I know there are assertions there has been time and there have been communications. Those things in a varying degree depending on who you are, and your perspective, those are accurate. We also heard the eloquence and passion yesterday of the gentlady from Jamaica Plain. And her words are very important in this discussion. They have been from day one. They will continue to be. I appreciate her reminding us that we are compelled here to act. The fact we are compelled to act I do not think is a subject of dispute. I think the question is, how do we act? For many years, and particularly under your presidency, for which we are very appreciative, the way we have acted is an inclusive, informed, deliberative way, that allows for discussion and consideration of perspectives. In the bill that pends before the Senate, and I will speculate once again, I would guess there is agreement on some 80 to 90 percent by everyone. The remaining elements on which there is not agreement, they are the elements of speculation in many ways about how tribunals might act, how the judiciary might act, and about the practical implications of that which has been posited on the floor for our consideration. Yesterday, we heard in the very impassioned tones of the gentlady from Jamaica Plain that we must intercede. I would suggest there is no question we must act, no one has said we should not. What we have said is that we should act in a reasoned, informed, deliberative way. Madam President, since analogies are being used, I'm going to offer my own. In an urgent medical situation, where life is at stake, you do first that which you need to do. And if there are other things remaining to be done, you act second and third and fourth. And when you do those things, you often ask for a second opinion. And a

third opinion. And that has been in some ways a benefit of what has happened over the last several days. We know this particular matter did not have a public hearing. And there is some, perhaps, difference of opinion about the role that would have played. I would suggest it would have played a role in some ways analogous to what we are seeing right now. Hundreds and probably thousands of emails coming in to all of us with people who have now just begun to have an opportunity to read the text, summaries, amendments, and they're offering their thoughts. One of the things that has made us so noticeably different from other legislative bodies in this country - and I am so proud to be a member of the Senate - is that we talk to each other. We find ways to work through problems. We find ways to hit the pause button when we encounter a problem so we can say we will not gladly move forward when we know problems have been called to our attention. And they have. We have all seen, sadly, and that is a mild word, what has happened in our nation's Capitol when people don't talk to each other. It is one of the reasons why components of this bill have not become law as a matter of national policy. We have always been different and we should still be different. We can be different. What would be a more powerful message across the entire United States that the members of the Massachusetts Senate found a way to not follow what is sometimes human nature and focus on what divides us, but to the contrary, to focus on what unites us? Madam President, 80 to 90 percent of this bill is what unites us. It unites us at a time when you can count the days remaining in this legislative session. Madam President, if an intervention is needed - and we believe that it is - then the time is upon us to take the appropriate time to work out the remaining issues if that is possible, and if it is not, to do what we have done in many instances in the past: subject the things that divide us to further action at another day, and we know that day will come, to walk out these front doors, stand on these front steps, and have another press conference. With Republicans and Democrats, members representing the African American and other minority communities, and law enforcement. And to say to the world, look at us. Look at us. We found a way. We got it done. And if we could do it there's no state in the union that can't do it. And maybe there would be hope for our United States Congress. Madam President, that's what's at stake. And what does it cost us? It costs us some additional time to be able to work through the issues that are before us. One of those issues calls for the changing of a standard and the use of language that has not been applied to that subject matter - ever. I know there are many people that want to charge ahead and say, we need to do this because we need to do it. I believe we need to look at that issue because it's the right thing to do. Judicial decisions are a funny thing. Just when you think you know how a court might interpret particular language, sometimes you get surprised to find out that isn't the case. It wasn't all that long ago we had an initiative petition to change our tax structure. Repeatedly when we asked in this chamber and in the chamber down the hall in a constitutional convention, is this constitutional? We were told it absolutely is, we shouldn't take time to ask the court what it means, we shouldn't even let that be an obstacle or a speed bump. Then the court ruled the approach was unconstitutional. All across this building, plans for how to spend \$2 billion were back on the shelf. They're still there now,

waiting to be revived. What we're talking about here is speculating not on revenue, as important as that is, we're talking about speculating about accountability and holding people liable for bad acts. I think everyone who knows me knows what I think about how important revenue questions are. This is far more important. We need to get it right. To make sure the people we ask every day to leave their home in the morning to put on a bullet proof vest and get into a cruiser and drive to a scene and walk through a door when they don't know what they're going to see, they don't know what's going to happen, and they don't know if their life ever again will be the same. They may not know what protections are afforded to them for doing their job in a legal and just way that somebody else has a different opinion about. But that's not the only reason not to speculate. The other reason not to speculate is that we have seen across this country horrific acts and we say we need to do more, and make sure if someone is a victim of those bad acts, there is a standard by which we all can have faith that they will not in the case of the bad actor be able to use language as a sword that should be used as a shield. So Madam President, I humbly suggest that on issues where we're seeking to understand judicial action and interpretation, that we be cautious and do things in a reasoned way. Madam President, you and I and many members of the chamber are attorneys. We know from what we have been taught and what we've learned through our practices that we don't ever know how a court is going to rule. We don't. We think we do. What we can do is try to summon the very best minds to consider these issues and make a commitment we will return to them. No one has a monopoly on wisdom. No one. I would hope that in the best tradition of the Senate, we would not need to use a parliamentary measure although we certainly could, Madam President, we certainly could. And the gentleman from Sutton who has made motions to provide additional time stands to my right and I think is prepared to do it again. But I hope that action doesn't need to be taken, that we can agree to be respectful and interactive and responsive to each other to overcome the difficulty and anxiety and stress of the moment and rise to be what this Golden Dome above us has been since the creation of this State House. A beacon that says we will do it right, uphold freedom, and make sure conversations that need to happen continue to happen. I would hope that we would agree to take the time we need to take - just perhaps a few more days - agree to return to the chamber on Monday and pick up the matter then. If we do not, I suspect what will happen is a motion by a member of our caucus. But I also want to say that in making that motion he will not be alone. We have been contacted by a great number of members of this chamber, not from our party, suggesting they too would like more time on these issues. I hope we will find a way to give it to them.

Sen. Timilty of Milton had entered the chamber during Sen. Tarr's speech and spoke with Sen. Chang-Diaz of Boston before walking to his desk.

Time was 10:40 a.m.

Sen. Brownsberger said to my brother from Gloucester I want to offer a few thoughts. First,

I don't mind the additional time to consider this matter. It never does any harm, it gives us more time to talk, and that's all good. But time is short and we need to get this bill on the governor's desk. Before that we have to go through the conference process. The delay is the enemy of success here. So in my view we need to move forward. I think it's important to speak a bit to what the process has been on this bill so far. We had a lot of conversations in assembling this bill. What's more important is to emphasize this bill is based on the component parts that had the appropriate hearings. The part generating the most controversy is the qualified immunity part which the gentleman referred to at length. It had a hearing last September and was reported favorably by the Judiciary Committee. So now we are taking it up and that is good. As is normal people don't really pay attention to what is going on. They didn't turn out to the hearing. They only focus on it at the last minute. That's understandable. There are a lot of things to focus on. But now it's time to get it done. To allege something different is happening here is just not true. I think it's important to speak about the merits of this issue because it is a confusing issue and one of the benefits of the delay you've created is we've been able to assemble a good communications package on it and start to understand it better. Like all of us, the courts understand the fundamental challenges law enforcement officers face. The fact they are out on the street in the middle of the night, sometimes alone, forced to make split second decisions. Our jurisprudence of excessive use of force fully recognizes that. Fully recognizes the courts should not be in the business of second-guessing officers who make a reasonable decision in light of facts available to them at the time. That's built into our Fourth Amendment jurisprudence. Qualified immunity has nothing to do with the fundamental definitions of protections given to law enforcement officers. Those come from the underlying law. Qualified immunity is a procedural doctrine not found in the Constitution, it is in the Supreme Court's more recent thoughts about how to manage the flow of litigation. Many think the court has substantially overstepped its bounds by limiting the availability of remedies in ways better left to legislatures. We are stepping up to the plate to say you've gone a tick too far. The effect of qualified immunity of practice is to say when a lawsuit has been filed and the matter is going forward, you can bring a motion asserting qualified immunity, and unless the matter has been very clearly established by other courts, that's the rule the more recent Supreme Court has done, from its own policy making standpoint. This principle has created a constitutional Catch-22 that when new situations emerge, litigants cannot move them forward because they haven't been addressed yet. This can happen repeated times when litigants come forward with a new set of facts. Each time the case is thrown out because there isn't a clear prohibition on it and qualified immunity is applied. When in fact, outrageous conduct has occurred. It is appropriate for us to make an adjustment in the doctrine of qualified immunity. Our language as written, as written, is fine. It is solid. As written it preserves an objective reasonableness standard which will allow courts to throw out cases without a complete examination of the facts if the officer's conduct is reasonable in light of existing precedent. We're just getting rid of this Catch-22 thing that prevents litigation about new fact patterns. We're doing something that is in fact modest. I

understand the gentleman will make the motion, and that will give us additional time to talk about this. But we are on the right track. It isn't some mysterious strange thing. It's just complicated enough that people get confused about it.

Sen. Tarr sought recognition from his desk at 10:47 a.m. President Spilka declared a brief recess.

The Senate returned to order at 10:47 a.m.

Sen. Brownsberger said one more point. As the gentleman makes his motion we will use the day to continue to negotiate and continue to clarify what we can do to increase people's comfort level. No problem with that. So we look forward to continuing dialogue.

Sen. Tarr sought recognition from his desk at 10:48 a.m. President Spilka declared a brief recess and spoke with her aides on the rostrum.

President Spilka gaveled the Senate to order at 10:50 a.m.

Having not previously spoken, the chair recognized Sen. Comerford of Northampton.

Sen. Comerford said I'm grateful to speak on this. When you established the working group you called us forward for a marathon and a sprint in response to these tragedies which called us to act with a kind of strategic, incisive decisions that are needed now. The minority leader has today, I believe, reminded us of important hallmarks of this Senate. One of the hallmarks is of course that we listen to constituents. As chair of the working group, Sen. Brownsberger acknowledged many of these bills have been interrogated in public hearings. The minority leader also reminded us that we talk to each other in the Senate and consider each other as colleagues. I believe in the working group we did that process and the minority leader strengthened this bill with your robust participation. Participation that helped me believe in the construction of this bill because the process was bipartisan. It wasn't an easy sprint, it was a considered deep process sprint. You have called us to even deeper conversation Mr. Minority Leader. Yesterday the gentlelady from Jamaica Plain talked in an inspiring way about calls to us coming from communities of color. A constituent of mine from Amherst said to me, she who feels it, knows it. She has not only passion, the gentlelady from Jamaica Plain, she has depth of knowledge and experience. I've been hearing from constituents who are out of time. They need the racial justice and other things embodied in this bill. He spoke of the emails being received, and we are receiving these emails and doing our best to engage with these constituents. Some of them are in law enforcement and have my utmost respect. But Madam President, I am hearing from a great deal more of my constituents who are hungry for the change and justice embodied by this bill. They have waited far too long for these new ideas, this accountable transformation, who battle everyday with racial injustice we are all steeped in. My colleague the chair said earlier, this bill is a reasonable way forward. A good first step

in the marathon you have called this Senate to. I am proud to lock arms with my constituents. I want this deep conversation on these complex issues. We must not delay the work on this bill any more. We cannot run out of time in the charge you have called us to.

Sen. Tarr said I want to thank the gentlelady who just spoke for her comments. I think it's important to acknowledge a couple of things. One, I have not heard anyone in this discussion yet say we should fail to act. Two, I would not suggest we should consider important only the emails from one perspective we have been receiving. I am receiving them from many different perspectives and take all of them into account. It's very interesting, much has been made of the fact I participated in the working group. I appreciate your invitation to do so. But my ego is not such I would not be willing to say, sometimes things change and sometimes what I thought yesterday before more information, is not what I think today. That's number three. Number four, I have tremendous respect for the gentleman from Belmont. It seems like whenever he speaks I feel like I learn something and that's valuable to me, as is his friendship. I do not disagree with much of what he has said. One of the most important things he said is something grieving me for quite a period of time, and that is the assertion that somehow the bill now pending would eliminate all qualified immunity. It does not. What it does do is make a change the significance of which is being weighed by many, many people to understand its impact. The doctrine itself emerged in 1967 in the Supreme Court decision *Pierson v. Ray*. The doctrine has been evolving in our courts. The primary application is not in state courts; these cases are frequently brought in federal courts. We could debate for some period of time what the impact of a state change would be on the majority of cases brought in this category. Now, I also want to note something with appreciation. That is that every speaker today has acknowledged the importance of the time we have had to work on this as the result of the gentleman from Sutton's actions. I hope those assertions lay to rest any thought, and any attempt by anyone, who is a member of our chamber, any suggestion that the gentleman is being obstructionist. That would be just irresponsible. The gentleman is correct that the bill had a public hearing relative to qualified immunity. It was referred I believe to House Ways and Means. It was not referred to Senate Ways and Means, nor our working group on S 2800. So if you want to talk about process I think we need to consider that. No one in this discussion is suggesting we not act and do so in a timely fashion. But one question you have to ask is if you want timely action, is that best served by adding things that are so extensive in the bill when so many people interested in the bill have suggested we should focus on the core things that need to happen now? Happy to introduce letters from some of those folks indicating very clearly the best path to getting this bill done. Those letters were about not taking a bit more time but about making sure the bill we pass can garner consensus. I appreciate my colleagues' words. I suggest that taking a little more time is the appropriate way to proceed.

Sen. Fattman of Sutton said in the spirit of more time and the spirit of more dialogue, I'd like to make a motion under Rule 31 to print the amendments in the calendar.

Sen. Tarr seconded the motion.

[Senate Rule 31: "If an amendment is offered by any member at the second or third reading of a bill or resolve, substantially changing the greater part of the bill or resolve, the question shall not be put forthwith on adopting the amendment to the bill or resolve if formally requested by 2 members, but the bill or resolve shall be laid over and placed in the Orders of the Day for the next day after that on which the amendment is offered, with the amendment pending..."]

President Spilka said under the rules, the amendments will be printed in the calendar.

RECESS/RETURNS: President Spilka at 11:03 a.m. said the orders of the day had been completed, and called a brief recess. The Senate returned to order at 11:06 a.m.

MONDAY FORMAL SESSION: The Senate adopted a Sen. Chang-Diaz order to meet next on Monday at 11 a.m. in a full formal session with a calendar.

ADJOURNS: On a Sen. Timilty motion, the Senate adjourned at 11:06 a.m. to meet next on Monday at 11 a.m. in a full formal session with a calendar.

DISCLAIMER: Bill texts and histories are available at <http://www.malegislature.gov/>. All votes are voice votes, unless otherwise noted. Bills ordered to third reading have been given initial approval. To engross a bill is to pass it and send it to the other branch. The last of three votes taken on bills that reach the governor's desk is the vote on enactment. So, it's third reading (initial approval), engrossment (passage) and enactment. The News Service coverage of legislative debate is an accurate summary of remarks, not a verbatim transcript.

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