

HOUSE No. 3551

The Commonwealth of Massachusetts



House of Representatives,

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

1 *Ordered*, Whereas, Part II, c. 1, § 3, art. 7, of the Constitution of the Commonwealth
2 requires that “All money bills shall originate in the house of representatives; but the senate may
3 propose or concur with amendments, as on other bills”;

4 Whereas, The Supreme Judicial Court has opined in *In Re Opinion of the Justices*, 126 Mass.
5 557, 601 (1878), that it is “the exclusive constitutional privilege of the House of Representatives
6 to originate money bills” and that ‘money bills’ are “bills that transfer money or property from
7 the people to the State,” and do “not include bills that appropriate money from the Treasury of
8 the Commonwealth to particular uses of the government, or bestow it upon individuals or
9 corporations”;

10 Whereas, Grave doubt exists as to whether the Senate has the authority to initiate a proposal to
11 “transfer money or property from the people to the State” into a bill that originated in the House
12 of Representatives and that did not include any provision for transferring “money or property

from the people to the State” pursuant to Part II, c. 1, § 3, art. 7, of the Constitution of the Commonwealth, but did include provisions relative to tax expenditures;

Whereas, On March 4, 2015 His Excellency the Governor recommended to the General Court a budget for fiscal year 2016 as required by Article 63, § 2 of the Amendments to the Constitution of the Commonwealth; said recommendation, in the form of House No. 1, included section 27 which would delay the effective date of a previously enacted tax expenditure;

Whereas, On April 15, 2015 the House Committee on Ways and Means filed with the Clerk of the House of Representatives House No. 3400, the general appropriation bill, as provided for in Article 63, § 3 of the Amendments to the Constitution of the Commonwealth, and said House No. 3400 included section 48, a section identical to section 27 of House No. 1, which would delay the effective date of a previously enacted tax expenditure;

Whereas, On April 27, 2015 the House of Representatives voted to adopt Amendment No. 685 to House No. 3400;

Whereas, Amendment No. 685, as adopted and if enacted, would provide for an increase in the limit on personal and corporate tax credit expenditures allowed for donations of conservation land from \$2,000,000 to \$5,000,000 effective January 1, 2016;

Whereas, House No. 3400, including section 48 and section 76, as inserted by the adoption of Amendment No. 685, was passed to be engrossed by the House of Representatives on April 30, 2015 and is now House No. 3401;

32 Whereas, House No. 3401 was transmitted by the Clerk of the House of Representatives to the
33 Clerk of the Senate on May 7, 2015 and referred by the Clerk of the Senate to the Senate
34 Committee on Ways and Means on May 7, 2015;

35 Whereas, On May 12, 2015 the Senate Committee on Ways and Means struck the text of House
36 No. 3401 as engrossed by the House of Representatives and filed with the Clerk of the Senate in
37 place of House No. 3401 the text of Senate No. 3;

38 Whereas, On May 19, 2015 the Senate voted to adopt Amendment No. 6 which, inter alia, would
39 insert a section 31D and a section 107A into Senate No. 3;

40 Whereas, Section 31D of Senate No. 3, as adopted and if enacted, would “transfer money or
41 property from the people to the State” by repealing the current statutory mechanism established
42 by section 4(b) of chapter 62 of the General Laws which requires that the tax rate on personal
43 income be set at 5% upon satisfaction of certain fiscal requirements, and replacing it with a
44 permanently fixed tax rate on personal income of 5.15%, which section 107A would make
45 effective on January 1, 2016;

46 Whereas, on May 21, 2015 the Senate voted to adopt Amendment No. 836, which would insert a
47 section 34A into Senate No. 3;

48 Whereas, Section 34A of Senate No. 3, as adopted and if enacted, would “transfer money or
49 property from the people to the State” by creating a new tax on the sale of certain tobacco
50 products;

51 Whereas, Senate No. 3, including section 31D and section 107A, as inserted by the adoption of
52 Amendment No. 6, and section 34A, as inserted by the adoption of Amendment No. 836, was
53 passed to be engrossed by the Senate on May 22, 2015;

54 Whereas, Grave doubt exists as to whether House No. 3401 as engrossed and transmitted by the
55 Clerk of the House of Representatives to the Clerk of the Senate would “transfer money or
56 property from the people to the State” thereby rendering House No. 3401 a ‘money bill’ pursuant
57 to Part II, c. 1, § 3, art. 7, of the Constitution of the Commonwealth; and

58 Whereas, Grave doubt exists as to the constitutionality of sections 31D and 34A of Senate No. 3
59 if enacted into law; therefore be it

60 Ordered, That the opinions of the Honorable Justices of the Supreme Judicial Court be required
61 by the House of

62 Representatives upon the following important questions of law:

63 1. Does an amendment to an existing session law postponing the effective date of a
64 previously enacted tax expenditure, as set forth in section 48 of House No. 3401, render House
65 No. 3401 a ‘money bill’ pursuant to Part II, c. 1, § 3, art. 7, of the Constitution of the
66 Commonwealth?

67 2. Does an amendment to an existing General Law increasing the expenditure of tax credits
68 as set forth in section 76 of House No. 3401, render House No. 3401 a ‘money bill’ pursuant to
69 Part II, c. 1, § 3, art. 7, of the Constitution of the Commonwealth?

70 3. If the answers to question 1 and question 2 are in the negative, would it be violative of Part II,
71 c. 1, § 3, art. 7, of the Constitution of the Commonwealth for the Senate to “transfer money or

property from the people to the State” by initiating the repeal of the current statutory mechanism requiring the tax rate on personal income be set at 5% upon satisfaction of certain fiscal requirements and replacing that reduction mechanism with a permanently fixed tax rate on personal income of 5.15% as set forth in section 31D of Senate No. 3?

4. If the answers to question 1 and question 2 are in the negative, would it be violative of Part II, c. 1, § 3, art. 7, of the Constitution of the Commonwealth for the Senate to “transfer money or property from the people to the State” by initiating a new tax on certain tobacco products as set forth in section 34A of Senate No. 3?

5. If the answer to question 1 or question 2 is in the affirmative, does the substitution by the Senate of the text of Senate No. 3 for the text of House No. 3401 result in the Senate originating a money bill in violation of Part II, c. 1, § 3, art. 7, of the Constitution of the Commonwealth?

HOUSE OF REPRESENTATIVES, MAY 22, 2015.

ADOPTED

STEVEN T. JAMES, CLERK