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UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



JOURNAL OF THE SENATE.

Thursday, February 5, 2004.

Met at three minutes past one o'clock P.M. (Ms. Menard in the Chair).

Distinguished Guests.

There being no objection, during consideration of the Orders of the Day, the President in the Chair, the Senator from Third Middlesex, Ms. Fargo introduced, seated in the gallery of the Chamber, James Betz of Bedford, James Dorer of Bedford, Daniel Lindquist of Chelmsford, Louisa Slocum of Concord-Carlisle, Aisha Townes of Lexington, Maria Townes of Lexington, Catherine Riffin of Weston and Elise Patterson of Weston, members of the Student Advisory Council of the Third Middlesex District.. They are here today to tour the State House and to talk about a realm of issues that face high school students today.

Reports of a Committee.

By Mr. Moore, for the committee on Health Care, on petition (accompanied by bill, Senate, No. 494), an Order relative to authorizing the joint committee on Health Care to make an investigation and study of Senate document numbered 494, relative to prescription drug prices (Senate, No. 2201);

By the same Senator, for the same committee, on petition (accompanied by bill, Senate, No. 529), an order relative to authorizing the joint committee on Health Care to make an investigation and study of Senate document numbered 529, relative to school vaccinations (Senate, No. 2202); and

By the same Senator, for the same committee, on petition (accompanied by bill, Senate, No. 561), an Order relative to authorizing the joint committee on Health Care to make an investigation and study of Senate document numbered 561, relative to managed care accountability (Senate, No. 2203);

Severally referred, under Joint Rule 29, to the committees on Rules of the two branches, acting concurrently.

By Mr. Moore, for the committee on Health Care, on petition, a Bill relative to the National Legislative Association on Prescription Drug Prices (Senate, No. 558);

Read and, under Joint Rule 29, referred to the committees on Rules of the two branches, acting concurrently.

By Mr. Moore, for the committee on Health Care, on petition, a Bill relative to the pharmacy licensing and disclosure act (Senate, No. 547);

By the same Senator, for the same committee, on petition, a Bill discouraging fraudulent marketing practices by the pharmaceutical industry (Senate, No. 551);

By the same Senator, for the same committee, on petition, a Bill codifying the hepatitis C program (Senate, No. 553);

By the same Senator, for the same committee, on petition, a Bill further regulating investigations of abuse against residents of long term care facilities (Senate, No. 567);

By the same Senator, for the same committee, on petition, a Bill relative to frozen desserts and frozen dessert mix (Senate, No. 586);

By the same Senator, for the same committee, on petition, a Bill requiring hospitals to report head injuries and spinal cord injuries (Senate, No. 587);

By the same Senator, for the same committee, on petition, a Bill relative to licensing of milk pasteurization plants located within the Commonwealth (Senate, No. 596);

By the same Senator, for the same committee, on petition, a Bill relative to a registered nurse seat on the Public Health Council (Senate, No. 600);

By the same Senator, for the same committee, on petition, a Bill providing for the proper prevention of pneumonia in health care workers (Senate, No. 607);

By the same Senator, for the same committee, on petition, a Bill requiring notification to the department of public health for certain school construction projects (Senate, No. 622);

By the same Senator, for the same committee, on petition, a Bill to provide senior citizen hearing tests (Senate, No. 623);

By the same Senator, for the same committee, on petition, a Bill reducing sexually transmitted diseases (Senate, No. 650);

By the same Senator, for the same committee, on petition, a Bill studying the health effects of toxic mold (Senate, No. 657);

By the same Senator, for the same committee, on petition, a Bill relative to a deputy nurse commissioner at the Department of Public Health (Senate, No. 668);

By the same Senator, for the same committee, on petition, a Bill relative to caseload capacity for dentists participating in the MassHealth program (Senate, No. 691); and

By the same Senator, for the same committee, on petition, a Bill establishing a statewide environmental illness incidence registry (Senate, No. 695);

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

By Mr. Moore, for the committee on Health Care, on petition, a Bill relative to the practice of dental assisting (Senate, No. 508); and

By the same Senator, for the same committee, on petition, a Bill relative to cemeteries and burials (Senate, No. 648);

Severally read and, under Senate Rule 26, referred to the committee on Steering and Policy.

PAPER FROM THE HOUSE.

The following petition, having been transmitted by the Secretary of the Commonwealth to the Clerk of the House of Representatives as required by Article XLVIII of the Amendments to the Constitution, and having been received in the office of the Clerk of the House of Representatives on January 7, 2004, was referred, in concurrence, pursuant to an order previously adopted by the House and Senate, to the joint committees on Health Care and Insurance, the House committees on Ways and Means and Medicaid and the Senate Committee on Federal Financial Assistance, to wit:—

Initiative petition of Harold Hestnes and others for an Initiative Amendment to the Constitution relative to the provision of health insurance (House, No. 4444).

Recess.

At four minutes past one o'clock P.M., the Chair (Ms. Menard) declared a recess subject to the call of the Chair, and at fourteen minutes before two o'clock P.M., the Senate reassembled, Mr. Havern in the Chair.

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

Resolutions.

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

Resolutions (filed by Mr. Lees) “on the Ronald Reagan Legacy Project’s observance of February 6, 2004 as ‘Ronald Reagan Day’ ”; and

Resolutions (filed by Mr. Moore) “honoring the Knitters Club of Hopedale as ‘Givers’ through the ‘Hugs from Hopedale’ Project.”

Orders of the Day.

The Orders of the Day were considered, as follows:

Bills

Relative to the employment rights of volunteer ambulance service employees (Senate, No. 34);

Relative to the Barnstable County charter (Senate, No. 143);

Relative to the crime of engaging in legal or medical running (Senate, No. 170);

Regarding medical record retention requirements (Senate, No. 643);

Authorizing municipalities to petition for public involvement plans in cases of hazardous material sites (Senate, No. 1234);

Relating to the distribution and sale of household cleaning products containing phosphorous (Senate, No. 1252);

Authorizing the town of Harvard to employ Peter E. Warren as fire chief for two years after his sixty-fifth birthday (Senate, No. 1930);

Relative to voting precincts in the town of Amherst (Senate, No. 2040);

To authorize the town of Winchester to lien certain outstanding charges owed the town (Senate, No. 2041);

Authorizing the town of Tewksbury to grant certain utility easements (Senate, No. 2070);

Relative to part-time elected officials of the town of Swansea (printed as House, No. 3969);

Authorizing the town of Mendon to establish a capital expenditure fund (House, No. 192);

Authorizing the town of Dighton to establish a special fund (House, No. 455);

Relative to interstate criminal information systems (House, No. 1489);

Relative to the pronouncement of death by a nurse practitioner (House, No. 1663);

Validating the acts and proceedings at a certain town caucus in the town of Westhampton (House, No. 1712);

Authorizing a public waterfront walkway to be exempted from the harbor line in the Charlestown Navy Yard in the city of Boston (House, No. 3857);

Relative to court advisement (House, No. 4135); and

Authorizing the town of Middleton to grant certain easements (House, No. 4196);

Were severally read a second time and ordered to a third reading.

The Senate Bill authorizing the Department of Environmental Management to take or acquire conservation restrictions in and to lands of the city of Leominster (Senate, No. 1619),— was read a second time and was amended, as previously recommended by the committee on Ways and Means, in section 1, by striking out, in line 9, the words: “The division shall not” and inserting in place thereof the following words:— “Neither the division nor the department shall”.

The bill (Senate, No. 1619, amended) was then ordered to a third reading.

The Senate bills

Requiring the reporting of medication errors (Senate, No. 599) (its title having been changed by the committee on Bills in the Third Reading);

Relative to the safe administration of medications and legible prescriptions (Senate, No. 621);

Relative to the compensation and expenses of members of the Board of Registration in Medicine (Senate, No. 634); and

Providing for performance standards for physicians (Senate, No. 2048);

Were severally read a third time and passed to be engrossed.

Severally sent to the House for concurrence.

The President in the Chair, the Senate reports

Of the committee on Commerce and Labor, ought NOT to pass, on the petition (accompanied by bill, Senate, No. 116) of Associated Industries of Massachusetts, by Robert Ruddock, Bruce E. Tarr, David P. Magnani and other members of the General Court for legislation to establish a secretary of economic development and technology, and

Of the committee on Public Service, ought NOT to pass, on the petition (accompanied by bill, Senate No. 1506) of Thomas M. McGee, Michael W. Morrissey, Steven M. Walsh and Kathi-Ann Reinstein for legislation to establish an early retirement incentive program for certain local government employees;

Were severally considered; and they were accepted.

The House report of the committee on Health Care, ought NOT to pass, on so much of the recommendations of the Division of Medical Assistance (House, No. 57) as relates to transferability between accounts (accompanied by bill, House, No. 61),— **was considered; and it was accepted, in concurrence.**

The Senate Bill further regulating check cashing privacy (Senate, No. 63),—was read a second time.

After remarks, the question on ordering it to a third reading was determined by a call of the yeas and nays, at two minutes before two o'clock P.M., on motion of Mr. Lees, as follows, to wit (yeas 37 — nays 0) [**Yeas and Nays No. 440**]:

YEAS.

Antonioni, Robert A.	Montigny, Mark C.
Baddour, Steven A.	Moore, Richard T.
Barrios, Jarrett T.	Morrissey, Michael W.
Brewer, Stephen M.	Murray, Therese
Chandler, Harriette L.	Nuciforo, Andrea F., Jr.
Creedon, Robert S., Jr.	O'Leary, Robert A.
Creem, Cynthia Stone	Pacheco, Marc R.
Fargo, Susan C.	Panagiotakos, Steven C.
Glodis, Guy W.	Resor, Pamela
Hart, John A., Jr.	Rosenberg, Stanley C.
Havern, Robert A.	Shannon, Charles E.
Hedlund, Robert L.	Sprague, Jo Ann
Joyce, Brian A.	Tarr, Bruce E.
Knapik, Michael R.	Tisei, Richard R.
Lees, Brian P.	Tolman, Steven A.
Magnani, David P.	Tucker, Susan C.
McGee, Thomas M.	Walsh, Marian
Melconian, Linda J.	Wilkerson, Dianne —
	37.
Menard, Joan M.	

NAYS — 0.

ABSENT OR NOT VOTING.

Berry, Frederick E. —
1.

The yeas and nays having been completed at two minutes past two o'clock P.M., the bill was ordered to a third reading.

The Senate Bill relative to the penalties for killing, maiming or poisoning of an animal (Senate, No. 198),— was read a second time.

Pending the question on ordering the bill to a third reading, Mr. Hedlund moved to amend the bill by inserting after section 3 the following section:—

“SECTION 4. Chapter 272 of the General Laws is hereby amended by inserting after section 79B, as appearing in the 2002 Official Edition, the following section:—

Section 79C. (a) As used in this section the following words shall have the following meanings:—

(1) ‘Circus’, a class C licensee licensed under the Animal Welfare Act, 7 U.S.C. Section 2131 et seq., and its subsequent amendments, regulations and standards adopted pursuant to the Act, that offers performances by live animals, clowns or acrobats.

(2) ‘Exotic animal’, any or all of the following orders and families, whether bred in the wild or in captivity, and whether or not native to Massachusetts, and any or all hybrids thereof with domestic species. The animals listed in parentheses are intended to act as examples and are not to be construed as an exhaustive list or limit the generality of each group of animals, unless otherwise specified:

- a. non-human primates and prosimians (all species);
- b. felidae (all wild cats and hybrids thereof, except domesticated cats);
- c. ursidae (all bears);
- d. proboscidae (all elephants).

(3) ‘Person’, an individual, partnership, corporation, joint venture, association, trust, estate or any other legal entity, and any officer, member, shareholder, director, employee, agent or representative thereof.

(4) ‘Sanctuary’, a non-profit organization described in Section 170(b)(1)(A)(vi) of the Internal Revenue Code 1986, and its subsequent amendments, that operates a facility that is a place of refuge where abused, neglected, unwanted, impounded, abandoned, orphaned or displaced exotic animals are provided care for their lifetime or released back to their natural habitat and is a facility with the following characteristics:

- a. no commercial activity involving animals occurs including, but not limited to, the sale of or trade in animals, animal parts, animal by-products or animal offspring, or the sale of photographic opportunities involving animals);
- b. no propagation of animals occurs in the facility; and
- c. no unescorted public visitation or direct contact between the public and exotic animals is allowed.

(5) ‘Traveling show’, any mobile or stationary act, circus, public show, trade show, photographic opportunity, carnival, city or county fair, agricultural fair, ride, parade, race, performance or similar undertaking in which the exotic animals do not permanently reside or that moves exotic animals from location to location. ‘Traveling show’ shall not include any person that keeps exotic animals at a permanent site and that, if transporting such animals for the purposes of obtaining medical care or for providing education or entertainment to others, the animals spends less than 6 hours, total, in transit to the site where the education, entertainment or medical services are provided and back to site where the exotic animal is permanently kept.

(b) It shall be unlawful for any person to bring into the state, conduct or operate a traveling show or circus that includes exotic animals.

(c) Any person who violates this section shall be fined not more than \$5,000 per exotic animal or imprisoned in the house of correction for not more than 1 year, or by both such fine and imprisonment.

(d) This section shall not apply to institutions accredited by the American Zoo and Aquarium Association or any sanctuary.”

After remarks, the amendment was rejected.

The bill was then ordered to a third reading.

The Senate Bill relative to the reporting of child abuse to local law enforcement officials (Senate, No. 542),— was read a second time.

After remarks, the question on ordering it to a third reading was determined by a call of the yeas and nays, at nine minutes past two o’clock P.M., on motion of Mr. Lees, as follows, to wit (yeas 37 — nays 0) [**Yeas and Nays No. 441**]:

YEAS.

Antonioni, Robert A. Montigny, Mark C.

Baddour, Steven A.	Moore, Richard T.
Barrios, Jarrett T.	Morrissey, Michael W.
Brewer, Stephen M.	Murray, Therese
Chandler, Harriette L.	Nuciforo, Andrea F., Jr.
Creedon, Robert S., Jr.	O’Leary, Robert A.
Creem, Cynthia Stone	Pacheco, Marc R.
Fargo, Susan C.	Panagiotakos, Steven C.
Glodis, Guy W.	Resor, Pamela
Hart, John A., Jr.	Rosenberg, Stanley C.
Havern, Robert A.	Shannon, Charles E.
Hedlund, Robert L.	Sprague, Jo Ann
Joyce, Brian A.	Tarr, Bruce E.
Knapik, Michael R.	Tisei, Richard R.
Lees, Brian P.	Tolman, Steven A.
Magnani, David P.	Tucker, Susan C.
McGee, Thomas M.	Walsh, Marian
Melconian, Linda J.	Wilkerson, Dianne —
	37.
Menard, Joan M.	

NAYS — 0.

ABSENT OR NOT VOTING.

Berry, Frederick E. —
1.

The yeas and nays having been completed at thirteen minutes past two o’clock P.M., the bill was ordered to a third reading.

Bills

Relative to the Board of Registration in Nursing (Senate, No. 569);

Authorizing payroll deductions for certain contributions to the State Police Museum Fund (Senate, No. 1417); and

Relative to hunter education (Senate, No. 2111);

Were severally read a second time and ordered to a third reading.

The Senate Bill regarding eye exams for children (Senate, No. 687),— was read a second time and was amended, on motion of Messrs. Antonioni and Tolman, by striking out all after the enacting clause and inserting in place thereof the following new text:—

“The first paragraph of section 57 of chapter 71 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by adding the following words:— Provided that, upon entering kindergarten or within 30 days of the start of the school year, each child shall present to school health personnel certification of having passed a vision screening within the previous twelve months, conducted by personnel as approved by the department of public health and trained in the Massachusetts approved vision screening techniques to be developed by the department of public health in consultation with the department of education. In the event of failure to pass the approved Massachusetts vision screening and for children diagnosed with neurodevelopmental delay, proof of a comprehensive eye examination performed by a licensed optometrist or ophthalmologist chosen by the child’s parents or guardian indicating any pertinent diagnosis, treatment, prognosis, recommendation and evidence of follow-up treatment if necessary must be provided.”

The bill (Senate, No. 687, amended) was then ordered to a third reading.

The Senate Bill repealing certain antiquated laws pertaining to public health (Senate, No. 2157),— **was read a second time and, after remarks, was then ordered to a third reading.**

The House Bill relative to insurance fraud (House, No. 921),— was read a second time.

Pending the main question on ordering the bill to a third reading, on motion of Ms. Menard, the further consideration thereof was postponed until Sunday, August 1, 2004.

The House Bill relative to the use of the name of financial institutions (House, No. 1623),— was read a third time.

Pending the question on passing the bill to be engrossed, Mr. Nuciforo moved that the bill be amended by striking out all after the enacting clause and inserting in place thereof the following text:—

“SECTION 1. Section 37 of chapter 167 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after the first paragraph the following 2 paragraphs:—

Notwithstanding any special or general law to the contrary, a domestic or foreign corporation, individual, partnership, association or similar entity, other than corporations and persons excepted from the prohibitions of this section, shall not utilize the name or trademark or a name deceptively similar to that of an existing bank, credit union, federal bank, federal credit union, foreign bank or out-of-state bank as defined by section 1, or any subsidiary thereof, when marketing or soliciting business from a customer or prospective customer in a manner that could cause a reasonable person to believe that the marketing material or solicitation originated from or is endorsed by the existing bank or that the existing bank is responsible for the marketing material or solicitation unless the corporation, individual, partnership association or entity received prior written permission from the bank, credit union, federal bank, federal credit union, foreign bank or out-of-state bank.

Any domestic or foreign corporation, individual, partnership, association or similar entity, whom the commissioner determines to have violated this section, shall be considered to have engaged in an unfair and deceptive practice in violation of chapter 93A. The remedy provided by said chapter 93A shall be in addition to the remedy provided in section 37A of this chapter.

SECTION 2. Section 37A of said chapter 167, as so appearing, is hereby amended by inserting after the word ‘association’, in lines 2 and 3, the following words:— he or his examiners believe is violating the preceding section or who is.”.

This amendment was adopted.

The bill was then passed to be engrossed, in concurrence, with the amendment.

Sent to the House for concurrence in the amendment.

The Senate Bill requiring a study of testing options for taking the Massachusetts Comprehensive Assessment System exam (Senate, No. 1994, amended) (its title having been changed by the committee on Bills in the Third Reading),— **was read a third time and passed to be engrossed.**

Sent to the House for concurrence.

The Senate Bill relative to the punishment for sale and storage of fireworks (Senate, No. 1364),— was considered, the main question being on ordering it to a third reading.

Pending the motion, previously moved by Mr. Lees, to lay the matter on the table, and pending the main question on ordering the bill to a third reading, on further motion of Mr. Lees, the further consideration thereof was postponed until Thursday, March 4, 2004.

The Senate Bill ensuring that parents of children prescribed psychotropic drugs receive adequate information (Senate, No. 674),— was considered.

Pending the question on passing the bill to be engrossed, on motion of Mr. Moore, the further consideration thereof was postponed until Thursday, February 19, 2004.

The Senate Bill requiring children under 12 to wear ski helmets (Senate, No. 1376),— was considered, the main question being on ordering it to a third reading.

Messrs. Shannon, Nuciforo, Glodis and Antonioni moved that the bill be amended by striking out all after the enacting clause and inserting in place thereof the following new text:—

“SECTION 1. Section 71N of chapter 143 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after clause (4) the following 3 clauses:—

(4A) conspicuously place at a ski area’s point of purchase for lift tickets a sign measuring not less than 1 foot by 1 foot containing the following notice: ‘A HELMET — IT’S A SMART IDEA. FOR EDUCATIONAL INFORMATION ON HELMETS, INQUIRE AT TICKET OFFICE.’

(4B) make available to skiers, and school ski outings, written educational information on ski helmets;

(4C) keep on record and make available for annual inspection by the executive office of public safety, documentation of the steps taken by ski area operators to comply with clauses (4A) and (4B);

SECTION 2. The second paragraph of section 71O of said chapter 143, as so appearing, is hereby amended by inserting after the fourth sentence the following 2 sentences:— Skiers shall educate themselves on ski helmet use including, but not limited to, by reviewing any information provided by the ski area, and shall make informed choices on the use of ski helmets for themselves and their children. Skiers shall comply with all posted information and other warnings.

SECTION 3. Ski area operators shall comply with clause (4C) of section 71N of chapter 143 of the General Laws on and after April 15, 2004.”; by inserting before the enacting clause the following emergency preamble:—

“*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is forthwith to promote ski safety, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety and convenience.”; and by striking out the title and inserting in place thereof the following title:— “An Act promoting ski safety.”.

After remarks, the amendment was adopted.

The bill (Senate, No. 1376, amended) was then ordered to a third reading.

Subsequently, there being no objection, the rules were suspended, on motion of Mr. Moore, and the bill was read a third time.

The question on passing the bill to be engrossed was determined by a call of the yeas and nays at twenty-six minutes past two o'clock P.M., on motion of Mr. Nuciforo, as follows, to wit (yeas 36 — nays 1) [**Yeas and Nays No. 442**]:

YEAS.

Antonioni, Robert A.	Montigny, Mark C.
Baddour, Steven A.	Moore, Richard T.
Barrios, Jarrett T.	Morrissey, Michael W.
Brewer, Stephen M.	Murray, Therese
Chandler, Harriette L.	Nuciforo, Andrea F., Jr.
Creedon, Robert S., Jr.	O'Leary, Robert A.
Creem, Cynthia Stone	Pacheco, Marc R.
Fargo, Susan C.	Panagiotakos, Steven C.
Glodis, Guy W.	Resor, Pamela
Hart, John A., Jr.	Rosenberg, Stanley C.
Havern, Robert A.	Shannon, Charles E.
Hedlund, Robert L.	Sprague, Jo Ann
Joyce, Brian A.	Tarr, Bruce E.
Knapik, Michael R.	Tisei, Richard R.
Lees, Brian P.	Tolman, Steven A.
Magnani, David P.	Tucker, Susan C.
McGee, Thomas M.	Walsh, Marian
Melconian, Linda J.	Wilkerson, Dianne —
	37.
Menard, Joan M.	

NAYS

Glodis, Guy W. — **1.**

ABSENT OR NOT VOTING.

Berry, Frederick E. —
1.

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

Sent to the House for concurrence.

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 relative to the Dighton Water District (House, No. 387),— **was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence.**

PAPERS FROM THE HOUSE.

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:

Relative to the Geriatric Authority of the town of Milford (see House, No. 193);

Relative to the use of motorcyclist's head gear in parades (see House, No. 206, changed);

Relative to vacancies in certain offices in the town of Spencer (see House, No. 4077); and

Placing the members of the fire department of the town of Acushnet under the civil service law (see House, No. 4282).

An engrossed Bill authorizing the town of Milton to establish the Milton High School accreditation fund (see House Bill, printed in House, No. 4367) (which originated in the House), **having been certified by the Senate Clerk to be rightly and truly prepared for final passage, was passed to be enacted, two-thirds of the members present having voted in the affirmative, and it was signed by the President and laid before the Governor for his approbation.**

Engrossed Bill — Land Taking for Conservation, Etc.

An engrossed Bill authorizing the town of Tewksbury or the Tewksbury Conservation Commission to convey certain easements to Tennessee Gas Pipeline Company in the town of Tewksbury (see Senate, No. 1938, changed) (which originated in the Senate), 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 or 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 twenty-nine minutes before three o'clock P.M., as follows, to wit (yeas 37 — nays 0) **[Yeas and Nays No. 443]:**

YEAS.

Antonioni, Robert A.	Montigny, Mark C.
Baddour, Steven A.	Moore, Richard T.
Barrios, Jarrett T.	Morrissey, Michael W.
Brewer, Stephen M.	Murray, Therese
Chandler, Harriette L.	Nuciforo, Andrea F., Jr.
Creedon, Robert S., Jr.	O'Leary, Robert A.
Creem, Cynthia Stone	Pacheco, Marc R.
Fargo, Susan C.	Panagiotakos, Steven C.
Glodis, Guy W.	Resor, Pamela
Hart, John A., Jr.	Rosenberg, Stanley C.
Havern, Robert A.	Shannon, Charles E.
Hedlund, Robert L.	Sprague, Jo Ann
Joyce, Brian A.	Tarr, Bruce E.
Knapik, Michael R.	Tisei, Richard R.
Lees, Brian P.	Tolman, Steven A.
Magnani, David P.	Tucker, Susan C.
McGee, Thomas M.	Walsh, Marian
Melconian, Linda J.	Wilkerson, Dianne —
Menard, Joan M.	37.

NAYS — 0.
ABSENT OR NOT VOTING.

Berry, Frederick E. —

1.

The yeas and nays having been completed at twenty-six minutes before three 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.

Message from the Governor — Disapproval and Reductions in Supplemental Appropriation Bill.

A message from His Excellency the Governor, returning, with his disapproval of certain items and sections and parts of certain items, and reductions in certain items contained in the engrossed Bill making appropriations for the fiscal year 2004 to provide for supplementing certain existing appropriations and for certain other activities and projects (see House, No. 4330), which on Wednesday, November 19, 2003, had been laid before the Governor for his approbation,— came from the House, in part, several items and sections having been passed by the House notwithstanding the reduction or disapproval of the Governor.

The message (House, No. 4365) was read; and the Senate proceeded to reconsider several items, which had been reduced or disapproved in accordance with the provisions of the Constitution.

Item 1599-4500 (Help America Vote Act) was considered as follows:

“1599-4500 For a reserve to leverage a federal grant for the Help America Vote Act; provided, that the secretary of the commonwealth shall submit a report no later than December 20, 2003 to the house and senate committees on ways and means that shall include but not be limited to the following; summarizing the implementation of this act, amount of federal funds received as a result of this appropriation, how the state and federal funds will be spent, how much in state spending is needed to access the remainder of federal funds associated with the Help America Vote Act \$1,727,500”.

After debate, the question on passing item 1599-4500 (contained in section 2A) in concurrence, the objections of His Excellency the Governor to the contrary notwithstanding, was determined by a call of the yeas and nays, as required by Chapter I, Section I, Article II, of the Constitution, at twenty minutes before three o'clock P.M., as follows, to wit (yeas 33 — nays 4) **[Yeas and Nays No. 444]:**

YEAS.

Antonioni, Robert A.	Moore, Richard T.
Baddour, Steven A.	Morrissey, Michael W.
Barrios, Jarrett T.	Murray, Therese
Brewer, Stephen M.	Nuciforo, Andrea F., Jr.
Chandler, Harriette L.	O'Leary, Robert A.
Creedon, Robert S., Jr.	Pacheco, Marc R.
Creem, Cynthia Stone	Panagiotakos, Steven C.
Fargo, Susan C.	Resor, Pamela
Glodis, Guy W.	Rosenberg, Stanley C.
Hart, John A., Jr.	Shannon, Charles E.
Havern, Robert A.	Tarr, Bruce E.
Joyce, Brian A.	Tisei, Richard R.
Magnani, David P.	Tolman, Steven A.
McGee, Thomas M.	Tucker, Susan C.
Melconian, Linda J.	Walsh, Marian
Menard, Joan M.	Wilkerson, Dianne —
Montigny, Mark C.	33.

NAYS.

Hedlund, Robert L. Lees, Brian P.
Knapik, Michael R. Sprague, Jo Ann — **4.**
ABSENT OR NOT VOTING.

Berry, Frederick E. —
1.

The yeas and nays having been completed at sixteen minutes before three o'clock P.M., item 1599-4500 (contained in section 2) stands, in concurrence, notwithstanding the objections of His Excellency the Governor, two-thirds of the members present having approved the same.

Item 4000-0600 (Nursing Homes Kosher Foods) was considered as follows:

"4000-0600\$600,000".

The question on passing item 4000-0600 (contained in section 2), in concurrence, the objections of His Excellency the Governor to the contrary notwithstanding, was determined by a call of the yeas and nays, as required by Chapter I, Section I, Article II, of the Constitution, at a quarter before three o'clock P.M., as follows, to wit (yeas 35 — nays 2) [**Yeas and Nays No. 445**]:

YEAS.

Antonioni, Robert A.	Montigny, Mark C.
Baddour, Steven A.	Moore, Richard T.
Barrios, Jarrett T.	Morrissey, Michael W.
Brewer, Stephen M.	Murray, Therese
Chandler, Harriette L.	Nuciforo, Andrea F., Jr.
Creedon, Robert S., Jr.	O'Leary, Robert A.
Creem, Cynthia Stone	Pacheco, Marc R.
Fargo, Susan C.	Panagiotakos, Steven C.
Glodis, Guy W.	Resor, Pamela
Hart, John A., Jr.	Rosenberg, Stanley C.
Havern, Robert A.	Shannon, Charles E.
Joyce, Brian A.	Tarr, Bruce E.
Knapik, Michael R.	Tisei, Richard R.
Lees, Brian P.	Tolman, Steven A.
Magnani, David P.	Tucker, Susan C.
McGee, Thomas M.	Walsh, Marian
Melconian, Linda J.	Wilkerson, Dianne —
	35.
Menard, Joan M.	

NAYS.

Hedlund, Robert L. Sprague, Jo Ann — **2.**
ABSENT OR NOT VOTING.
Berry, Frederick E. —
1.

The yeas and nays having been completed at twelve minutes before three o'clock P.M., item 4000-0600 (contained in section 2), stands in concurrence, notwithstanding the objections of His Excellency the Governor, two-thirds of the members present having approved the same.

Section 85 (Kosher Foods for Nursing Homes) was considered as follows:

“SECTION 85. Item 4000-0600 of said section 2 of said chapter 26 is hereby amended by adding the following words:— and provided further, that notwithstanding any general or special law to the contrary, for any nursing home that provides kosher food to its residents, the division of medical assistance, in consultation with the division of health care finance and policy, is directed to approve a special innovative program, and the division of health care finance and policy, in recognition of the unique special innovative program status granted by the division of medical assistance, shall, for any nursing home that provides kosher food to its residents, establish up to a \$5 per day increase to the standard payment rates to reflect the high dietary costs incurred in providing kosher food.

The question on passing Section 85, in concurrence, the objections of His Excellency the Governor to the contrary notwithstanding, was determined by a call of the yeas and nays, as required by Chapter I, Section I, Article II, of the Constitution, at eleven minutes before three o'clock P.M., as follows, to wit (yeas 36 — nays 1) [**Yeas and Nays No. 446**]:

YEAS.

Antonioni, Robert A.	Menard, Joan M.
Baddour, Steven A.	Montigny, Mark C.
Barrios, Jarrett T.	Moore, Richard T.
Brewer, Stephen M.	Morrissey, Michael W.
Chandler, Harriette L.	Murray, Therese
Creedon, Robert S., Jr.	Nuciforo, Andrea F., Jr.
Creem, Cynthia Stone	O'Leary, Robert A.
Fargo, Susan C.	Pacheco, Marc R.
Glodis, Guy W.	Panagiotakos, Steven C.
Hart, John A., Jr.	Resor, Pamela
Havern, Robert A.	Rosenberg, Stanley C.
Hedlund, Robert L.	Shannon, Charles E.
Joyce, Brian A.	Tarr, Bruce E.
Knapik, Michael R.	Tisei, Richard R.
Lees, Brian P.	Tolman, Steven A.
Magnani, David P.	Tucker, Susan C.
McGee, Thomas M.	Walsh, Marian
Melconian, Linda J.	Wilkerson, Dianne —

36.

NAYS.

Sprague, Jo Ann — **1.**

ABSENT OR NOT VOTING.

Berry, Frederick E. —
1.

The yeas and nays having been completed at nine minutes before three o'clock P.M., Section 85 stands, in concurrence, notwithstanding the objections of His Excellency the Governor, two-thirds of the members present having approved the same.

Section 65 (Lexington and Billerica Rte. 3 Sound Barriers) was considered as follows:

“SECTION 65. Said item 6033-9917 of said section 2B of said chapter 235 of the acts of 2000, as amended by section 21 of chapter 246 of the acts of 2002, is hereby further amended by inserting after the words “B & M railroad in the town of Montague” the following words:— ; provided further, that funds shall be expended for the construction of sound barriers in the towns of Billerica and Lexington as follows: in the town of Billerica on the northerly side of Route 3 from a point 500 yards south of the Eliot Street bridge and extending 700 yards north of the Eliot Street bridge on the Northerly side of Route 3; provided, further, that said barriers in the town of Lexington shall be from the off-ramp from Route 3 accessing Route 128 south and extending to the Grove Street Bridge; provided, further, that funds shall be expended for the construction of sound barriers at designated Area Number 21, Waterford Place in Chelmsford, designated Area 1, Ledgewood/Lido Land in Bedford, as defined

by HMMH Report Number 298280 as prepared for said document.”

The question on passing Section 65, in concurrence, the objections of His Excellency the Governor to the contrary notwithstanding, was determined by a call of the yeas and nays, as required by Chapter I, Section I, Article II, of the Constitution, at three minutes past three o’clock P.M., as follows, to wit (yeas 31 — nays 6) [**Yeas and Nays No. 447**]:

YEAS.

Antonioni, Robert A.	Montigny, Mark C.
Baddour, Steven A.	Moore, Richard T.
Barrios, Jarrett T.	Morrissey, Michael W.
Brewer, Stephen M.	Murray, Therese
Chandler, Harriette L.	Nuciforo, Andrea F., Jr.
Creedon, Robert S., Jr.	O’Leary, Robert A.
Creem, Cynthia Stone	Pacheco, Marc R.
Fargo, Susan C.	Panagiotakos, Steven C.
Glodis, Guy W.	Resor, Pamela
Hart, John A., Jr.	Rosenberg, Stanley C.
Havern, Robert A.	Shannon, Charles E.
Joyce, Brian A.	Tolman, Steven A.
Magnani, David P.	Tucker, Susan C.
McGee, Thomas M.	Walsh, Marian
Melconian, Linda J.	Wilkerson, Dianne —
	31.
Menard, Joan M.	

NAYS.

Hedlund, Robert L.	Sprague, Jo Ann
Knapik, Michael R.	Tarr, Bruce E.
Lees, Brian P.	Tisei, Richard R. — 6.

ABSENT OR NOT VOTING.

Berry, Frederick E. —
1.

The yeas and nays having been completed at seven minutes past three o’clock P.M., Section 65 stands, in concurrence, notwithstanding the objections of His Excellency the Governor, two-thirds of the members present having approved the same.

Section 69 (Sunset Lake earmark) was considered as follows:

“SECTION 69. Item 2000-2017 in section 2 of chapter 236 of the acts of 2002 is hereby amended by inserting after the word ‘Bernardston’ the following words:— ; provided further, that not less than \$175,000 shall be expended for a grant to the town of Braintree for a lake bottom drawdown on Sunset lake in the town and for a resanding of the C. Murray Smith Beach in the town.”

The question on passing Section 69, in concurrence, the objections of His Excellency the Governor to the contrary notwithstanding, was determined by a call of the yeas and nays, as required by Chapter I, Section I, Article II, of the Constitution, at eight minutes past three o’clock P.M., as follows, to wit (yeas 29 — nays 8) [**Yeas and Nays No. 448**]:

YEAS.

Antonioni, Robert A.	Menard, Joan M.
Baddour, Steven A.	Montigny, Mark C.
Barrios, Jarrett T.	Moore, Richard T.

Brewer, Stephen M.	Morrissey, Michael W.
Chandler, Harriette L.	Murray, Therese
Creedon, Robert S., Jr.	Pacheco, Marc R.
Creem, Cynthia Stone	Panagiotakos, Steven C.
Fargo, Susan C.	Resor, Pamela
Glodis, Guy W.	Rosenberg, Stanley C.
Hart, John A., Jr.	Shannon, Charles E.
Havern, Robert A.	Tolman, Steven A.
Joyce, Brian A.	Tucker, Susan C.
Magnani, David P.	Walsh, Marian
McGee, Thomas M.	Wilkerson, Dianne —
Melconian, Linda J.	29.

NAYS.

Hedlund, Robert L.	O’Leary, Robert A.
Knapik, Michael R.	Sprague, Jo Ann
Lees, Brian P.	Tarr, Bruce E.
Nuciforo, Andrea F., Jr.	Tisei, Richard R. — 8.

ABSENT OR NOT VOTING.

Berry, Frederick E. —
1.

The yeas and nays having been completed at eleven minutes past three o’clock P.M., Section 69 stands, in concurrence, notwithstanding the objections of His Excellency the Governor, two-thirds of the members present having approved the same.

Section 70 (Environmental Bond Bill) was considered as follows:

“SECTION 70. Item 2200-2015 of said section 2 of said chapter 236 is hereby amended by adding the following words:— ; and provided further, that not less than \$7,400,000 shall be expended to ensure that all needed environmental remediation and related work is performed and that all contamination is eliminated from the property located in the town of Norfolk as identified in chapter 519 of the acts of 1980 and formerly known as the Department of Public Health Hospital, Pondville Hospital, pursuant to section 679 of chapter 26 of the acts of 2003.”

The question on passing Section 70, in concurrence, the objections of His Excellency the Governor to the contrary notwithstanding, was determined by a call of the yeas and nays, as required by Chapter I, Section I, Article II, of the Constitution, at nineteen minutes past three o’clock P.M., as follows, to wit (yeas 26 — nays 12) [**Yeas and Nays No. 449**]:

YEAS.

Antonioni, Robert A.	Montigny, Mark C.
Baddour, Steven A.	Morrissey, Michael W.
Barrios, Jarrett T.	Murray, Therese
Creedon, Robert S., Jr.	O’Leary Robert A.
Creem, Cynthia Stone	Pacheco, Marc R.
Fargo, Susan C.	Panagiotakos, Steven C.
Glodis, Guy W.	Resor, Pamela
Hart, John A., Jr.	Shannon, Charles E.
Havern, Robert A.	Tolman, Steven A.
Joyce, Brian A.	Travaligni, Robert
Magnani, David P.	Tucker, Susan C.

McGee, Thomas M. Walsh, Marian
Menard, Joan M. Wilkerson, Dianne —
26.

NAYS.

Brewer, Stephen M. Moore, Richard T.
Chandler, Harriette L. Nuciforo, Andrea F., Jr.
Hedlund, Robert L. Rosenberg, Stanley C.
Knapik, Michael R. Sprague, Jo Ann
Lees, Brian P. Tarr, Bruce E.
Melconian, Linda J. Tisei, Richard R. — **12.**

ABSENT OR NOT VOTING.

Berry, Frederick E. —
1.

The yeas and nays having been completed at twenty-six minutes past three o'clock P.M., Section 70 stands, in concurrence, notwithstanding the objections of His Excellency the Governor, two-thirds of the members present having approved the same.

Section 121 (Lakeville Regional DEP office) was considered as follows:

‘SECTION 121. Notwithstanding any general or special law to the contrary, the department of environmental protection shall continue to locate and operate regional offices in Lakeville, Worcester and Springfield. The division of capital asset management and maintenance shall take all steps necessary and appropriate to enforce this section.’

The question on passing Section 121, in concurrence, the objections of His Excellency the Governor to the contrary notwithstanding, was determined by a call of the yeas and nays, as required by Chapter I, Section I, Article II, of the Constitution, at twenty-seven minutes past three o'clock P.M., as follows, to wit (yeas 33 — nays 4) [**Yeas and Nays No. 450**]:

YEAS.

Antonioni, Robert A. Menard, Joan M.
Baddour, Steven A. Montigny, Mark C.
Barrios, Jarrett T. Moore, Richard T.
Brewer, Stephen M. Morrissey, Michael W.
Chandler, Harriette L. Murray, Therese
Creedon, Robert S., Jr. Nuciforo, Andrea F., Jr.
Creem, Cynthia Stone Pacheco, Marc R.
Fargo, Susan C. Panagiotakos, Steven C.
Glodis, Guy W. Resor, Pamela
Hart, John A., Jr. Rosenberg, Stanley C.
Havern, Robert A. Shannon, Charles E.
Joyce, Brian A. Tisei, Richard R.
Knapik, Michael R. Tolman, Steven A.
Lees, Brian P. Tucker, Susan C.
Magnani, David P. Walsh, Marian
McGee, Thomas M. Wilkerson, Dianne —
33.
Melconian, Linda J.

NAYS.

Hedlund, Robert L. Sprague, Jo Ann
O'Leary, Robert A. Tarr, Bruce E.. — 4.

ABSENT OR NOT VOTING.

Berry, Frederick E. —
1.

The yeas and nays having been completed at twenty-nine minutes past three o'clock P.M., Section 121 stands, in concurrence, notwithstanding the objections of His Excellency the Governor, two-thirds of the members present having approved the same.

Message from the Governor — Disapproval and Reductions in Economic Stimulus Bill.

A message from His Excellency the Governor, returning, with his disapproval of certain sections, and reductions in certain sections contained in the engrossed Bill relative to investments in emerging technologies to promote job creation, economic stability and competitiveness in the Massachusetts economy (see House, No. 4328), which on Wednesday, November 19, 2003, had been laid before the Governor for his approbation, came from the House, in part, several sections having been passed by the House notwithstanding the reduction or disapproval of the Governor.

The message (House, No. 4366) was read; and the Senate proceeded to reconsider an item, which had been reduced or disapproved in accordance with the provisions of the Constitution.

Section 72 (Mass Technology Development Corporation) was considered as follows:

“SECTION 72. Notwithstanding any general or special law to the contrary, the comptroller shall transfer, effective December 31, 2003, to the Massachusetts Technology Development Corporation, established pursuant to section 3 of chapter 40G of the General Laws, the amount of \$5,000,000 from the Economic Stimulus Trust Fund, established pursuant to this act. Commencing on April 1, 2004, the board of directors of the Massachusetts Technology Development Corporation shall submit a quarterly report to the house and senate committees on ways and means, the house and senate committees on science and technology, and the joint committee on commerce and labor on the number and nature of early stage technology companies, both startup and expansion, operating in the commonwealth that said corporation has invested in as a result of funds transferred to said corporation pursuant to this section, the number and nature of jobs created in Massachusetts as a result of investments made by said corporation from funds transferred to said corporation pursuant to this section, the amount of private investments leveraged for said companies as a result of investments made by said corporation, the internal rate of return on the entire portfolio of investments made by said corporation from funds transferred pursuant to this section, the cumulative realized gains on equity investments made by said corporation since the transfer of funds authorized by this section and the cumulative realized losses on both debt and equity investments made by said corporation since the transfer of funds authorized by this section.”

After debate, the question on passing Section 72 in concurrence, the objections of His Excellency the Governor to the contrary notwithstanding, was determined by a call of the yeas and nays, as required by Chapter I, Section I, Article II, of the Constitution, at twenty-four minutes before four o'clock P.M., as follows, to wit (yeas 31 — nays 6) [**Yeas and Nays No. 451**]:

YEAS.

Antonioni, Robert A.	Montigny, Mark C.
Baddour, Steven A.	Moore, Richard T.
Barrios, Jarrett T.	Morrissey, Michael W.
Brewer, Stephen M.	Murray, Therese
Chandler, Harriette L.	Nuciforo, Andrea F., Jr.
Creedon, Robert S., Jr.	O'Leary, Robert A.
Creem, Cynthia Stone	Pacheco, Marc R.
Fargo, Susan C.	Panagiotakos, Steven C.
Glodis, Guy W.	Resor, Pamela
Hart, John A., Jr.	Rosenberg, Stanley C.
Havern, Robert A.	Shannon, Charles E.
Joyce, Brian A.	Tolman, Steven A.

Magnani, David P. Tucker, Susan C.
McGee, Thomas M. Walsh, Marian
Melconian, Linda J. Wilkerson, Dianne —
31.
Menard, Joan M.

NAYS.

Hedlund, Robert L. Sprague, Jo Ann
Knapik, Michael R. Tarr, Bruce E.
Lees, Brian P. Tisei, Richard R. — 6.

ABSENT OR NOT VOTING.

Berry, Frederick E. —
1.

The yeas and nays having been completed at twenty-one minutes before four o'clock P.M., Section 72 stands, in concurrence, notwithstanding the objections of His Excellency the Governor, two-thirds of the members present having approved the same.

A petition (accompanied by bill, House, No. 4500) of Anne M. Gobi, other members of the General Court and another relative to the operation of snow vehicles or recreational vehicles while under the influence of alcohol or narcotic substances,— **was referred, in concurrence, under suspension of Joint Rule 12, to the committee on criminal Justice.**

Order Adopted.

On motion of Ms. Murray,—

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.

Adjournment in Memory of

John J. (Jack) Leonard of Braintree.

The Senator from Norfolk and Plymouth, Mr. Morrissey and the Senator from Norfolk, Bristol and Plymouth, Mr. Joyce, moved that when the Senate adjourns today, it adjourn in memory of John (Jack) Leonard, who passed away on Tuesday, February 3rd. Jack worked as the State House Photographer for fifty-six years, he performed his duties with distinction, professionalism and always had a smile on his face. Jack was an Army Veteran of World War II and is survived by his wife Irene and son John.

Accordingly, as a mark of respect to the memories of John J. (Jack) Leonard of Braintree at eighteen minutes before four o'clock P.M., on motion of Mr. Havern, the Senate adjourned to meet again on Monday next at eleven o'clock A.M.