

NOTICE: While reasonable efforts have been made to assure the accuracy of the data herein, this is **NOT** the official version of Senate Journal. It is published to provide information in a timely manner, but has **NOT** been proofread against the events of the session for this day. All information obtained from this source should be checked against a proofed copy of the Senate Journal.

UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



JOURNAL OF THE SENATE

Wednesday, May 19, 2004.

Met at eleven minutes past twelve o'clock noon.

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

Resolutions.

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

Resolutions (filed by Mr. Pacheco) "on the occasion of the fiftieth wedding anniversary of Manuel and Joan Faria";
Resolutions (filed by Mr. Pacheco) "honoring the memory of Philip J. Farley";
Resolutions (filed by Ms. Wilkerson) "honoring Reverend John Heinemeier on the occasion of his retirement"; and
Resolutions (filed by Ms. Wilkerson) "honoring Mr. Li Hongzhi and Falun Dafa."

Papers from the House

Emergency Preambles Adopted.

An engrossed Bill establishing a sick leave bank for a certain employee of the Department of Mental Retardation (see Senate, No. 2336, amended), having been certified by the Senate Clerk to be rightly and truly prepared for final passage and containing an emergency preamble,-- was laid before the Senate; and, a separate vote being taken in accordance with the requirements of Article LXVII of the Amendments to the Constitution, the preamble was adopted in concurrence, by a vote of 9 to 0.
The bill was signed by the President and sent to the House for enactment.

An engrossed Bill relative to the terms of certain bonds to be issued by the Commonwealth (see House Bill, printed in House, No. 4285), 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 10 to 0.
The bill was signed by the President and sent to the House for enactment.

Engrossed Bills.

The following engrossed bills (the first of which originated in the Senate), 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:

Authorizing a transfer from the unemployment compensation fund in the town of Gill (see Senate, No. 2104, amended);

Relative to the destruction, defacement or removal of veterans' commemorative flag holders (see House, No. 2390); and
Relative to the use of retired police officers by the town of Grafton (see House, No. 3936).

An engrossed Bill exempting members of the police force of the town of Hopedale from the civil service law (see House, No. 4309, amended) (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 re-enacted and was signed by the President and again laid before the Governor for his approbation.**

Orders of the Day.

The Orders of the Day were considered as follows:-

The House Bill making appropriations for the fiscal year 2005 for the maintenance of the departments, boards, commissions, institutions and certain activities of the Commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements (House, No. 4601),-- was read a second time.

After remarks, pending the question on ordering the bill to a third reading and pending the question on adoption of the amendment as recommended by the committee on Ways and Means, striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2400,- the following amendments were considered:-

Mr. Nuciforo moved that the bill be amended in Section 2 by inserting, after item 1599-7092, the following item:-
“1599-7095

For the purpose of disaster relief and to meet the expense of public services for the towns of Dalton, Windsor, Cummington, Peru, and the Dalton Fire District to be reimbursed by the commissioner of administration in the following amounts, town of Dalton \$1,770; town of Windsor \$40,704; town of Cummington \$1,224,172; town of Peru \$17,306; Dalton Fire District \$16,927; provided further, that reimbursement shall be made only upon acceptance by said commissioner of itemized bills from each town and district for such expenses\$1,300,879”

The amendment was *rejected*.

Mr. Joyce moved that the bill be amended, in section 2, in item 8324-0000, in line 33, by inserting after the words ", and supplies," the following item:-"; and provided further that not less than \$250,000 shall be expended for renovations and expansions of the Avon Police and Fire Department Headquarters.”

The amendment was *rejected*.

Mr. Joyce moves to amend the bill, in section 2, in item 8324-0000, in line 33, by inserting after the words “, and supplies,” the following item:-

“; and provided further that not more than \$45,000 shall be expended for the purchase of a forest fire truck in West Bridgewater.”

The amendment was *rejected*.

Messrs. Lees, Tisei, Knapik and Brown and Mrs. Sprague moved that the bill be amended in Section 2 in item 8900-0001 by striking the figure “429,606,705” and inserting in place thereof the following:- “432,268,435”.

After debate, the question on adoption of the amendment was determined by a call of the yeas and nays, at eight minutes before one o'clock P.M., on motion of Mr. Lees, as follows, to wit (yeas 8 – nays 30) [**Yeas and Nays No. 527**]:

YEAS.

Brown, Scott P.	Lees, Brian P.
Glodis, Guy W.	Sprague, Jo Ann
Hedlund, Robert L.	Tarr, Bruce E.
Knapik, Michael R.	Tisei, Richard R. — 8.

NAYS.

Antonioni, Robert A.	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.
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

Hart, John A., Jr.
Havern, Robert A.
Joyce, Brian A.
Magnani, David P.
McGee, Thomas M.
Melconian, Linda J.

Rosenberg, Stanley C.
Shannon, Charles E.
Tolman, Steven A.
Tucker, Susan C.
Walsh, Marian
Wilkerson, Dianne — **30.**

ABSENT OR NOT VOTING.

Menard, Joan M. — **1.**

The yeas and nays having been completed at five minutes before one o'clock P.M., the amendment was *rejected*.

Messrs. Morrissey, Montigny, Glodis, and Brown moved that the bill be amended, in section 2, in item 8900-0001, by inserting after the words "and the sex offender registry" following:-

"and provided further, that the Commissioner of the Department of Correction shall report annually on the staffing of Unit 4 positions, so-called, in each state correctional institution. Such report shall include, but not be limited to, the following: The number of Unit 4 positions broken down by correctional institution, and the number of Unit 4 positions vacant; the number of Unit 4 positions lost to retirement, discharge or resignation and the number that have been replaced; a breakdown by correctional facility of the staff hours of overtime worked by Unit 4 personnel and the annual aggregate costs related to this overtime; the number of reported assaults upon Unit 4 personnel; the number of Unit 4 personnel out on industrial accident leave, and for each individual, the length of time on leave.

The report mandated by this section shall be prepared on a fiscal year basis and shall be filed no later than September 31 of each year with the secretary of public safety, the secretary of administration and finance, the joint legislative committees on public safety and criminal justice, and the house and senate committees on ways and means and sufficient copies shall be made available to the general public.

The amendment was **adopted**.

Mr. Barrios and Ms. Wilkerson moved that the bill be amended by inserting, after Section 362, the following new Section:-
"SECTION __. Chapter 22C of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after section 69 the following new section:-

Section 70.

(1) As used in this section the following words shall, unless the context requires otherwise, have the following meanings:-

"Audit", a review and evaluation of the policies and procedures used by the department of correction for conducting investigations and the degree to which the department of correction has adhered to these policies and procedures.

"Inspector general", the inspector general of corrections, the head of the office of the inspector general of corrections

"Misconduct", any act, malfeasance, or dereliction of duty that results in physical or emotional injury of a person, including, but not limited to, assault, battery, sexual assault, sexual harassment, threats, intimidation, or coercion.

"Office", the office of the inspector general of corrections

"Retaliation", the intentional act of reprisal, threats, coercion, or similar acts against a person employed by the department of correction, or who works in the department of correction, who has either made a complaint or disclosed information regarding alleged misconduct by another employee.

(2) There is hereby established the office of the inspector general of corrections within the department of state police. The purpose of the office shall be to provide for the investigation and remediation of instances of misconduct by individuals employed by or working within the department of correction. The governor shall appoint the inspector general without regard to political affiliation and solely on the basis of integrity and demonstrated ability in law, public administration, investigation or criminal justice administration. The inspector general shall serve for a term of five years and may be removed by the governor only for gross misconduct, substantial neglect of duty, inability to discharge the powers and duties of office, or conviction of a felony.

(3) The commissioner of correction shall refer to the inspector general any allegation of misconduct by an individual employed by or working within the department of correction. When appropriate, the prison inspector

general shall initiate an investigation or audit of the alleged misconduct, or shall refer the matter back to the department of correction for investigation. The inspector general may initiate an investigation into an alleged misconduct or an audit on his or her own accord, or at the request of the secretary of public safety, the commissioner of correction, or a member of the Legislature.

(4) The inspector general shall be responsible for reviewing and evaluating the policies, practices, and procedures used by the department of correction for conducting investigations into misconduct by anyone employed by or working within the department of correction. The inspector general shall, during the course of an investigation or audit, identify areas of full and partial compliance, or noncompliance, with department of correction investigatory policies and procedures, specify deficiencies in the completion and documentation of investigatory processes, and recommend corrective actions, including, but not limited to, additional training with respect to investigative policies, additional policies, or changes in policy, discipline or termination of staff, as well as any other findings or recommendations that the prison inspector general deems appropriate. Upon receipt of any such findings or recommendations, the commissioner of correction shall initiate remedial action, including disciplinary action where appropriate. The commissioner of correction shall establish a schedule of sanctions for misconduct by employees. The commissioner shall report to the inspector general in writing the results of any remedial or disciplinary action taken. If the commissioner takes no action in response to the findings and recommendations, he or she shall explain the reason in writing to the inspector general.

(5) If the inspector general has determined that there is reason to believe that a criminal offense has been committed, he or she shall immediately forward any relevant information to the attorney general or a district attorney for the county wherein the alleged criminal offense occurred. Upon receipt of such report, the attorney general or district attorney for the county wherein the alleged criminal offense occurred shall contact the prison inspector general in order to coordinate the investigation of the matters giving rise to the report. As part of such coordination, the attorney general or the district attorney may request that the inspector general delay or defer its investigation of the non-criminal matters giving rise to the report; provided, however, that such request shall be granted only where the inspector general determines that the health and the safety of any inmate shall not be adversely affected thereby and that the ability of the prison inspector general to conduct a later investigation shall not be unreasonably impaired by such delay or deferral. In all cases including, but not limited to, those in which the inspector general agrees to delay or defer its investigation, the attorney general or district attorney shall keep the inspector general informed of the status of the criminal investigation and the inspector general shall provide to the attorney general or the district attorney any and all information that may be relevant to the criminal investigation. In cases in which the inspector general agrees to delay or defer its investigation, it shall monitor the progress of the criminal investigation and shall determine, after consultation with such law enforcement agencies, when or whether the inspector general's investigation should be initiated or resumed.

(6) The prison inspector general may receive communications from any individual, including those employed by the department of correction, prisoners, or any other entity, who believes he or she may have information that may describe a variance from department of correction policy, including investigatory policies and procedures. The identity of the person providing the information as well as the information provided shall be held as confidential by the prison inspector general and may be disclosed only to the secretary of public safety, the commissioner of correction, a member of the legislature, the governor, or a law enforcement agency in the furtherance of their duties.

(7) In order to properly respond to any allegation of improper staff activity, the prison inspector general shall establish a toll-free public telephone number for the purpose of identifying any alleged misconduct by an employee of the department of corrections or anyone working within the department of correction. This telephone number shall be posted in all correctional institutions of the commonwealth in clear view of all employees, prisoners, and the public and the department of correction website. The request shall be confidential and is not subject to disclosure under the Public Records Act. The identity of the person providing the information that initiated the investigation shall not be disclosed without the person's written permission, except to a law enforcement agency in the furtherance of its duties.

(8) a) The inspector general, in carrying out the provisions of this chapter, shall have access to all records, reports, emails, audits, reviews, papers, books, documents, audio or videotapes, recommendations, correspondence, and any other data or material that in any way relates to any matter under audit or investigation.

b) The inspector general may request such information, cooperation and assistance from any state, county or local governmental agency as may be necessary for carrying out his duties and responsibilities. Upon receipt of such request each person in charge of, or the governing body of any public body shall furnish to the prison inspector general or his authorized agent or representative such information, cooperation and assistance.

c) The inspector general may require by summons, the production of all records, reports, emails, audits, reviews, papers, books, documents, audio or videotapes, recommendations, correspondence and any other data and material relevant to any matter under audit or investigation pursuant to the provisions of this chapter. Such summons shall

be served in the same manner as a summons for the production of documents in civil cases issued on behalf of the commonwealth, and all provisions of law relative to said summons shall apply to a summons issued pursuant to this chapter. Any justice of the superior court department in the trial court may, upon application by the prison inspector general issue an order to compel the production of records, reports, audits, reviews, papers, books, documents, recommendations, correspondence and any other data and material as aforesaid in the same manner and to the same extent as before said superior court department. Any failure to obey such order may be punished by said court as contempt.

d) Whenever the inspector general has reason to believe that a person has information with respect to any matter related to an audit or investigation, he may require by summons the attendance and testimony under oath of said person. If any person refuses to attend or testify as required by the summons, any justice of the superior court department in the trial court may, upon application by the prison inspector general issue an order to compel witness to attend and answer questions. Any failure to obey such order may be punished by said court as contempt.

(9) a) All allegations or complaints received by the inspector general, whether investigated or not, shall be logged and numbered sequentially on an annual basis. The log shall specify, but not be limited to, the following information: the sequential number of the allegation or complaint, the date of receipt of the allegation or complaint, the location or facility to which the allegation or complaint pertains, and the disposition of all actions taken.

b) The inspector general shall conduct investigations and inquiries in a manner that provides a complete and thorough presentation of the facts regarding the allegation or complaint. All aggravating, extenuating and mitigating facts shall be explored and reported. Any findings of misconduct or wrongdoing shall be based on a preponderance of the evidence standard.

c) Upon the completion of any investigation, the prison inspector general shall prepare a written report that shall be provided to the commissioner of correction, and to the secretary of public safety, the person who requested the investigation, the person who was the subject of the investigation, and, upon request, to any member of the legislature. All reports of investigations shall be submitted in a standard format, begin with a statement of the allegation or complaint, provide all relevant facts, and contain findings and the reasons for the findings.

d) The inspector general shall, not later than April thirtieth of each year, prepare a report summarizing the activities of the office for the prior calendar year. This report shall be forwarded to the governor, the president of the senate, the speaker of the house of representatives, the senate and house chairs of the joint committee on public safety, the secretary of public safety, the commissioner of correction, and shall be made available to the public.

(10) Upon receiving a complaint of retaliation from an employee, the inspector general may commence an investigation. When investigating a complaint of retaliation the inspector general shall consider, among other things, whether any of the following either actually occurred or were threatened:

a) Unwarranted or unjustified staff changes.

b) Unwarranted or unjustified letters of reprimand or other disciplinary actions, or unsatisfactory evaluations.

c) Unwarranted or unjustified formal or informal investigations.

d) Engaging in acts, or encouraging or permitting other employees to engage in acts that are unprofessional, or foster a hostile work environment.

e) Engaging in acts, or encouraging or permitting other employees to engage in acts that are contrary to the rules, regulations, or policies of the workplace.

Upon making a finding that retaliation has occurred, the inspector general shall forward the findings of the investigation to the commissioner of correction for appropriate action, including disciplinary proceedings.”

After remarks, the amendment was **adopted**.

Ms. Fargo, Ms. Wilkerson, Ms. Resor, and Mr. Magnani move to amend the bill by inserting, after Section __, the following new Section: -

“SECTION __. Notwithstanding any general or special law to the contrary, there is hereby established a Correction Citizen Review Board, referred to hereafter as the board. Said board shall consist of thirteen members, including one member appointed by each of the following: the Secretary of Public Safety, the Senate President, the Speaker of the House of Representatives, the Chief Justice of the Supreme Judicial Court, the Parole Board, the Commissioner of the Department of Public Health, the Massachusetts Correctional Officers Federated Union, the Massachusetts Sheriffs’ Association, Massachusetts Correctional Legal Services, the American Civil Liberties Union of Massachusetts, the Massachusetts Taxpayers Foundation, the League of Women Voters of Massachusetts and the Massachusetts Council of Churches. The terms of the members appointed to said board by the Secretary of Public Safety, the Senate President, the Speaker of the House of Representatives and the Chief Justice of the Supreme Judicial Court shall be for three years. The terms of the members appointed to said board by the Parole Board, the Commissioner of the Department of Public Health, the Massachusetts Correctional Officers Federated Union, the Massachusetts Sheriffs’ Association, Massachusetts Correctional Legal Services, the American Civil Liberties Union of Massachusetts, and the Massachusetts Taxpayers Foundation shall be for two years and, at the expiration of the first two-year term of the first members appointed by the Parole Board, the Commissioner of the Department of Public Health, the Massachusetts Correctional Officers Federated Union, the

Massachusetts Sheriffs' Association, Massachusetts Correctional Legal Services, the American Civil Liberties Union of Massachusetts and the Massachusetts Taxpayers Foundation, for three years thereafter. The terms of the members appointed to said board by the League of Women Voters of Massachusetts, and the Massachusetts Council of Churches shall be for one year and, at the expiration of the first one-year term of the first members appointed by the League of Women Voters of Massachusetts and the Massachusetts Council of Churches, for three years thereafter. No member of said Board shall be appointed to serve more than two consecutive three-year terms.

Members of the board shall have access to all Massachusetts Correctional Institutions and all inmates therein upon furnishing a photo identification provided by the Executive Office of Public Safety. Between the hours of 7 pm and 7 am, members of said board shall provide 48 hours notice to the Commissioner of the Department of Correction prior to entering a Massachusetts Correctional Institution. Said Commissioner may waive the requirement of 48 hours notice for board member access to a Massachusetts Correctional Facility between the hours of 7 pm and 7 am.

The board shall have the following duties:

- (a) It shall study the medical services, including mental health services, and educational, vocational, employment and rehabilitation programs available to prisoners;
- (b) It shall review the annual budget of the department of correction and shall make recommendations to the House and Senate Committees on Ways and Means in regard thereto;
- (c) It shall report on the general state of correctional facilities within the Commonwealth, their administration of correctional policy and practices, the living conditions of inmates therein, the general state of working conditions for department of correction employees and, where appropriate, the impact of department of correction policies and inmate living conditions upon rates of recidivism and over-classification;
- (d) It shall hold at least quarterly meetings;
- (e) It shall advise the commissioner of the department of correction on policy development and priorities for department of correction facilities as well as on the department's compliance with legislative and judicial mandates;
- (f) It shall issue public reports annually to the department of correction and the joint committee on public safety;

The board shall convene its first meeting not later than September 30, 2004. The initial co-chairs of the board shall be the member appointed by the Speaker of the House of Representatives and the member appointed by the President of the Senate. Said co-chairs shall convene and facilitate the board's first meeting at which the board shall elect a new chairperson for a term of one year. The board shall annually elect a chairperson. Said board shall adopt bylaws to govern its own proceedings.

Members of said board shall serve without compensation but each member shall be reimbursed by the commonwealth for actual expenses incurred in the performance of their official duties. A quorum to conduct business shall consist of seven members." and move to further amend the bill, in section 2, in item 8000-0000, by inserting at the end thereof the following: — “; provided further, that not less than \$100,000 shall be expended for the citizens correctional review board.”

After remarks, the amendment was *rejected*.

Mr. Shannon and Ms. Resor moved that the bill be amended in section 313 by inserting at the end thereof the following words:- “Pursuant to the provisions of Section 108 of Chapter 140 of the Acts of 2003, said regulations shall also reflect that the inspection fee for residential elevators and wheelchair lifts that are determined to be medically necessary shall be \$100 per inspection and the overtime elevator inspection fee shall be \$100 per inspection.”

After remarks, the amendment was adopted.

Messrs. Nuciforo, Morrissey, Magnani and Panagiotakos moved that the bill be amended by striking the words “department of inspection and regulation”:- where ever they appear and inserting in place thereof the following:- “department of public safety”. The amendment was *rejected*.

Mr. Hart moved that the bill be amended in section 2, in item 8000-0010, in line 3, by inserting after the word “police” the following: - “provided further, that \$165,000 of the Boston award shall be provided for community policing in the B-2 sector of the Dudley

Square section of Roxbury in the city of Boston for additional enforcement in conjunction with the neighborhood policing program.”

The amendment was *rejected*.

Messrs. Brown and Hedlund moved that the bill be amended, in section 2, in line 8000-0010, by inserting after the words “non-related overtime;” the following wording:- “provided further, \$19,200 shall be awarded to the department of police in the town of Norfolk;”

The amendment was *rejected*.

Mr. Joyce moved that the bill be amended, in section 2, in item 8000-0010, in line 7, by inserting after “fiscal year 2005” the following: “; and provided further, that not less that \$25,000 shall be expended to provide additional Milton Police patrols for that

portion of the Neponset River bicycle path in the town of Milton.”
The amendment was *rejected*.

Messrs. Lees, Tisei, Tarr, Knapik and Brown moved that the bill be amended, in section 2, in item 8000-0010, by striking out the words “fiscal year 2004” and inserting in place thereof the words “fiscal years 2003 and 2004”.
After remarks, the amendment was *rejected*.

Mr. Tarr moved that the bill be amended in item 8000-0010 by adding, at the end thereof, the following: - “provided further, that the following communities shall receive not less than \$40,000 from this item: The towns of Boxford, Essex, Georgetown, Groveland, Hamilton, Ipswich, Manchester-by-the-Sea, Middleton, Newbury, North Andover, North Reading, Rockport, Rowley, Wenham, West Newbury, Wilmington and the City of Gloucester.”
The amendment was *rejected*.

Mr. Tarr moved that the bill be amended in item 8000-0010 by adding the following the term 2005 in line 4 the following:-
“provided further, that no community shall receive a grant in fiscal year 2005 which is less than that received in fiscal year 2002;”.
The amendment was *rejected*.

Mr. Tarr moved that the bill be amended in item 8000-0060 by adding the to the end thereof the following:-
“provided that funds from this item may be expended for the training and education of municipal police officers”.
The amendment was *rejected*.

Mr. Joyce moved that the bill be amended, in section 2, in item 8000-2004, in line 4, by inserting after “Democratic National Convention” the following: “; and provided further, that not less than \$25,000 shall be expended to provide additional Milton Police patrols in the town of Milton for increased security needs associated with the Democratic National Convention.”
The amendment was *rejected*.

Mr. Joyce moved that the bill be amended, in section 2, in item 8000-2004, in line 4, by inserting after “Democratic National Convention” the following: “; and provided further, that not less than \$25,000 shall be expended to provide additional Randolph Fire protection services in the Town of Randolph for increased security needs associated with the Democratic National Convention.”
The amendment was *rejected*.

Mr. Joyce moved that the bill be amended, in section 2, in item 8000-2004, in line 4, by inserting after “Democratic National Convention” the following: “; and provided further, that not less than \$25,000 shall be expended to provide additional Randolph Police patrols in the town of Randolph for increased security needs associated with the Democratic National Convention.”
The amendment was *rejected*.

Mr. Joyce moved that the bill be amended, in section 2, in item 8000-2004, in line 4, by inserting after “Democratic National Convention” the following: “; and provided further, that not less than \$25,000 shall be expended to provide additional Milton Fire protection services in the Town of Milton for increased security needs associated with the Democratic National Convention.”
The amendment was *rejected*.

Messrs. Lees, Tisei, Tarr, Hedlund, Knapik and Brown and Mrs. Sprague moved that the bill be amended, in section 2, in item 8910-0000, by striking out the words “provided further, that Suffolk county may receive additional funding from the balance for county correction maintenance and operation expenses”.

After debate, the question on adoption of the amendment was determined by a call of the yeas and nays, at a quarter past one o'clock P.M., on motion of Mr. Lees, as follows, to wit (yeas 9 – nays 29) **[Yeas and Nays No. 528]:**

YEAS.

Brewer, Stephen M.	Lees, Brian P.
Brown, Scott P.	Sprague, Jo Ann
Glodis, Guy W.	Tarr, Bruce E.
Hedlund, Robert L.	Tisei, Richard R. — 9 .
Knapik, Michael R.	

NAYS.

Antonioni, Robert A.	Moore, Richard T.
Baddour, Steven A.	Morrissey, Michael W.

Barrios, Jarrett T.	Murray, Therese
Berry, Frederick E.	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
Hart, John A., Jr.	Rosenberg, Stanley C.
Joyce, Brian A.	Shannon, Charles E.
Magnani, David P.	Tolman, Steven A.
McGee, Thomas M.	Tucker, Susan C.
Melconian, Linda J.	Walsh, Marian
Menard, Joan M.	Wilkerson, Dianne —
	29.
Montigny, Mark C.	

ABSENT OR NOT VOTING.

Havern, Robert A. — **1.**

The yeas and nays having been completed at twenty-one minutes past one o’clock P.M., the amendment was *rejected*.

Mr. Knapik moved that the bill be amended by inserting after item 8000-0225 the following item:-
 “8000-8085 \$5,384,000”.

After remarks, the amendment was *rejected*.

Mr. Barrios moved that the bill be amended in Section 122 by striking the words “and department of correction personnel” and inserting in place thereof the following words:- “department of correction personnel and any other public safety and criminal justice system personnel”.

After remarks, the amendment was **adopted**.

Mr. Tarr, Ms. Tucker, Messrs. Baddour, Tisei, O’Leary and Rosenberg moved that the bill be amended by adding, at the end thereof, the following new section:-

“SECTION ____ . A Study Commission shall be established to analyze and review available resources for corrections in the Commonwealth, including the per capita cost of corrections per inmate at each of the fourteen sheriff’s departments and the department of corrections. The Commission shall be comprised of one representative from each of the fourteen sheriff departments, one representative from the Department of Corrections, the Secretary of Administration and Finance, or his designee, 3 members from the House Committee on Ways and means, at least one being a member of the minority party, and 3 members from the Senate Committee on Ways and Means, at least one being a member of the minority party. Said Commission shall file a report with both the Senate and House Committees on Ways and Means not later than August 31, 2004.”.

After remarks, the amendment was *rejected*.

Mr. Brown and Mrs. Sprague moved that the bill be amended by inserting, after Section _____, the following new Section:-
 “SECTION ____ .

A.) Notwithstanding the provisions of any special or General Law to the contrary, the county of Norfolk is hereby authorized to establish a special account to be known as the “Norfolk County Fire and Rescue Dispatch Account”. Into such account shall be deposited all receipts, revenues, grants and funds from any source derived from any activity of the Norfolk County Fire and Rescue Dispatch Center.

B.) The Norfolk County Fire and Rescue Dispatch Center shall provide timely fire dispatch and emergency medical dispatch and shall function as a department of the County of Norfolk but under the direction of officials of such cities and towns as shall agree to pay for and collaborate in the operation of a joint fire and rescue dispatch center. Membership will be limited to individual cities or towns of the commonwealth. Initial membership in said center shall require the vote of a town meeting or a town or city council. In any future year, failure to make the required annual appropriation shall constitute a withdrawal from the county dispatch center effective July 1 next succeeding. For fiscal year 2007 and thereafter, any new member municipality shall be required to pay an entry fee, of \$2.00 per capita, which shall be credited to the capital improvement/stabilization fund of the dispatch center. Said fee may be paid as one lump sum or by equal payments over five years. There

shall be created an operating council, consisting of the fire chief of each member municipality. Operations of said center shall be under the care and control of the operating council. Said council shall allocate costs among participating municipalities, based, as near equally practicable, upon the following characteristics: population, wealth as measured by equalized assessed valuation and workload as measured by calls for fire and emergency service. The operating council shall translate such characteristic costs into the form of one total annual membership dues and shall provide notice of the same to participating municipalities no later than December 31 next prior to that fiscal year. Payment of such annual dues to the county shall be made by the participating municipality no later than August 1 of that membership year. For fiscal year 2005, costs may be apportioned by said council for either a half year's operation and billed timely thereto. The annual budget of the center shall be timely prepared by the operating council and shall thereafter follow the process normal for a county department.

C.) The account authorized in section one shall be maintained by the County Treasurer in accordance with the provisions of section ten of chapter 35 of the General Laws and expenditures for such account shall be made by the administrator of the Norfolk County Fire and Rescue Dispatch Center, subject to appropriation, and be used solely for the operation and maintenance and for the provision capital, equipment and plant for said center. Such account shall be maintained in accordance with generally accepted principles of accounting and shall be audited annually by a certified public accountant. Such audits shall be submitted to the board of selectmen or mayor or manager of participating municipalities, the operating council, the Norfolk County advisory board, the Norfolk County treasurer, and the bureau of accounts. The county treasurer shall invest the monies in said account as authorized by law and the interest accruing thereon shall inure to the benefit of the center. For the purposes of providing timely fire dispatch and emergency medical dispatch to the citizens of the county of Norfolk, said county may from time to time appropriate monies into said account and donations for private sources may be received into said account.

D.) For the purposes of authorized by sections one and two, including initial or start-up costs, the treasurer of the County of Norfolk, with the approval of the county commissioners, may borrow upon the credit of the county such sums as may be necessary, not exceeding, in the aggregate, one million seven hundred thousand dollars, and may issue bonds or notes of the county therefore, which shall bear upon their face the words, Norfolk County Fire and Emergency Dispatch Center Loan, Act of 2003. Each authorized issue shall constitute a separate loan and such loans shall be payable in not more than fifteen years from their dates. The binds or notes shall be signed by the county treasurer and countersigned by a majority of the county commissioners. The county may sell the said securities at public or private sale, upon such terms and conditions as the county commissioners may deem proper, but not for sale, upon such terms and conditions as the county commissioners may deem proper, but not for less than their par value. Indebtedness incurred hereunder shall, except as herein provided, be subject chapter 35 of the General Laws. Debt service on any such indebtedness shall be charged by the county against the special account established in section one of this act.

E.) Effective upon passage, governance of the dispatch center shall lie in an Interim Council of seven members, consisting of four active fire chiefs, nominated by the Norfolk County Association of Fire Chiefs and confirmed by the Firefighters of Massachusetts and confirmed by the Norfolk County Commissioners; and two retired fire managers nominated and confirmed by the Norfolk County Commissioners. The County Director of Norfolk County shall, under the direction of said Interim Council, serve as Interim Administrator of said dispatch center. Interim governance shall cease, upon certification by the county commissioners that, by accumulated votes of initial membership, there are now a sufficient number of cities or towns to establish the operating council of fire chiefs, established by section two of this act. Said sufficiency shall be as the Norfolk County Commissioners, at their sole discretion, so determine.

F.) This act shall take affect upon its passage.”

The amendment was *rejected*.

Messrs. Barrios and McGee moved that the bill be amended, in section 2, in item 8950-0001, by striking out the figure “12,653,427” and inserting in place thereof the figure “13,496,758” and by inserting after the word “board” the following:- “provided further, that funds appropriated herein may be expended for the enhancement of the parole board’s operations, including, but not limited to, increased substance abuse programming and testing, professional development and enhanced victim services”. After remarks, the amendment was *rejected*.

Messrs. Lees, Tisei, Tarr, Knapik and Brown and Mrs. Sprague move that the bill be amended in Section 2 in item 8100-0007 by striking the figure “9,060,782” and inserting in place thereof the following:- “11,060,782”.

After debate, the question on adoption of the amendment was determined by a call of the yeas and nays, at seventeen minutes before two o'clock P.M., on motion of Mr. Lees, as follows, to wit (yeas 11 – nays 28) [**Yeas and Nays No. 529**]:

YEAS.

Barrios, Jarrett T. O’Leary, Robert A.
Brown, Scott P. Resor, Pamela
Glodis, Guy W. Sprague, Jo Ann
Hedlund, Robert L. Tarr, Bruce E.
Knapik, Michael R. Tisei, Richard R. — **11.**
Lees, Brian P.

NAYS.

Antonioni, Robert A. Brewer, Stephen M.
Baddour, Steven A. Chandler, Harriette L.
Berry, Frederick E. Creedon, Robert S., Jr.
Creem, Cynthia Stone Morrissey, Michael W.
Fargo, Susan C. Murray, Therese
Hart, John A., Jr. Nuciforo, Andrea F., Jr.
Havern, Robert A. Pacheco, Marc R.
Joyce, Brian A. Panagiotakos, Steven C.
Magnani, David P. Rosenberg, Stanley C.
McGee, Thomas M. Shannon, Charles E.
Melconian, Linda J. Tolman, Steven A.
Menard, Joan M. Tucker, Susan C.
Montigny, Mark C. Walsh, Marian
Moore, Richard T. Wilkerson, Dianne —
28.

The yeas and nays having been completed at thirteen minutes before two o’clock P.M., the amendment was *rejected*.

Mr. Hart moved that the bill be amended, in section 2, in item 8100-0000, in line 3, by inserting after the word " unit " the following:-
" provided, that not less than \$70,000 shall be expended for patrols of properties of the metropolitan district commission located along Day Boulevard in South Boston section of the city of Boston;".

After remarks, the amendment was *rejected*.

Ms. Melconian in the Chair, Mr. Tolman moved that the bill be amended by inserting, after Section 362, the following new Section:-
“SECTION 363. The third paragraph of Section 3 of Chapter 150E of the General Laws as appearing in the 2002 Official Edition should be amended by striking out the first sentence and inserting in place the following sentence:

The appropriate bargaining unit in the case of the uniformed members of the state police shall be a public safety professional unit composed of all such uniformed members in titles below that of major and above that of sergeant and a unit composed of all such uniformed members in titles below that of lieutenant.”.

After remarks, the amendment was **adopted**.

Messrs. Lees, Tisei, Tarr, Hedlund, Knapik and Brown and Mrs. Sprague moved that the bill be amended in Section 2 in item 8400-0001 by striking the figure “45,677,250” and inserting in place thereof the following:- “45,970,316”.

After debate, the amendment was *rejected*.

Mr. Moore moved that the bill be amended by adding at the end thereof the following new Section:-

SECTION _____.

SECTION XX:

Section 2A of chapter 60A of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by striking out, in line 38, the words ‘twenty dollar’ and inserting in place thereof the following figure:- \$30.

SECTION 2. The third paragraph of said section 2A of said chapter 60A, as so appearing, is hereby amended by adding the following four sentences:-

From the amount payable to the registrar under this paragraph, \$5 shall be used for the enhancement, upgrade or expansion of the registry's technology, which shall include, but not be limited to software, hardware, maintenance and equipment. The registrar shall report, annually, to the house and senate committee on ways and means on the use of such fund for technology purposes as required by this paragraph. From the amount payable to the registrar pursuant to this paragraph, \$5 shall be provided to the collection agency or deputy collector, provided that the collection agency or deputy collector has located or relocated its collection operations within close proximity to the nearest full service registry of motor vehicles office. The registrar shall promulgate regulations to define "close proximity" which shall include, but not be limited to, shared office space with the registry or electronic, technology-based systems for the payment of parking tickets and excise. The amendment was *rejected*.

Messrs. Baddour and Tarr moved that the bill be amended by inserting, after Section _____, the following new Section: -
"; SECTION _____. (a) There is established a task force to study reflectorized safety number plates, within available appropriations. The task force shall study the feasibility of a state-wide license plate reissuance for passenger and commercial vehicles. Such study shall include, but not be limited to:

- (1) The impact on the reduction of unregistered and uninsured motor vehicles;
- (2) the impact on state and local revenue;
- (3) the task force shall examine state-of-the-art digital technology.

(b) The task force shall consist of the following members:

- (1) The Registrar of Motor Vehicles, or designee,
- (2) the Secretary of Public Safety, or designee,
- (3) a representative from the Department of Correction,
- (4) a representative from the Massachusetts Police Chiefs Association,
- (5) a representative from the Massachusetts Municipal Association,
- (6) a representative from the International Brotherhood of Police Officers,
- (7) the Chairmen from the Joint Committee on Public Safety,
- (8) the Chairmen from the House and Senate Committees on Science and Technology,
- (9) a Chairperson appointed by His Excellency, the Governor.

(c) All appointments to the task force shall be made no later than thirty days after the effective date of this section. Any vacancy shall be filled by the appointing authority.

(d) Not later than December 15, 2004, the task force shall submit a report on its findings and recommendations to the joint standing committee of the General Assembly having cognizance of matters relating to transportation. The task force shall terminate on the date that it submits such report."

The amendment was *rejected*.

Mr. Panagiotakos moved that the bill be amended by adding at the end thereof the following new section: -
SECTION _____. Chapter 90 of the General Laws is hereby amended by inserting after section 19J the following section:-

Section 19K. For the purposes of this section, the term "hitching mechanism" shall be defined as the lift cylinder and the lift arm. Nothing in this section shall apply to state, county or municipally owned or operated vehicles. Between May 15 and October 15 of each year, any vehicle with a gross weight of less than 26,000 pounds which is equipped with a plow shall be required to have removed the plow and hitching mechanism used with the plow. Vehicles equipped with an apparatus that allows the hitching mechanism to be folded flat leaving no protruding surfaces, shall only be required to have the plow itself removed, provided that the hitching mechanism is in the folded flat position while the vehicle is in operation. If snowfall occurs prior to October 25 or after May 15 vehicles subject to this act may be re-equipped with the plow and any apparatus necessary for clearing snow. Vehicles will be required to abide by the provisions of this section within 72 hours of the conclusion of snowfall.

Any individual found operating a motor vehicle in violation of this section shall be issued a warning for the first offense, shall be fined \$250 for the second offense and \$500 and revocation of the vehicle's registration for the third offense. The revocation of a vehicle's registration due to a third offense shall remain in effect until such time as the vehicle is in compliance with this section. This section shall not apply to hitching mechanisms which are permanently affixed through welding or other means, prior to the effective date if this section. However, it shall be unlawful, and punishable by the same fines and revocations aforementioned, for any person to permanently affix through welding or other means a hitching mechanism governed under this section after the effective date of this section.

The registry of motor vehicles shall, within 180 calendar days of the passage of this act, develop a list of makes and models of hitching mechanisms that fold flat leaving no protruding surfaces. The registry of motor vehicles shall promulgate and implement regulations governing a system of verification whereby the registry of motor vehicles can ensure a motor vehicle's compliance with this section following a third offense."

After debate, the question on adoption of the amendment was determined by a call of the yeas and nays, at twelve minutes past two o'clock P.M., on motion of Mr. Lees, as follows, to wit (yeas 26 – nays 13) [**Yeas and Nays No. 530**]:

YEAS.

Antonioni, Robert A.	Melconian, Linda J.
Baddour, Steven A.	Menard, Joan M.
Barrios, Jarrett T.	Montigny, Mark C.
Berry, Frederick E.	Morrissey, Michael W.
Chandler, Harriette L.	Murray, Therese
Creedon, Robert S., Jr.	O'Leary, Robert A.
Creem, Cynthia Stone	Pacheco, Marc R.
Fargo, Susan C.	Panagiotakos, Steven C.
Hart, John A., Jr.	Resor, Pamela
Havern, Robert A.	Tolman, Steven A.
Joyce, Brian A.	Tucker, Susan C.
Magnani, David P.	Walsh, Marian
McGee, Thomas M.	Wilkerson, Dianne — 26.

NAYS.

Brewer, Stephen M.	Nuciforo, Andrea F., Jr.
Brown, Scott P.	Rosenberg, Stanley C.
Glodis, Guy W.	Shannon, Charles E.
Hedlund, Robert L.	Sprague, Jo Ann
Knapik, Michael R.	Tarr, Bruce E.
Lees, Brian P.	Tisei, Richard R. — 13.
Moore, Richard T.	

The yeas and nays having been completed at sixteen minutes past two o'clock P.M., the amendment was **adopted**.

Mr. Baddour, Ms. Tucker, Messrs. McGee and Tarr moved that the bill be amended, in section 2, by striking out 8910-6619 and inserting in place thereof the following item:-

“; 8910-6619

The Essex sheriff's department may expend for the operation of the department an amount not to exceed \$2,000,000 from revenues received from federal inmate reimbursements; provided, that \$150,000 from the reimbursements shall not be available for expenditure and shall be deposited quarterly into the general fund before the retention by the department of any of these revenues as certified by the comptroller; provided further, that said quarterly payments shall total \$600,000 in fiscal year 2005 and provided further, that notwithstanding any general or special law to the contrary, for the purpose of accommodating timing discrepancies between the receipt of retained revenues and related expenditures, the department may incur expenses and the comptroller may certify for payment amounts not to exceed the lower of this authorization or the most recent revenue estimate as reported in the state accounting system..... \$2,000,000”.

After remarks, the amendment was **adopted**.

Messrs. Lees and Knapik and Ms. Melconian moved that the bill be amended, in section 2, in item 8910-1000, by striking out the figure “\$600,000” in each instance and inserting in place thereof the figure “\$700,000”.

The amendment was *rejected*.

Mr. Lees moved that the bill be amended in section 2, in item 6010-0001, by inserting the following wording:- “provided further, that funds shall be expended to mill and pave Route 20A in the city of Springfield and that said milling and paving shall be completed by June 30, 2005”.

The amendment was *rejected*.

Mr. Baddour moved that the bill be amended in section 2, in item 6010-0001, by adding the following language at the end thereof:- “; provided further, that the department shall maintain the motorist emergency call system installed on I-91, I-93, I-95, I-195 and I-495, in an operational condition for use in emergencies by the public” .

The amendment was *rejected*.

Mrs. Chandler moved that the bill be amended, in section 2, in item 6010-0001, by inserting at the end the following wording:- “; provided further, that not less than \$100,000 shall be expended for traffic signalization at the site of the Greendale Fire Station on Route 12 in the City of Worcester”.

The amendment was *rejected*.

Ms. Chandler and Ms. Resor moved that the bill be amended, in section 2, in item 6010-0001, by inserting at the end the following wording:- “; provided further, that not less than \$10,000 shall be expended to conduct a noise study along Route 290 in the Town of Northborough”.

The amendment was *rejected*.

Messrs. Lees, Tisei, Hedlund, Tarr and Knapik and Mrs. Sprague moved that the bill be amended in section 2, by striking out items 6010-0001 and 6010-0002 inserting in place there of the following:-

“6010-0001

For personnel costs of the department of highways, for certain administrative and engineering expenses and equipment of the highways commission, the office of the commissioner of highways, the division of administrative services, highway engineering, highway maintenance, highway construction, the outdoor advertising board, district and other highway activity offices, materials, supplies, fleet maintenance and equipment, general maintenance and equipment and the maintenance and operation of state highways and bridges; provided further, that notwithstanding any general or special law to the contrary, the department may expend from capital authorizations amounts necessary to cover operational costs of the department in excess of amounts appropriated in this item to ensure that adequate staffing levels are maintained to support the services and programs offered by the department
.....After debate, the amendment was *rejected*.

There being no objection, the Chair (Ms. Melconian) requested that amendment number 640 be taken out of order; and the amendment was considered as follows:-

Messrs. Barrios, Rosenberg, Montigny, Ms. Creem, Mr. O’Leary, Ms. Resor and Ms. Melconian moved that the bill be amended by inserting after Section 206 the following section:-

“SECTION 206A. Chapter 207 of the General Laws is hereby amended by repealing sections 11, 12, 13 and 50.”

Pending the question on adoption of the amendment, Messrs. Panagiotakos, Moore, Creedon and Morrissey moved that the pending amendment be amended by striking out the text and inserting in place thereof the following text:-

By inserting after Section 206 the following section:-

SECTION 206A. Section 13 of Chapter 207 of the General Laws is hereby amended by adding the following sentence:- These sections shall not be applied to discriminate in any manner on the basis of race, color, creed or national origin.

After remarks, the further amendment was *rejected*.

The President in the Chair, after remarks, the question on adoption of the pending amendment (Barrios et al) was taken by a standing vote, on motion of Ms. Wilkerson, and was adopted by a vote of 28 to 3.

Mr. Tisei doubted the vote and asked for a call of the yeas and the nays.

An insufficient number joining with him, the yeas and nays were not ordered.

Mr. Pacheco moved that the bill be amended by striking out Section 262 and inserting in place thereof a new Section 262:

“SECTION 262. The department of highways, and the department of conservation and recreation shall enter into an agreement concerning the construction, maintenance, repair, and operation of the roadways and boulevards under the control of the department of conservation and recreation; provided, however, that such roadways and boulevards shall remain under the control of the department of conservation and recreation. The executive office of transportation shall also examine and pursue appropriate actions for increasing federal aid for projects related to roadways and boulevards under the control of the department of conservation and recreation, in consultation with the department of conservation and recreation. The secretary of the executive office of transportation and the director of the department of conservation and recreation shall report to the house and senate committees on ways and means, the joint committee on natural resources and the joint committee on transportation no later than March 1, 2005, which shall include a 5 year plan related to the maintenance, repair, and operation of the roadways and boulevards under the control of the department of conservation and recreation and shall detail measures undertaken to preserve and protect the scenic and historic integrity of such roadways and boulevards.; provided further however that nothing in this section shall supersede or negate the provisions of Massachusetts General Laws Chapter 7 Sections 52 thru 55.”

The amendment was *rejected*.

Mr. Barrios moved that the bill be amended in section 262, by inserting after the first sentence the following:-

“Said agreement shall make provisions for the employees of the Department of Conservation and Recreation to continue to construct, maintain, repair and operate the roadways and boulevards owned by the Department of Conservation and Recreation. In

the event that said employees are transferred from the Department of Conservation and Recreation to the Department of Highways, such transfer shall be subject to the following:

(1) The employees of the transferor agency, including those who immediately before the effective date of this act hold permanent appointment in positions classified under chapter 31 of the General Laws or have tenure in their positions as provided by section 9A of chapter 30 of the General Laws or do not hold such tenure, or hold confidential positions, are hereby transferred to the transferee agency, without interruption of service within the meaning of said section 9A of said chapter 31, without impairment of seniority, retirement or other rights of the employee, and without reduction in compensation or salary grade, notwithstanding any change in title or duties resulting from such reorganization, and without loss of accrued rights to holidays, sick leave, vacation and benefits, and without change in union representation or certified collective bargaining unit as certified by the state labor relations commission or in local union representation or affiliation. Any collective bargaining agreement in effect immediately before the transfer date shall continue in effect and the terms and conditions of employment therein shall continue as if the employees had not been so transferred. The reorganization shall not impair the civil service status of any such reassigned employee who immediately before the effective date of this act either holds a permanent appointment in a position classified under chapter 31 of the General Laws or has tenure in a position by reason of section 9A of chapter 30 of the General Laws.

(2) Notwithstanding any general or special law to the contrary, all such employees shall continue to retain their right to collectively bargain pursuant to chapter 150E of the General Laws and shall be considered employees for the purposes of said chapter 150E.

(3) Nothing in this section shall be construed to confer upon any employee any right not held immediately before the date of said transfer, or to prohibit any reduction of salary grade, transfer, reassignment, suspension discharge layoff or abolition of position not prohibited before such date.

(4) All petitions, requests, investigations and other proceedings appropriately and duly brought before each transferor agency or duly begun by each transferor agency and pending before it before the effective date of this act, shall continue unabated and remain in force, but shall be assumed and completed by the respective transferee agency.

(5) All orders, rules and regulations duly made and all approvals duly granted by each transferor agency, which are in force immediately before the effective date of this act, shall continue in force and shall thereafter be enforced, until superseded, revised, rescinded or canceled, in accordance with law, by the respective transferee agency.”

The amendment was *rejected*.

Mr. Panagiotakos moved that the bill be amended by striking out Sections 42 and 43.

The amendment was **adopted**.

Distinguished Guest.

There being no objection, during consideration of the Orders of the Day, the President introduced Lenny Clarke, star of stage, screen and standup comedy. Mr. Clark is involved in a number of worthy causes. He continually raises money for the homeless, victims of substance abuse and domestic violence. Mr. Clark briefly addressed the Senate, signed the guest book and departed from the Chamber. Mr. Clark was the guest of Senate President Travaglini.

At one minute before three o'clock P.M., at the request of Mr. Lees, for the purpose of a minority party caucus, the President declared a recess; and, at eight minutes past four o'clock P.M., the Senate reassembled, the President in the Chair.

Papers from the House

Engrossed Bills.

The following engrossed bills (the first two of which originated in the Senate), 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 credit union boards of directors (see Senate, No. 13);
- Establishing a sick leave bank for a certain employee of the Department of Mental Retardation (see Senate, No. 2336, amended); and
- Relative to the terms of certain bonds to be issued by the Commonwealth (see House Bill, printed in House, No. 4285).

Engrossed Bill -- Land Taking for Conservation, Etc.

An engrossed Bill authorizing the town of Maynard to grant an easement over certain conservation land (see Senate bill printed in Senate, No. 2169, amended) (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 nine minutes past four o'clock P.M., as follows, to wit (yeas 38 - nays 1) [**Yeas and Nays No. 531**]:

YEAS.

Antonioni, Robert A.	Menard, Joan M.
Baddour, Steven A.	Montigny, Mark C.
Barrios, Jarrett T.	Moore, Richard T.
Berry, Frederick E.	Morrissey, Michael W.
Brewer, Stephen M.	Murray, Therese
Brown, Scott P.	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.	Sprague, Jo Ann
Hedlund, Robert L.	Tarr, Bruce E.
Joyce, Brian A.	Tisei, Richard R.
Knapik, Michael R.	Tolman, Steven A.
Magnani, David P.	Tucker, Susan C.
McGee, Thomas M.	Walsh, Marian
Melconian, Linda J.	Wilkerson, Dianne — 38.

NAYS.

Lees, Brian P. — **1.**

The yeas and nays having been completed at seventeen minutes past four o'clock P.M., the bill was passed to be enacted, two-thirds of the members present having agreed to pass the same, and it was signed by the President and laid before the Governor for his approbation.

Bill Recalled from the Governor.

On motion of Mr. Berry, it was voted that a messenger be appointed to wait upon His Excellency the Governor, requesting the return to the Senate of the engrossed Bill relative to the Jacob Sears Memorial Library (see House, No. 3746, amended).

Mr. Berry was appointed the messenger. Subsequently, the bill was returned to the Senate.

Orders of the Day.

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

The House Bill making appropriations for the fiscal year 2005 for the maintenance of the departments, boards, commissions, institutions and certain activities of the Commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements (House, No. 4601),- was further considered, the main question being on ordering it to a third reading.

Pending the question on adoption of the amendment, previously recommended by the committee on Ways and Means, Mr. Shannon moved that the bill be amended by inserting, after Section 362, the following new Section:-

“SECTION __. Notwithstanding any general or special law, rule or regulation to the contrary, the state highway commissioner, or the designated state agency or governmental body that has jurisdiction over billboards and other outdoor advertising, is hereby directed to grant a permit to the property at 17 MacArthur Street in Somerville for the erection of a new billboard, as previously approved by the City of Somerville and authorized to be grandfathered in to the local zoning ordinances. This section shall take effect on July 1, 2004.”

The amendment was *rejected*.

Mr. Havern moved that the bill be amended by adding the following section at the end thereof:-

“SECTION ____.

Provided further that the Massachusetts Highway Department allow the town of Arlington access to the land between route 2 and Spy Pond for the purposes of establishing a pumping station at Spy Pond.”

The amendment was *rejected*.

Ms. Melconian in the Chair, Mr. Morrissey moved that the bill be amended after section 353 by inserting the following new section:-
SECTION ____.

Section 40E of chapter 82 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out in line 2 the words “five hundred” and inserting in place thereof the following words: - “one thousand”;

Said section is further amended by striking out in line 3 the words “one thousand” and inserting in place thereof the following words: - “five thousand”;

Said section is further amended by striking out in line 3 the words “five thousand” and inserting in place thereof the following words: - “ten thousand”.

After debate, the question on adoption of the amendment was determined by a call of the yeas and nays, at twenty-four minutes past four o'clock P.M., on motion of Mr. Lees, as follows, to wit (yeas 37 – nays 2) [**Yeas and Nays No. 532**]:

YEAS.

Antonioni, Robert A.	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.
Chandler, Harriette L.	Pacheco, Marc R.
Creedon, Robert S., Jr.	Panagiotakos, Steven C.
Creem, Cynthia Stone	Resor, Pamela
Fargo, Susan C.	Rosenberg, Stanley C.
Glodis, Guy W.	Shannon, Charles E.
Hart, John A., Jr.	Sprague, Jo Ann
Havern, Robert A.	Tarr, Bruce E.
Hedlund, Robert L.	Tisei, Richard R.
Joyce, Brian A.	Tolman, Steven A.
Magnani, David P.	Tucker, Susan C.
McGee, Thomas M.	Walsh, Marian
Melconian, Linda J.	Wilkerson, Dianne — 37.
Menard, Joan M.	

NAYS.

Knapik, Michael R.	Lees, Brian P. — 2.
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The yeas and nays having been completed at twenty-seven minutes past one o'clock P.M., the amendment was **adopted**.

Ms. Walsh and Mr. Baddour moved that the bill be amended, in section 2, in item 1108-5200, by striking out the words “and provided, that notwithstanding this item or any general or special law to the contrary, the authority’s share of the premiums for employees of the Massachusetts Bay Transportation Authority, to whom a collective bargaining agreement in force on July 1, 2002, other than because of a rollover, applies, shall be as provided in that agreement until that agreement expires but not including any rollover period” and inserting in place thereof the following words: -

“provided further, that notwithstanding any general or special law to the contrary, the Massachusetts Bay Transportation Authority’s percentage share of premiums for group, general or blanket hospital, medical, dental or other health insurance, either

by purchase of a policy or policies from one or more insurance companies, or nonprofit hospital, medical, dental or other service corporations, including health maintenance organizations, or by means of a self insurance plan or preferred provider arrangement plan, shall be determined by the authority, or where collective bargaining is authorized through the process of collective bargaining; provided further, that the percentage share of premiums for employees of the authority to whom a collective bargaining agreement is in force, shall be the percentage share which was paid during the month that such collective bargaining agreement first went into effect and shall continue until such time as that agreement expires; and provided further, that the commission shall notify the house and senate committees on ways and means by March 15 of each year of the cost of the commonwealth's projected share of group insurance premiums for the next fiscal year”.

The amendment was **adopted**.

Mr. Baddour moved that the bill be amended, in section 127, by striking out the third paragraph, and inserting in place thereof the following new paragraph:-

"Except for the chairperson, the members of the authority who began in office prior to July 31, 2002 shall continue for the remainder of their respective terms, and the members of the authority appointed after July 31, 2002 and before July 1, 2004 shall continue for the remainder of an initial term which shall be for 6 years, but all successive terms for such members shall be for a term of 5 years. The members of the authority appointed after July 1, 2004 shall be appointed for a term of 5 years; provided, however, that any person appointed to fill a vacancy shall serve only for the unexpired term."

After remarks, the question on adoption of the amendment was determined by a call of the yeas and nays, at a half past four o'clock P.M., on motion of Mr. Lees, as follows, to wit (yeas 35 – nays 4) [**Yeas and Nays No. 533**]:

YEAS.

Antonioni, Robert A.	Menard, Joan M.
Baddour, Steven A.	Montigny, Mark C.
Barrios, Jarrett T.	Moore, Richard T.
Berry, Frederick E.	Morrissey, Michael W.
Brewer, Stephen M.	Murray, Therese
Brown, Scott P.	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.	Sprague, Jo Ann
Hedlund, Robert L.	Tolman, Steven A.
Joyce, Brian A.	Tucker, Susan C.
Magnani, David P.	Walsh, Marian
McGee, Thomas M.	Wilkerson, Dianne — 35.
Melconian, Linda J.	

NAYS.

Knapik, Michael R.	Tarr, Bruce E.
Lees, Brian P.	Tisei, Richard R. — 4.

The yeas and nays having been completed at twenty-six minutes before five o'clock P.M., the amendment was **adopted**.

Mr. Baddour moved that the bill be amended by striking Section 142 in its entirety; and inserting the following new section in place thereof: -

Section 142. Notwithstanding any general or special law to the contrary, the Executive Office of Public Safety, the Department of State Police, and the Registry of Motor Vehicles working in conjunction with the Massachusetts Motor Transportation Association, other relevant federal, state, and local agencies and governmental departments, including but not limited to the Federal Motor Carrier Safety Administration, is hereby required to report to the General Court the level of compliance with and enforcement of statutes and regulations governing the intrastate and interstate operation of commercial vehicles in the Commonwealth. Said report shall include, but not be limited to, consideration of the following: regulations of the United States Department of

Transportation and Federal Motor Carrier Safety Administration, as contained in Title 49 of the code of Federal Regulations, relative to proof of financial responsibility, driver qualification files and forms, drug and alcohol testing records as applicable, records and supporting documentation of duty status, driver vehicle inspection reports and maintenance records, hazardous materials records as applicable, and an accident register and copies of all accident reports as required by the Commonwealth and/or insurers; sections 2, 3, 9, and 10 of chapter 90 of the general laws relative to licensing and registration; section 2B of chapter 85 and section 31 of chapter 90 of the general laws relating to the transportation of freight, passengers or hazardous materials; chapter 90F of the general laws relative to the operation of commercial vehicles; and any other relevant state statute pertaining to the operation of commercial motor vehicles in the Commonwealth. Said report must also include the effect of non-compliance of said statutes and regulations upon the Commonwealth's eligibility for federal grant monies by and through the Federal Motor Carrier Safety Administration. Said report, including any legislative recommendations, must be filed with the house and senate committees on ways and means no later than March 31, 2005.

After remarks, the question on adoption of the amendment was determined by a call of the yeas and nays, at twenty-four minutes before five o'clock P.M., on motion of Mr. Lees, as follows, to wit (yeas 39 – nays 0) **[Yeas and Nays No. 534]:**

YEAS.

Antonioni, Robert A.	Menard, Joan M.
Baddour, Steven A.	Montigny, Mark C.
Barrios, Jarrett T.	Moore, Richard T.
Berry, Frederick E.	Morrissey, Michael W.
Brewer, Stephen M.	Murray, Therese
Brown, Scott P.	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.	Sprague, Jo Ann
Hedlund, Robert L.	Tarr, Bruce 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 — 39.
Melconian, Linda J.	

NAYS — 0.

The yeas and nays having been completed at twenty-one minutes before five o'clock P.M., the amendment was **adopted.**

Mr. Baddour moved that the bill, in section 218, by striking the following:-
“, who shall serve as chairperson of the authority”.

After remarks, the question on adoption of the amendment was determined by a call of the yeas and nays, at a quarter before five o'clock P.M., on motion of Mr. Lees, as follows, to wit (yeas 39 – nays 0) **[Yeas and Nays No. 535]:**

YEAS.

Antonioni,	Menard, Joan M.
Baddour,	Montigny, Mark C.

Barrios, Ja	Moore, Richard T.
Berry, Fre	Morrissey, Michael W.
Brewer, St	Murray, Therese
Brown, Sc	Nuciforo, Andrea F., Jr.
Chandler,	O’Leary, Robert A.
Creedon,	Pacheco, Marc R.
Creem, Cy	Panagiotakos, Steven C.
Fargo, Su	Resor, Pamela
Glodis, Gu	Rosenberg, Stanley C.
Hart, John	Shannon, Charles E.
Havern, Ro	Sprague, Jo Ann
Hedlund,	Tarr, Bruce E.
Joyce, Bri	Tisei, Richard R.
Knapik, Mi	Tolman, Steven A.
Lees, Bria	Tucker, Susan C.
Magnani,	Walsh, Marian
McGee, T	Wilkerson, Dianne — 39.
Melconian, Linda J.	

NAYS — 0.

The yeas and nays having been completed at twelve minutes before five o’clock P.M., the amendment was **adopted.**

Mr. Pacheco moved that the bill be amended by striking out Section 261 and inserting in place thereof a new Section 261: “SECTION 261. The executive office of transportation shall promote administrative saving and improvement initiatives between the Massachusetts Port Authority and the Massachusetts Aeronautics Commission. These initiatives shall seek to reduce duplication and enhance coordination regarding airport access, planning, economic development and security. The secretary of the executive office of transportation shall report to the house and senate committees on ways and means and the joint committee on transportation the results of these initiatives no later than March 1, 2005, which shall include a list of the administrative savings adopted and the projected amount of savings or other improvements from such initiatives.”

After remarks, the question on adoption of the amendment was determined by a call of the yeas and nays, at nine minutes before five o’clock P.M., on motion of Mr. Lees, as follows, to wit (yeas 39 – nays 0) [**Yeas and Nays No. 536**]:

YEAS.

Antonioni,	Menard, Joan M.
Baddour,	Montigny, Mark C.
Barrios, Ja	Moore, Richard T.
Berry, Fre	Morrissey, Michael W.
Brewer, St	Murray, Therese
Brown, Sc	Nuciforo, Andrea F., Jr.
Chandler,	O’Leary, Robert A.
Creedon,	Pacheco, Marc R.
Creem, Cy	Panagiotakos, Steven C.
Fargo, Su	Resor, Pamela
Glodis, Gu	Rosenberg, Stanley C.
Hart, John	Shannon, Charles E.
Havern, Ro	Sprague, Jo Ann
Hedlund,	Tarr, Bruce E.
Joyce, Bri	Tisei, Richard R.

Knapik, Mi
Lees, Bria
Magnani,
McGee, T
Melconian, Linda J.

Tolman, Steven A.
Tucker, Susan C.
Walsh, Marian
Wilkerson, Dianne — **39**.

NAYS — 0.

The yeas and nays having been completed at five minutes before five o'clock P.M., the amendment was **adopted**.

Mr. Pacheco moved that the bill be amended by striking out Section 262 and inserting in place thereof a new Section 262:-
“SECTION 262. The department of highways, and the department of conservation and recreation shall enter into an agreement concerning the construction, maintenance, repair, and operation of the roadways and boulevards under the control of the department of conservation and recreation; provided, however, that such roadways and boulevards shall remain under the control of the department of conservation and recreation. The executive office of transportation shall also examine and pursue appropriate actions for increasing federal aid for projects related to roadways and boulevards under the control of the department of conservation and recreation, in consultation with the department of conservation and recreation. The secretary of the executive office of transportation and the director of the department of conservation and recreation shall report to the house and senate committees on ways and means, the joint committee on natural resources and the joint committee on transportation no later than March 1, 2005, which shall include a 5 year plan related to the maintenance, repair, and operation of the roadways and boulevards under the control of the department of conservation and recreation and shall detail measures undertaken to preserve and protect the scenic and historic integrity of such roadways and boulevards.”

After remarks, the question on adoption of the amendment was determined by a call of the yeas and nays, at four minutes before five o'clock P.M., on motion of Mr. Lees, as follows, to wit (yeas 39 – nays 0) [**Yeas and Nays No. 537**]:

YEAS.

Antonioni,
Baddour,
Barrios, Ja
Berry, Fre
Brewer, St
Brown, Sc
Chandler,
Creedon,
Creem, Cy
Fargo, Su
Glodis, Gu
Hart, John
Havern, Ro
Hedlund,
Joyce, Bri
Knapik, Mi
Lees, Bria
Magnani,
McGee, T
Melconian, Linda J.

Menard, Joan M.
Montigny, Mark C.
Moore, Richard T.
Morrissey, Michael W.
Murray, Therese
Nuciforo, Andrea F., Jr.
O'Leary, Robert A.
Pacheco, Marc R.
Panagiotakos, Steven C.
Resor, Pamela
Rosenberg, Stanley C.
Shannon, Charles E.
Sprague, Jo Ann
Tarr, Bruce E.
Tisei, Richard R.
Tolman, Steven A.
Tucker, Susan C.
Walsh, Marian
Wilkerson, Dianne — **39**.

NAYS — 0.

The yeas and nays having been completed at one minute before five o'clock P.M., the amendment was **adopted**.

Mr. Pacheco moved that the bill be amended by striking out Section 263 and inserting in place thereof a new Section 263:-
“SECTION 263. The executive office of transportation shall promote administrative saving and improvement initiatives among the Massachusetts Bay Transportation Authority and any regional transportation authorities established under chapter 161B. These initiatives shall seek to promote the sharing of resources as appropriate and to enhance statewide transit service, construction, repair, maintenance, capital improvement, security, coordination, financing and planning. The executive office of transportation shall study the issue of tort liability among the regional transportation authorities established under chapter 161B. The executive office of transportation shall also examine and pursue appropriate models for increasing federal aid for transit projects in the commonwealth. The secretary of the executive office of transportation shall report to the house and senate committees on ways and means and the joint committee on transportation the results of these initiatives no later than March 1, 2005, which shall include a list of the administrative savings adopted and the projected amount of savings or other improvements from such initiatives.”

After remarks, the question on adoption of the amendment was determined by a call of the yeas and nays, at five o'clock P.M., on motion of Mr. Lees, as follows, to wit (yeas 39 – nays 0) [**Yeas and Nays No. 538**]:

YEAS.

Antonioni,	Menard, Joan M.
Baddour,	Montigny, Mark C.
Barrios, Ja	Moore, Richard T.
Berry, Fre	Morrissey, Michael W.
Brewer, St	Murray, Therese
Brown, Sc	Nuciforo, Andrea F., Jr.
Chandler,	O'Leary, Robert A.
Creedon,	Pacheco, Marc R.
Creem, Cy	Panagiotakos, Steven C.
Fargo, Su	Resor, Pamela
Glodis, Gu	Rosenberg, Stanley C.
Hart, John	Shannon, Charles E.
Havern, Ro	Sprague, Jo Ann
Hedlund,	Tarr, Bruce E.
Joyce, Bri	Tisei, Richard R.
Knapik, Mi	Tolman, Steven A.
Lees, Bria	Tucker, Susan C.
Magnani,	Walsh, Marian
McGee, T	Wilkerson, Dianne — 39.
Melconian, Linda J.	

NAYS — 0.

The yeas and nays having been completed at three minutes past five o'clock P.M., the amendment was **adopted**.

Mr. Pacheco moved that the bill be amended by striking out Section 264 and inserting in place thereof a new Section 264:-
“SECTION 264. The executive office of transportation, the Massachusetts Turnpike Authority and the department of highways shall identify instances in which the authority or the department can achieve costs savings and improved performance and service by eliminating or consolidating duplicative functions, sharing or coordinating resources, equipment, facilities, expertise, personnel and procurement. The Massachusetts highway department shall enter into an agreement or agreements with the authority in order to achieve efficiencies, realize cost savings, eliminate duplication, and provide enhanced value to the commonwealth. The executive office of transportation shall submit a report to the joint committee on transportation and the house and senate committees on ways and means on or before March 1, 2005, detailing any and all cost savings to the commonwealth resulting from any agreements concluded pursuant to this section or estimated to result from any proposed agreement to share employees, equipment and operational activities and functions in order to achieve efficiencies, improved performance or services and cost savings, including recommendations to establish a permanent and potentially expanded process for the transfer or consolidation of certain responsibilities for interstate highway systems in the commonwealth from the highway department to the authority beginning December 31, 2005.”

After remarks, the question on adoption of the amendment was determined by a call of the yeas and nays, at four minutes past five o'clock P.M., on motion of Mr. Lees, as follows, to wit (yeas 39 – nays 0) [**Yeas and Nays No. 539**]:

YEAS.

Antonioni,	Menard, Joan M.
Baddour,	Montigny, Mark C.
Barrios, Ja	Moore, Richard T.
Berry, Fre	Morrissey, Michael W.
Brewer, St	Murray, Therese
Brown, Sc	Nuciforo, Andrea F., Jr.
Chandler,	O'Leary, Robert A.
Creedon,	Pacheco, Marc R.
Creem, Cy	Panagiotakos, Steven C.
Fargo, Su	Resor, Pamela
Glodis, Gu	Rosenberg, Stanley C.
Hart, John	Shannon, Charles E.
Havern, Ro	Sprague, Jo Ann
Hedlund,	Tarr, Bruce E.
Joyce, Bri	Tisei, Richard R.
Knapik, Mi	Tolman, Steven A.
Lees, Bria	Tucker, Susan C.
Magnani,	Walsh, Marian
McGee, T	Wilkerson, Dianne — 39.
Melconian, Linda J.	

NAYS — 0.

The yeas and nays having been completed at seven minutes past five o'clock P.M., the amendment was **adopted**.

Mr. Baddour moved that the bill be amended in Section 325 by inserting after the words "In the course of its deliberations, the commission shall examine the transportation" the following word:- "finance".

The amendment was **adopted**.

Messrs. Lees, Tisei, Tarr, Hedlund, Knapik and Brown and Mrs. Sprague moved that the bill be amended by striking out section 361 in its entirety and inserting in place thereof the following:-

"SECTION 361. Section 127 shall take effect on December 31, 2005."

After debate, the question on adoption of the amendment was determined by a call of the yeas and nays, at thirteen minutes past five o'clock P.M., on motion of Mr. Lees, as follows, to wit (yeas 7 – nays 32) [**Yeas and Nays No. 540**]:

YEAS.

Brown, Scott P.	Sprague, Jo Ann
Hedlund, Robert L.	Tarr, Bruce E.
Knapik, Michael R.	Tisei, Richard R. — 7.
Lees, Brian P.	

NAYS.

Antonioni, Robert A.	Havern, Robert A.
Baddour, Steven A.	Joyce, Brian A.
Barrios, Jarrett T.	Magnani, David P.
Berry, Frederick E.	McGee, Thomas M.

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

32.

The yeas and nays having been completed at seventeen minutes past five o'clock P.M., the amendment was *rejected*.

Mrs. Sprague moved that the bill by inserting after Section 352, the following new Section:-

“Section 352A. Notwithstanding any general or special law or regulation to the contrary, the Massachusetts Highway Department shall include the proposed intersection improvements of the Route 1A/Main Street-Winter Street-Jean Road intersection in Walpole on the Transportation Improvement Program project list covering fiscal years 2003-2007 and shall commence said improvements during fiscal year 2005.”

The amendment was *rejected*.

Mr. Lees moved that the bill be amended by inserting, after Section __, the following new Section:-

“SECTION __. Notwithstanding any general or special law to the contrary, sections 52 through 56, inclusive, of chapter 7 of the general laws shall not apply to the executive office of transportation and construction or the University of Massachusetts during fiscal year 2005; provided, however, that any agreement or combination or series of agreements entered into by the executive office of transportation and construction or the university of Massachusetts during said fiscal year by which a non-governmental person or entity agrees to provide services to said executive office, said university or any agency or department under their auspices, valued at \$100,000 or more, which are substantially similar to and in lieu of services theretofore provided, in whole or in part, by regular employees of said executive office, said university or any agency or department under their auspices shall not be for a term to exceed 2 calendar years. On or before July 15, 2005, said executive office and said university shall file a report with the secretary of administration of finance and the house and senate committees on ways and means detailing the number and nature of any such agreements entered into by said executive office or said university during fiscal year 2005. Said report shall include, but not be limited to, the following:

- (1) a written statement of the services provided by said agreement(s) entered into, including the specific quantity and standard of quality of the subject services;
- (2) the term of the agreement(s);
- (3) the estimated cost of the services to be provided over the term of the agreements; and
- (4) the current cost to the commonwealth for the provision of said services as said services are provided by regular employees of said executive office, said university or any agency or department under the auspices of said executive office or university.

On or before August 15, 2006, said executive office and said university shall file a report with the secretary of administration of finance and the house and senate committees on ways and means which shall include, but not be limited to, the following:

- (1) a comprehensive written analysis of the actual cost to the commonwealth that was incurred from said agreement during the term of the agreement, specifically including the costs of transition from public to private operation, of additional unemployment and retirement benefits, if any, of monitoring and otherwise administering contract performance; and of the net impact on tax revenues collected on the Commonwealth resulting from the public to private operation;
- (2) a comparison of said actual cost to the prior actual cost of the provision of the same services as previously provided by the regular agency employees that most recently provided said services;
- (3) a comprehensive written analysis of the quality of the services that were provided by the entity during the term of the agreement(s) and whether said quality, in the opinion of said executive office or said university, fell short, of equaled, or surpassed the level of quality which was provided by the regular agency employees that previously provided said services.

This section shall not apply to any agreement proposed during fiscal year 2005 by which a non-governmental person or entity seeks to provide services currently provided by the employees of the Massachusetts Bay Transportation Authority.”

After remarks, the question on adoption of the amendment was determined by a call of the yeas and nays, at twenty minutes past five o'clock P.M., on motion of Mr. Lees, as follows, to wit (yeas 8 – nays 31) [**Yeas and Nays No. 541**]:

YEAS.

Baddour, Steven A.	Rosenberg, Stanley C.
Brown, Scott P.	Sprague, Jo Ann
Knapik, Michael R.	Tarr, Bruce E.
Lees, Brian P.	Tisei, Richard R. — 8.

NAYS.

Antonioni, Robert A.	Menard, Joan M.
Barrios, Jarrett T.	Montigny, Mark C.
Berry, Frederick E.	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.	Shannon, Charles E.
Hedlund, Robert L.	Tolman, Steven A.
Joyce, Brian A.	Tucker, Susan C.
Magnani, David P.	Walsh, Marian
McGee, Thomas M.	Wilkerson, Dianne — 31.
Melconian, Linda J.	

The yeas and nays having been completed at twenty-four minutes past five o'clock P.M., the amendment was *rejected*.

Messrs. Magnani, Brown, Ms. Fargo, Mr. Moore and Ms. Resor, moved that the bill be amended by inserting, the following new Section:-

SECTION _____. The first paragraph of section 9 of chapter 161A of the General Laws, as appearing in the 2002 Official Edition is hereby amended by striking out the sixth sentence and inserting in place thereof the following:-

“Beginning on July 1, 2001, a city or town that is also a member of a regional transit authority or that at anytime joins a regional transit authority shall have 100 percent of the amount assessed for the operation of the regional transit authority credited against its share of the assessment made under this section. The amount credited shall not exceed the total amount of the assessment.

Section 3 of chapter 161B of General Laws, as so appearing, is hereby amended by striking out the third paragraph and inserting in place thereof the following paragraph:-

“Any city or town, or group or combination of cities or towns, other than a city or town included in the Massachusetts Bay Transportation Authority in which said Authority operated fixed route bus service or is in an authority established pursuant to section 14 may, by a majority vote of the city council or of the town meeting or majority vote of any other legislative body, respectively, and subject to the approval of the advisory board to a regional transit authority join an authority which is not separated from the city or town or group or combination of cities and towns by more than one other municipality.”

After remarks, the amendment was **adopted**.

Mr. Antonioni moved that the bill be amended, in section 2, in item 2511-3002, by striking out the figure “\$100,000” and inserting in place thereof the following figure: - “\$300,000”.

The amendment was *rejected*.

Mr. Tisei moved that the bill be amended, in section 2, item 2800-0100 by adding at the end thereof the following new language:-
“;provided further that notwithstanding any general or special law to the contrary the proceeds of any sale of a building owned by the department of conservation and recreation and located at 50 Somerset Street in the city of Boston be distributed in equal allotments to the cities and towns that constitute the metropolitan parks district, as defined in section 33 of chapter 92 of the Massachusetts General Laws.”

After debate, the amendment was *rejected*.

Mr. Pacheco moved that the bill be amended, in section 2, by inserting at the end of item 2800-0101 the following item:

“Provided further, that the water assets management project include Plymouth, Carver, Wareham, Plympton, Bourne, Middleborough, and Kingston, and provided further that the Department develop and implement a written plan to protect and manage the Plymouth-Carver sole source aquifer in consultation with these seven communities.”

The amendment was **adopted**.

Mr. Moore moved that the bill be amended, in section 2, in item 2820-0100 by inserting therein the following:- "provided, further, that \$30,000 shall be expended for child safety equipment in the town of Milford;"

The amendment was *rejected*.

Messrs. Hart, Joyce, Morrissey, and Tolman moved to amend the bill in section 2, in item 2820-0100, by striking out the figures “\$18,833,715” and inserting in place thereof the following figure “\$19,596,478.”

After debate, the question on adoption of the amendment was determined by a call of the yeas and nays, at eighteen minutes before six o'clock P.M., on motion of Mr. Lees, as follows, to wit (yeas 16 – nays 23) [**Yeas and Nays No. 542**]:

YEAS.

Barrios, Jarrett T.	Nuciforo, Andrea F., Jr.
Brown, Scott P.	O’Leary, Robert A.
Hart, John A., Jr.	Resor, Pamela
Hedlund, Robert L.	Sprague, Jo Ann
Joyce, Brian A.	Tarr, Bruce E.
Knapik, Michael R.	Tisei, Richard R.
Lees, Brian P.	Tolman, Steven A.
Moore, Richard T.	Tucker, Susan C. — 16.

NAYS.

Antonioni, Robert A.	Melconian, Linda J.
Baddour, Steven A.	Menard, Joan M.
Berry, Frederick E.	Montigny, Mark C.
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.	Rosenberg, Stanley C.
Glodis, Guy W.	Shannon, Charles E.
Havern, Robert A.	Walsh, Marian
Magnani, David P.	Wilkerson, Dianne —
McGee, Thomas M.	23.

The yeas and nays having been completed at thirteen minutes before six o'clock P.M., the amendment was *rejected*.

Subsequently, Mr. Hart asked unanimous consent that no action having been taken on the amendment; and this motion prevailed. The amendment was then **adopted**.

Mr. Joyce and Ms. Fargo moved that the bill be amended in Section 308, line 21, by adding after the words "special law to the contrary":-

"shall be first offered at a nominal rate to the municipality in which the ice rink is located,"; and

In Section 308, line 34, by adding after the words "maintenance shall":-

" , if no lease agreement is reached with the municipality in which the rink is located,".

The amendment was *rejected*.

Messrs. Tisei, Lees, Knapik, Tarr, Hedlund, Mrs. Sprague, and Mr. Brown moved that the bill be amended by inserting, after Section 362, the following new section:-

"SECTION ____ . Section 110 of chapter 88 of the Acts of 1997 is hereby amended by deleting said section in its entirety and substituting therefore the following new section:-

“; 110. Notwithstanding the provisions of sections 40E to 40J, inclusive, of chapter 7 of the General Laws, or any other special or general law to the contrary, the commissioner of the department of conservation and recreation is hereby authorized to enter into license or lease agreements for the placement of telecommunications antennas on buildings, communications towers, fire observation towers, structures, and properties under the control of said department of conservation and recreation, on such terms as the commissioner deems appropriate. Said license or lease agreements may include, without limitation, provisions for access to and use of buildings, communications towers, fire observation towers, structures, and properties for placement, use, and maintenance of ancillary equipment, facilities, and fixtures. License agreements entered into pursuant to this section shall have a maximum initial term of five years and may be renewable for up to two more additional five year terms. Lease agreements shall have a maximum duration, including extensions, of 15 years. The license or lease fee paid for any agreement entered into pursuant to this section shall be the full fair market value, provided that agreements entered into with public entities may provide for the delivery of goods and services in lieu of monies. Any such antenna installation must comply with all applicable federal, state and local laws, regulations, and ordinances and shall be subject to a public hearing in a municipality in which said antennas are proposed to be located. Said public hearing shall be advertised in a newspaper of general circulation in said municipality not less than 14 days prior to said public hearing.

Said commissioner of the department of conservation and recreation shall, at least 15 days before the execution of any agreement with a non-public entity as authorized in this section, submit the agreement to the house and senate committees on ways and means and state administration together with a written report specifically determining that the agreement is in the public interest; that the payments to be received by the commonwealth represent full and fair market value; that any activities authorized by the agreement will not interfere with the commonwealth's current or anticipated future use of the buildings, communications towers, fire observation towers, structures, or properties; and that the activities authorized by the agreement do not change the essential character of the building or property.

Revenues received from any agreement authorized by this section shall be deposited to the General Fund.”

The amendment was *rejected*.

Ms. Fargo moved that the bill be amended by inserting after Section __, the following new Section: -

"SECTION ____ . Item 2840-2016 of section 2 of chapter 236 of the acts of 2002 is hereby amended by striking the words “; provided further, that \$200,000 shall be expended for renovation of the Connors pool in the city of Waltham” and inserting in place thereof the following: - provided further, that \$1,200,000 shall be expended for renovation of the Connors pool in the city of Waltham.”

The amendment was **adopted**.

Messrs. Tisei, Lees, Knapik, Tarr, Hedlund, Mrs. Sprague, and Mr. Brown moved that the bill be amended by inserting, after Section 362, the following new section:-

"SECTION ____ . Section 110 of chapter 88 of the Acts of 1997 is hereby amended by deleting said section in its entirety and substituting therefore the following new section:-

“;110. Notwithstanding the provisions of sections 40E to 40J, inclusive, of chapter 7 of the General Laws, or any other special or general law to the contrary, the commissioner of the department of conservation and recreation is hereby authorized to enter into license or lease agreements for the placement of telecommunications antennas on buildings, communications towers, fire observation towers, structures, and properties under the control of said department of conservation and recreation, on such terms as the commissioner deems appropriate. Said license or lease agreements may include, without limitation, provisions for access to and use of buildings, communications towers, fire observation towers, structures, and properties for placement, use, and maintenance of ancillary equipment, facilities, and fixtures. License agreements entered into pursuant to this section shall have a maximum initial term of five years and may be renewable for up to two more additional five year terms. Lease agreements shall have a maximum duration, including extensions, of 15 years. The license or lease fee paid for any agreement entered into pursuant to this section shall be the full fair market value, provided that agreements entered into with public entities may provide for the delivery of goods and services in lieu of monies. Any such antenna installation must comply with all applicable federal, state and local laws, regulations, and ordinances and shall be subject to a public hearing in a municipality in which said antennas

are proposed to be located. Said public hearing shall be advertised in a newspaper of general circulation in said municipality not less than 14 days prior to said public hearing.

Said commissioner of the department of conservation and recreation shall, at least 15 days before the execution of any agreement with a non-public entity as authorized in this section, submit the agreement to the house and senate committees on ways and means and state administration together with a written report specifically determining that the agreement is in the public interest; that the payments to be received by the commonwealth represent full and fair market value; that any activities authorized by the agreement will not

interfere with the commonwealth's current or anticipated future use of the buildings, communications towers, fire observation towers, structures, or properties; and that the activities authorized by the agreement do not change the essential character of the building or property.

50 percent of revenues received from any agreement authorized by this section shall be deposited to the General Fund and 50 percent to the community hosting the telecommunications facility."

The amendment was *rejected*.

Ms. Walsh moved that the bill be amended by inserting after Section __, the following new Section: -
SECTION __. Section 1B of chapter 132A of the General Laws is hereby amended by striking out the second sentence.
After remarks, the amendment was **adopted**.

Ms. Walsh moved that inserting after Section __, the following new Section, amend the bill: -
SECTION __. Section 1A of chapter 92 of the General Laws is hereby amended by striking out the second sentence.
The amendment was **adopted**.

Ms. Walsh moved that the bill be amended by inserting, after Section ____, the following new Section: -
"SECTION _____. Chapter 92 of the General Laws, as amended by chapter 26 of the Acts of 2003, is hereby amended by inserting after section 37 the following section: -

Section 37A. When used in this section, the following words shall, unless the context otherwise requires, have the following meaning:

"Commercial purpose," property used or held for use for business purposes including but not limited to any commercial, business, retail, trade, service recreational, agricultural, artistic, sporting, fraternal, governmental, educational, medical or religious enterprise, for non-profit purposes.

"Industrial purpose," property used or held for use for manufacturing, milling, converting, producing, processing or fabricating materials; the extraction or processing of materials unserviceable in their natural state to create commercial products or materials; the mechanical, chemical or electronic transformation of property into new products and any use that is incidental to or an integral part of such use, whether for profit or non-profit purposes; and property used or held for uses for the storage, transmitting and generating of utilities regulated by the department of telecommunications and energy.

"Sign," any structure, device, light, letter, word, model, banner, pennant, insignia, trade flag, or representation which is designed to be seen from outside a building and which advertises or announces a use conducted or goods, products, services or facilities available, but excluding electric signs in windows or doors, window displays of merchandise and signs incidental to the display of merchandise.

No land abutting a boulevard or parkway under the division's care and control shall be used for a commercial or industrial purpose unless the commissioner, in consultation with the director, and after public notice and hearing, has granted the applicant for such use a special permit. The commissioner shall grant such special permit only if he finds that all of the following conditions are met: (a) there will be no significant adverse effect on traffic and parking on such boulevards or parkways and adjacent streets; (b) landscaping treatment will be provided that ensures that the natural and aesthetic quality of the boulevard or parkway and the surrounding neighborhood will be maintained; and (c) the applicant will provide that the design of all structures is compatible with the surrounding neighborhood. The commissioner may grant the permit subject to such reasonable terms and conditions that are related to traffic and parking, landscaping, and design as provided above.

No sign shall be displayed or erected on land abutting a boulevard or parkway under the division's care and control unless the commissioner, in consultation with the director, and after public notice and hearing, has granted the applicant for such use a special permit. The commissioner shall grant such special permit only if he finds that the following conditions are met: (a) landscaping treatment will be provided that ensures that the natural and aesthetic quality of the boulevard or parkway and the surrounding neighborhood will be maintained; and (b) the applicant will provide that the design of all structures is compatible with the surrounding neighborhood. The commissioner may grant the permit subject to such reasonable terms and conditions that are related to landscaping and design as provided above."

The amendment was *rejected*.

Mr. Morrissey moved that the bill be amended by inserting, after Section 353, the following new sections:-

Section ____ . Section 10A of Chapter 91 of the General Laws, as appearing in the 2002 official edition, in line 6, is hereby amended by inserting after the word “necessary”, the following words:- “A reasonable fee for said mooring, proportionate to the city or town’s cost of overseeing mooring permits, may be imposed by a city or town or whomsoever is so authorized by said city or town; provided further, that no such fees may discriminate on the basis of residence, provided however that, any money collected shall be deposited into and used concurrently with the purposes of the Municipal Waterways Improvement and Maintenance Fund, pursuant to Chapter 40, section 5G.

Section ____ . Section 5G of Chapter 40 of the General Laws, as appearing in the 2002 official edition, in line 3, is hereby amended after the words “chapter sixty B”, by inserting the following words:- “, section 10A of Chapter 91”.

The amendment was *rejected*.

Subsequently, Mr. Morrissey doubted the vote and asked for a standing vote and the amendment was *rejected*, by a vote of 3 to 10.

Ms. Resor moved that the bill be amended, in section 2, in line item 2020-0100 by striking out the figure “\$1,290,152”, and inserting in place thereof the following figure:- “1,299,323.”

The amendment was *rejected*.

Mr. Antonioni moved that the bill be amended, in section 2, by striking out item 2010-0100 and inserting in place thereof the following item:-

“2010-0100

For recycling and related purposes consistent with the recycling plan of the solid waste master plan which includes municipal equipment, a municipal recycling incentive program, recycled product procurement, guaranteed annual tonnage assistance, recycling transfer stations, source reduction and technical assistance, consumer education and participation campaign, municipal household hazardous waste program, the recycling loan program, research and development, recycling market development and recycling business development, and the operation of the Springfield materials recycling facility; provided, that the department shall not increase the number of full time employees paid from this item above the number assigned to this item on March 1, 2003; provided further, that funds may be expended on municipal recycling incentives; and provided further, that the department may expend funds on municipal equipment grants\$3,515,647”.

The amendment was *rejected*.

Ms. Resor moved that the bill, be amended, in section 2, in item 2010-0100, in line 6, by striking out the words:-

“provided that the department shall be prohibited from increasing the number of full time employees paid from this line item above the number assigned to this item on March 1, 2003;”

and inserting in place thereof the following:-

“provided that the costs of personnel charged to this item during any fiscal year shall not exceed the level expended for such personnel and/or individual contractors assigned to this item on March 1, 2003.”.

The amendment was *rejected*.

Mr. Brewer, Ms. Resor and Mr. Nuciforo moved that the bill be amended, in section 2, in item 2030-1000, by striking out the figure “\$9,702,003” and inserting in place thereof the following figure:-

“10,100,000”.

The amendment was *rejected*.

Mr. Tarr moved that the bill be amended by adding, in Section 2, item 2300-0100 at the end thereof the following:-

“Provided further, that the office of the commissioner shall provide technical assistance to cities and towns and develop model rules and regulations to assist cities and towns in implementing beaver population control programs.”.

The amendment was *rejected*.

Ms. Resor, Messrs. Brewer, Creedon, Lees, Moore, Nuciforo, Ms. Tucker, Messrs. Tarr, Hedlund, O’Leary, Glodis and Ms.

Chandler moved that the bill be amended in section 2, in line item 2310-0200, by striking the figure “\$7,282,279”, and inserting in place thereof the following:-“\$7,719,688”.

The amendment was *rejected*.

Ms. Resor , Messrs. Brewer, Lees, Ms. Creem, Messrs. Creedon, Nuciforo, Hedlund, Tisei, Tarr, Knapik, Brown, Joyce and O’Leary moved that the bill be amended in section 2, by inserting after line item 2320-0200, the following:-

“2310-0301

For Administration of the Natural Heritage and Endangered Species Program.....\$250,000”.

The amendment was *rejected*.

Recess.

At ten minutes past six o'clock P.M., at the request of Mr. Lees, for the purposes of a minority caucus, the President declared a recess; and at twenty-three minutes past seven o'clock P.M., the Senate reassembled, the President in the Chair.

Orders of the Day.

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

The House Bill making appropriations for the fiscal year 2005 for the maintenance of the departments, boards, commissions, institutions and certain activities of the Commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements (House, No. 4601),- was further considered, the main question being on ordering it to a third reading, with the proposed Ways and Means text pending.

Ms. Resor, Mr. Brewer, Ms. Creem, Mr. Creedon moved that the bill be amended in Section 103 by adding at the end thereof the following new section:-

“Section 15. Notwithstanding any provision of this chapter to the contrary, the department shall coordinate and collaborate with the executive office of environmental affairs and its agencies in promulgating all policies, guidelines, standards, rules or regulations necessary to implement the sections of this chapter. Nothing in this chapter shall be construed as limiting the powers, duties, and functions of the executive office of environmental affairs and its agencies in carrying out their statutory responsibilities.”

The amendment was *rejected*.

Ms. Creem, Ms. Resor, Mr. Brewer and Ms. Walsh moved that the bill be amended by striking Section 336.

The amendment was **adopted**.

Ms. Wilkerson moved that the bill be amended by striking Section 336 and inserting in place thereof the following Section: -

“SECTION 336. Notwithstanding any general or special law to the contrary, there is hereby established a Special Commission on the Community Preservation Act will conduct a review of the operation of the Community Preservation Act, established in Chapter 44B of the General Laws, including an assessment of whether limiting access to the program to imposition of a property tax surcharge is the most effective way of meeting community preservation needs, as defined in said chapter, throughout the commonwealth. This review shall include at least two public hearings, one of which shall be held in the western four counties of the commonwealth. The special commission shall solicit testimony regarding innovative ways that municipalities might generate local revenue streams that could qualify for matching funds from the Community Preservation Trust Fund. The committee shall report back to the House of Representatives and the Senate with recommendations and legislation, if any, no later than March 1, 2005.

Membership of said special commission shall consist of the secretary of commonwealth development, who shall serve as chairman, the house and senate chairmen of the joint committee on local affairs and regional government, the house and senate chairmen of the joint committee on housing and urban development, one representative selected by the Metro Mayors Coalition, one representative selected by the Massachusetts Municipal Association, one representative selected by the Community Preservation Coalition, and two representatives from Massachusetts regional planning agencies, who shall be selected by the secretary of commonwealth development.”

The amendment was *rejected*.

Mr. Tarr moved that the bill be amended by adding, at the end thereof, the following new section: -

“SECTION _____. Item 2000-2013 of section 2 of Chapter 236 of the acts of 2002 is hereby amended by inserting after the words "in the city of Woburn" the following words: -

; provided further, that, notwithstanding any rules or regulations of the department, not less than \$1,750,000 shall be expended for the acquisition of the Dunn property, so-called, in the town of West Newbury, however, in the event that the town expends its own funding for acquisition of said property, it will be reimbursed; and by striking out the figure "\$21,250,000" and inserting in place thereof the following figure:-

\$23,000,000.

SECTION _____. Item 2100-2011 of said section 2 of said chapter 236 is hereby amended by striking out the words "; provided further, that \$1,750,000 shall be expended for the acquisition of the Dunn property, so-called, in the town of West Newbury ; - and by striking out the figure "\$46,425,000" and inserting thereof the following figure: - \$44,675,000”.

The amendment was **adopted**.

Ms. Resor, Messrs. Brewer and Lees, Ms. Creem, Messrs. Creedon, Nuciforo, Tarr, Tisei, Knapik, Brown, Joyce and O’Leary move to amend the bill by inserting after section 17, the following new section:-

“SECTION 17A. Notwithstanding the provisions of any general or special law to the contrary, amounts expended from the Natural Heritage and Endangered Species Fund, established by section 35D of chapter 10 of the General Laws, shall be exempt from indirect cost charges pursuant to chapter 29 of the General Laws.

The amendment was **adopted**.

Mr. Nuciforo, Ms. Tucker and Messrs. Knapik and O'Leary moved that the bill be amended in section 2, in item 2200-0100, by striking out the figure "25,640,275" and inserting in place thereof the following figure:- "26,555,935".
The amendment was *rejected*.

Ms. Chandler and Mr. Antonioni moved that the bill be amended, in section 2, in item 2200-0100 by striking out the figure "\$25,640,275" and inserting in place thereof the figure "\$25, 890,275"; and by adding at the end the following wording:- " provided further, that not less than \$250,000 shall be expended for the Town of Clinton for the purpose of conducting a Comprehensive Site Assessment of South Meadow Pond and the presence of leachate from the former Clinton Landfill site".
The amendment was *rejected*.

Mr. Montigny moved that the bill be amended in section 2, in item 2200-0100 by inserting after the words - "section 18 of chapter 21A of the General Laws" the following:- "provided further, that not less than \$350,000 shall be expended for coastal pollution remediation for storm water discharge to improve the water quality in Buzzards Bay in the town of Darmouth."
The amendment was *rejected*.

Mr. Joyce moved that the bill be amended, in section 2, in item 2200-0100, in line 6, by inserting, after the words "the General Laws;" the following:- "and provided that not less than \$500,000 shall be expended by the Department of Environmental Protection in Fiscal Year 2005 towards the 15-year purchase of a parcel of land known as Rattlesnake Hill, in the Town of Sharon."
The amendment was *rejected*.

Messrs. Joyce and Morrissey moved that the bill be amended, in section 2, in item 2250-2000, in line 2, by inserting, after "the General Laws" the following:- " and provided, that not less than \$100,000 shall be expended for the planning and development of a new regional water treatment plant for the Tri-Town Water Board, representing the towns of Braintree, Randolph and Holbrook."
The amendment was *rejected*.

Ms. Resor moved that the bill be amended, in section 2, in line item 2260-8881, by striking the figure "\$334,308", and inserting in place thereof the following:-"\$349,308".
The amendment was *rejected*.

Mr. Baddour moved that the bill be amended, in section 2, in line item 2260-8870, by inserting after the words "21J of the General Laws " the following : - " ; and provided, that the department of environmental protection shall be obligated to test and remediate solid waste contamination at the Rivers Edge development in Methuen."
The amendment was **adopted**.

Mr. Moore moved that the bill be amended by striking Section 46 and replacing therein the following:-
"Section 46. Notwithstanding the provisions of any general or special law, or rule or regulation to the contrary, the department of environmental protection shall not consider intra-family transfers as transfers of title requiring an inspection of a system for the treatment and disposal of sanitary sewage below the ground surface."
The amendment was *rejected*.

Messrs. Pacheco and Nuciforo moved that the bill be amended by inserting, after Section __ the following new section:-
"SECTION ____ . Section 29 of Chapter 21 of the General Laws is hereby amended by adding the following paragraph:

If any district commission is deadlocked in the conduct of its affairs, voting shall be by weighted vote of each city or town based upon contributions to the operating budget of the district."
The amendment was **adopted**.

Mr. Tarr moved that the bill be amended by adding, at the end thereof, the following new section: -
"SECTION ____ . Section 150A of chapter 111 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting at the end thereof the following:- Any municipality, by a majority vote at town meeting in a town or by a majority vote by the council in a city, may adopt the following prohibition:

Contaminated soil, which means soil that contains oil or hazardous materials as a result of release to the environment, is prohibited from being disposed of, stored, stockpiled, used as landfill cover, or used as fill material for any and all purposes within the boundaries of the zone of contribution of any public or private groundwater drinking water supply or of the watershed of any surface water drinking water supply."
After remarks, the amendment was *rejected*.

Mr. Joyce moved that the bill be amended by inserting at the end thereof the following new section:

"SECTION ____ . Chapter 16 of the General Laws is hereby amended by inserting the following new section:—

Section 19A.

For the purposes of this section the following words will have the following meanings:

‘Cathode ray tube’ or ‘CRT’ means a vacuum tube or picture tube used to convert an electronic signal into a visual image.

‘Collection system’ means the collection, packaging, transportation, and recycling of CRT’s discarded by consumers.

‘Manufacturer’ means the corporation or other legal entity which is the brand owner or importer of any CRT or computer product sold or used in Massachusetts.

On or after July 1, 2006, no product which includes a cathode ray tube shall be offered for final sale, use, or distribution for promotional purposes in the Commonwealth, including all such products sold or donated by mail order or through the internet until such time as the manufacturer of said product either on its own or in concert with other persons has implemented a plan approved by the department for a convenient and accessible collection system for such products when the consumer is finished with them that will impose no cost on any city, town, county, or the Commonwealth.

Where a cathode ray tube is a component of another product, the collection system must provide for removal and collection of the cathode ray tube component or collection of both the cathode ray tube component and the product containing it.

The collection system plan submitted to the department shall include:

(A) a certification that the manufacturer will participate in a national collection system for computer products and cathode ray tubes that will be fully implemented in Massachusetts no later than July 1, 2006 and that said program will be consistent with the requirements of this section and of the performance standards established by the department; OR

(B) a certification that the manufacturer will participate in a collection system in Massachusetts which shall include the following elements:

a public education program to inform the public about the purpose of the collection program and how to participate in it;

a plan for implementing and financing the collection system that will impose no cost on any city, town, county, or the commonwealth;

documentation of the willingness of all necessary parties to implement the proposed collection system;

a description of the performance measures to be utilized and reported by the manufacturer to demonstrate that the collection system is meeting diversion rate targets and other measures of program effectiveness as required by the department; provisions to collect all computer products and CRT’s discarded by consumers in Massachusetts after the effective date of this section, including so-called “orphan wastes” which were produced by manufacturers who left the market before their products were discarded; a description of additional or alternative actions that will be implemented to improve the collection system and its operation in the event that the program targets are not met.; and an implementation plan to ensure that the collection system will be fully implemented no later than July 1, 2006.

The collection system plan may utilize or expand on existing collection and recycling infrastructure where feasible and cost-effective provided that the utilization of any existing infrastructure shall not impose any costs on any city, town, county, or the commonwealth. Any plan submitted which does not utilize existing collection and recycling infrastructure shall describe the reasons for establishing a separate collection system. Where establishing a separate system, manufacturers are required to develop, implement, and maintain the collection system, alone or in conjunction with other entities.

No later than two years following the implementation of the collection system plan required pursuant to this section and biennially thereafter, the manufacturer or entity that submitted the plan on behalf of the manufacturer and is implementing said plan shall be required to submit a report to the department on the effectiveness of the collection system. The report shall include an estimate of the numbers of cathode ray tubes that were collected, the diversion rate for the cathode ray tubes or components, the results of the other performance measures included in the manufacturers collection system plan, and such other information as the department may require. Such reports shall be made available to the public by the department pursuant to the provisions of section 10 of chapter 66 of the General Laws.

Upon a determination by the department that a manufacturer, or a third party organization, is not meeting the performance standards set by the department for the collection and recycling of discarded cathode ray tubes, the department may order said manufacturer or third party organization to take actions the department deems necessary to achieve said performance standards.

The department shall assess a reasonable fee, pursuant to the provisions of section 18 of chapter 21A of the general laws, which shall be payable by the manufacturer or third party organization acting on behalf of one or more manufacturers, which shall cover the full costs incurred by the department for the preparation said regulations, for the review of proposed plans for collection and recycling, and for other compliance costs.

The department is authorized and directed to promulgate regulations to carry out the provisions of this section. The amendment was *rejected*.

Mr. Lees moved that the bill be amended, in section 2, in item 7027-0016, by inserting the following wording:- “provided further, that \$25,000 shall be expended for the World is Our Classroom, Inc. in Springfield”.
The amendment was *rejected*.

Mr. Tolman moved that the bill be amended, in section 2, in item 7030-1003, by inserting after the words “August 31, 2005;” the following:- “provided further, \$250,000 to Read Boston to provide literacy coaches in early childhood education and preschool centers to establish literacy curriculum and libraries and to train staff members in quality, researched-based literacy instruction; provided further that the funds distributed through ReadBoston shall be contingent upon a match of not less than \$1 in private or corporate contributions for every dollar in state funding distributed through said grant program;” .
After debate, the amendment was *rejected*.

Mr. Baddour moved that the bill be amended, in section 2, by inserting in line item 7030-1004, after the words “where high concentrations of low income families reside” the following item: - “; provided further that no less than \$25,000, shall be expended for the School Link Services provider, the Pettengill House, to provide advocacy counseling, referrals, emergency assistance and prevention education programs to the children and families of both Triton Regional and Amesbury Public Schools.”
The amendment was *rejected*.

Mr. Tisei moved that the bill be amended, in section 2, in item 7061-0011, by striking out the wording and inserting in place thereof the following wording:- “For a Chapter 70 Equalization grant program, to be administered by the department of education to (i) provide enrollment aid to communities which have experienced past extraordinary enrollment growth or (ii) to meet deficiencies in the base chapter 70 aid that a community received at the inception of the education reform act; provided that said grants shall be available upon application to communities which receive less than 20% of their foundation budget through chapter 70. The commissioner of the department is hereby directed to establish criteria for the awarding of said grants; provided that the commissioner shall consult with the school district regarding the merits of any application; provided further that the commissioner shall issue a report to the chairs of the joint committee on ways and means and to the chairs of the joint committee on education regarding any money expended from this account; provided further, that notwithstanding the provisions of any general or special law to the contrary, assistance funded by this item shall be available on a recurring basis until the chapter 70 formula has been revised; and provided further, that funds distributed from this item to a municipality shall be considered as base aid used in the calculation of the minimum required local contribution for fiscal year 2003....\$7,000,000” .
After remarks, the amendment was *rejected*.

Ms. Walsh moved to amend the bill in Section 2, in item 7061-0012, by inserting after “item” in line 22, the following wording: - “; provided further, that not less than \$95,000 shall be allocated to item 7061-0029 for the purpose of continuing a study on effective means of serving special education students through the Donahue Institute at the University of Massachusetts;”.
The amendment was *rejected*.

Mr. Antonioni moved that the bill be amended, in section 2, by striking out item 7061-0029 and inserting in place thereof the following item:-
“7061-0029
For the office of educational quality and accountability established pursuant to chapter 15 section 55A of the General Laws; provided no more than \$1,092,999 shall be sent to the department of education for collaboration and analysis of school district audits through an intergovernmental service agreement \$2,601,971”.
The amendment was *rejected*.

Mr. Antonioni and Ms. Wilkerson moved that the bill be amended, in Section 2, in item 7061-9404 by striking the figure “\$14,000,000” and inserting in place thereof the following figure: -- “\$20,000,000”;

By adding the following words:- “provided further, that not less than \$5,000,000 shall be expended for a competitive grant program to support middle school students to pass the MCAS graduation standards. These funds can be used for comprehensive after-school programs operated as school partnerships between schools and community-based organizations as long as they have a structured academic component as approved by the board of education, including but not limited to Extended Day Schools that provide students extra learning programs that integrate structured English Language Arts and Math. Eligible programs must have curriculum that aligns with the state curriculum frameworks.”; and

In section 2, in item 7061-9404, by adding the classes of 2007 and 2008 to the list of classes that may receive MCAS remediation funding.
The amendment was *rejected*.

Mr. O’Leary moved that the bill be amended, in section 2, in item 7061-9404 by inserting after the words, “girls clubs” the following:- “; provided further, that not less than \$20,000 shall be expended for a Brown Eyes Blue Eyes Pilot Project, linking performance to perception to improve MCAS scores by teaching children how to recognize faulty stereotypes inherent in racism

for schools in Falmouth, Bourne, Barnstable and Springfield.”
The amendment was *rejected*.

Mr. Antonioni moved that the bill be amended, in section 2, in item 7061-9612 by adding after the words "excellence in mathematics and science;" the following words:-
"provided further that not more than \$100,000 shall be appropriated for programs and activities throughout the year, including summer, to attract minorities and females to further study and careers in the field of science and mathematics;"

By striking out the figure "1,199,231" and inserting in place thereof the following figure:- "1,299,231".; and

In section 2, in item 7061-0011 by striking out the figure"\$7,000,000" and inserting in place thereof the figure:- "\$6,900,000".
The amendment was *rejected*.

Mr. Hart moved that the bill be amended, in section 2, in item 7061-9626, in line 2, by inserting after the word “services” the following: - “provided further, that \$75,000 for job readiness programming by the Ella J. Baker House.”
The amendment was *rejected*.

Mr. Moore moved that the bill be amended, in section 2 after item 7061-9619 the following:-
“7061-9621

For the administration of a grant program for gifted and talented school children; provided, that the funds appropriated in this item shall be in addition to any federal funds available for such program; provided further, that priority shall be given to those grant applications that address the needs of students who are identified by any of the following criteria: (1) the result of a standardized aptitude examination which is 3 or more standard deviations above the mean; (2) an evaluation by the child's teachers that the child does perform, or is capable of performing, satisfactorily at 2 or more grade levels above the child's chronological age; or, (3) a score on the math or verbal Scholastic Aptitude Test by a child of no more than 13 years of age which is equal to, or greater than, the average on either test obtained by college-bound high school juniors; and provided further, that such programs may be made available by a city, town, or regional school district.....\$99,999”.

After remarks, the amendment was **adopted**.

Mr. Antonioni moved that the bill be amended, in section 2 by inserting after line item 7061-9612 the following item:

“7061-9614

For the alternative education grant program established pursuant to section 1N of chapter 69 of the General Laws, as established in this act; provided that the commissioner shall allocate funds for both subsection A and B of said section 1N of chapter 69 \$1,000,000”.

The amendment was *rejected*.

Mr. Antonioni moved that bill be amended in Section 254 by striking out the first paragraph and inserting in place thereof the following paragraph:-

"Notwithstanding any general or special law to the contrary, the division of purchased services of the department of procurement which, under section 274 of chapter 110 of the acts of 1993, is responsible for determining prices for programs under chapter 71B of the General Laws, authorize the fiscal year 2005 annual price for these programs by increasing the final fiscal year 2004 price by the estimated rate of inflation determined by the division on December 1, 2003. Programs for which prices in fiscal year 2004 were lower than the full amount either permitted or calculated by the division shall have fiscal year 2005 annual prices authorized by increasing the full price calculated for fiscal year 2004 by the rate of inflation determined by the division on December 1, 2003. All other provisions of 808 CMR 1.06 shall be operative. "

The amendment was *rejected*.

Mr. Antonioni moved that the bill be amended in Section 334 by inserting after the words “the Massachusetts Association of School Superintendents, the following words:- “the Massachusetts Association of School Committees,”.

The amendment was **adopted**.

Suspension of Senate Rule 38A.

Ms. Melconian in the Chair, Ms. Menard moved that Senate Rule 38A be suspended to allow the Senate to continue in session beyond the hour of eight o'clock P.M.; and, there being no objection, on further motion of the same Senator, the rule was suspended without a recorded yea and nay vote.

The House Bill making appropriations for the fiscal year 2005 for the maintenance of the departments, boards, commissions, institutions and certain activities of the Commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements (House, No. 4601),--

was further considered, the main question being on ordering it to a third reading, with the proposed Ways and Means text pending.

Mr. Pacheco moves to amend the bill by inserting, after Section ____, the following new Section:-

“SECTION _____. Notwithstanding the provisions of any general or special law to the contrary, the authority of the board of education to grant commonwealth charters to any applicant pursuant to section 89 of chapter 71 of the general laws is suspended until July 31, 2005, or until such time as a new tuition formula consistent with the recommendations of the house and senate working group authorized in this section has been enacted into law. During said period, the board of education shall not authorize additional enrollment, beyond that approved by the board prior to January 1, 2004, in any existing or previously authorized commonwealth charter school. Further, the approval of the commonwealth charters by the name of the Advanced Math and Science Academy Charter School, Community Charter School of Cambridge, KIPP Academy Lynn Charter School, Berkshire Arts and Technology Charter School, and the Salem Academy Charter School made prior to passage of this act are hereby suspended and the charter schools so named shall not be allowed to open until the Department of Education, after this period of suspended authority, conducts a full review of the application and authorization process of the commonwealth charters named above to insure that the letter and spirit of the laws governing those processes have been followed by the Department and Board of Education.

There is hereby established a house and senate working group to study all aspects of, make recommendations on how to improve, and develop legislation to change the current tuition financing system for charter schools. The first meeting of the working groups shall take place within 30 days of the passage of this act. The working group shall consist of the speaker of the house of representatives, or his designee, the president of the senate, or his designee, the minority leaders of the house and senate, or their designees, the house and senate chairs of the joint committee on education, arts, and humanities, and the chairs of the house and senate committee on ways and means.

Based on the findings of its study, the working group shall make recommendations on how the existing financing system can be improved in order to more closely align the funds sent to charter schools from state and local sources with the funds that would have been expended on the education of the charter school students if they remained in the districts from which they are drawn. The recommendations shall reflect actual costs associated with the grade level, program participation, and demographic profile of students attending charter schools, including all capital costs, transportation costs and other factors which contribute to the actual cost of educating these students. The working group shall also examine the relationship between charter school funding and state education funding under the provisions of Chapter 70 of the General Laws, and shall ensure that any recommendations for changes in charter school funding are consistent with the principles, objectives, and formulas embodied in the funding formula under Chapter 70. Any legislation proposed by the working group shall require that funding be reflective of the grade level, program participation, and demographic profile of the actual students enrolled in charter schools. The working group shall compile data which compares the demographic profile and educational needs that characterize charter school students with those that characterize students in the districts from which they are sent. The working group shall solicit advice from such persons and entities as they deem necessary, including the department of education, as well as associations representing superintendents, school budget officers, municipal officials, and charter schools. The working group shall file a report containing its recommendations, including legislation necessary to carry out its recommendations, with the joint committee on education, arts, and humanities on or before December 1, 2004.”

During consideration of the amendment, at thirteen minutes before nine o'clock P.M., Ms. Wilkerson doubted the presence of a quorum and twelve minutes before nine o'clock P.M., a quorum was deemed present.

The House Bill making appropriations for the fiscal year 2005 for the maintenance of the departments, boards, commissions, institutions and certain activities of the Commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements (House, No. 4601),-- was further considered, the question being on adoption of the amendment.

The President in the Chair, after debate, the question on adoption of the amendment previously moved by Mr. Pacheco, was determined by a call of the yeas and nays, at five minutes past nine o'clock P.M., on motion of Mr. Knapik, as follows, to wit (yeas 26 – nays 13) [Yeas and Nays No. 543]:

YEAS.

Barrios, Jarrett T.	Menard, Joan M.
Berry, Frederick E.	Montigny, Mark C.
Brewer, Stephen M.	Moore, Richard T.
Chandler, Harriette L.	Morrissey, Michael W.
Creedon, Robert S., Jr.	Murray, Therese
Creem, Cynthia Stone	Nuciforo, Andrea F., Jr.
Fargo, Susan C.	Pacheco, Marc R.
Glodis, Guy W.	Panagiotakos, Steven C.
Havern, Robert A.	Resor, Pamela
Joyce, Brian A.	Rosenberg, Stanley C.

Mr. Nuciforo moved that the bill be amended by inserting at the end thereof the following section:-
“SECTION – Section 89 of chapter 71 of the General Laws is amended in subsection (i) by striking the sixth sentence.”
The amendment was *rejected*.

Mr. Antonioni moved that the bill be amended by inserting, after Section ____, the following new Section: -
“SECTION ____. (a) The department of education, hereinafter referred to as the department, shall establish a grant program, subject to appropriation, to be known as the alternative education grant program for the purpose of providing grants to assist school districts, and Horace Mann and commonwealth charter schools with the development and establishment of alternative education programs and services to students suspended or expelled from school. The grants shall support the development of alternative education programs which would: (1) allow school districts to coordinate efforts to establish interdistrict regional alternative education collaboratives to provide educational services to suspended or expelled students; or (2) establish a district based alternative education program for such students. The grants may also be used to encourage the use of technology in alternative education programs. Such grants shall also encourage voluntary expansion of existing alternative education programs throughout the commonwealth, and shall be used to provide alternative education programs for students who are at risk of educational failure due to truancy, or dropping out of school. Grants may also be used to assist in developing programs that provide a continuum of approaches to address behavior issues such as behavior specialists, in-school suspension rooms and crisis centers, in addition to out-of-school alternative settings.

Programs designed under such grants shall be developed at the middle and high school levels and shall afford students the opportunity to earn a high school diploma in accordance with the provisions of section one D, and to be taught to the same academic standards and curriculum frameworks established for all students in accordance with the provisions of sections one D and one E. Such programs shall make use of existing resources in school districts, educational collaboratives, community colleges, and other agencies, service providers, and organizations. Programs shall be designed as placements that, at a minimum, educate students to the same academic standards and curriculum frameworks as taught to all students, address behavioral problems, utilize small class size, address individual needs and learning styles, provide engaging instruction and a supportive environment, and, where appropriate, utilize flexible scheduling. The programs shall also provide a comprehensive array of social services to support a student's remediation of issues that cause school failure, excessive absenteeism, truancy and school dropout. Grant recipients shall develop remediation plans for students that address both academic and behavioral issues. Grants may also be made available for in-school regular education programs that include self-improvement, behavior management and life skills training to help provide students with tools to better manage their lives and attitudes, to support programs that use family-based approaches, and to assist students and teachers during the transition of students back into regular education classrooms.

Any grants awarded pursuant to this subsection, shall require that recipients undertake ongoing program evaluations that document the effectiveness of the program in helping students to achieve academically to the same academic standards and curriculum frameworks required for all students, to develop self-management skills, and to reintegrate and remain in regular education classrooms. In awarding grants, priority shall be given to programs that employ interventions that have been empirically validated.

The department shall establish guidelines governing the alternative education grant program. Such guidelines shall include, but not be limited to, a provision that when a student is transferred to an alternative education program a representative of the school district shall meet with the student and the student's parents or legal guardian to develop an agreement that specifies the responsibilities of the school, the student and the student's parents or legal guardian. The agreement shall, at a minimum, include:

- (1) a remediation plan to address both academic and behavioral issues;
- (2) a plan for frequent evaluations and assessments of the student's adjustment, and academic achievement and progress;
- (3) a requirement that the parents or legal guardian of the student attend specified meetings or conferences with teachers, or utilize such other means of communication as determined necessary to facilitate communication, to review and assist in the student's progress;
- (4) any timetable for reintegrating the student into a regular education classroom;
- (5) the student's and the parents' or legal guardian's acknowledgement that they understand and accept the responsibilities imposed by the agreement.

(b) The department shall establish a grant program, subject to appropriation, to assist school districts with the development and establishment of in-school regular education programs and services to address within the regular education school program the educational and psycho-social needs of children whose behavior interferes with learning, particularly those who are suffering from the traumatic effects of exposure to violence. As used in this subsection, students suffering from the traumatic effects of exposure to violence shall include, but not be limited to, those exposed to abuse, family or community violence, war, homelessness or any combination thereof. The grants shall support the development of school based teams with community ties that:

- (1) collaborate with broadly recognized experts in the fields of trauma and family, community violence and with battered women shelters;
- (2) provide ongoing training to inform and train teachers, administrators, and other school personnel to understand and identify the symptoms of trauma; and

(3) evaluate school policy and existing school and community programs and services to determine whether and to what extent students identified as suffering from exposure to trauma can receive effective supports and interventions that can help them to succeed in their public school programs, and where necessary be referred quickly and confidentially to appropriate services.

Grants may also be awarded to assist school districts in developing comprehensive programs to help prevent violence in schools, from whatever causes, and to promote school safety. Such programs shall be designed to meet the following objectives: creating a school environment where students feel safe and that prevents problems from starting; helping students to take the lead in keeping the school safe; ensuring that school personnel have the skills and resources to identify and intervene with at-risk students; equipping students and teachers with the skills needed to avoid conflict and violence; and helping schools and individuals to reconnect with the community and share resources.

The department shall develop guidelines governing the implementation of the grant program authorized by this subsection. Any grants awarded pursuant to this subsection, shall require that recipients undertake ongoing evaluations of the effectiveness of the program. In awarding grants, priority shall be given to programs that are based on empirically validated interventions.

The department of education, in consultation with the department of public health and the department of mental health, shall establish an advisory committee to assist in implementing the grant program and in assisting public schools in addressing the learning and behavior problems of students who manifest trauma-related symptoms and/or classroom behavior that interferes with learning. Members of said advisory committee shall include but not be limited to: three educators, one of whom shall serve as the chair, appointed by the commissioner of the department of education; two leaders in the field of trauma and its relationship to school learning and behavior appointed by the commissioner of the department of public health, two leaders in mental health with expertise in family and/or community violence appointed by the commissioner of mental health; one leader in battered women's services appointed by the commissioner of public health; one leader in the area of homelessness and its impact on children appointed by commissioner of mental health, three parents one each appointed by the commissioner of education, the commissioner of public health, the commissioner of mental health. The advisory committee, at its discretion, may select additional members with relevant experience including but not limited to child advocates, medical doctors and representatives of juvenile and probate court.

(c) The commissioner shall evaluate annually the effectiveness of programs established under this section including the potential for replicating such programs throughout the commonwealth. Such evaluations shall also examine whether students in alternative education programs funded under this section are being taught to the same academic standards required for all students, how much time students are spending in such programs, the racial profile of expelled or suspended students, and the percentages of such students who are in special education or bilingual education. The commissioner shall also provide technical assistance to school districts seeking to replicate programs funded under this section, and shall provide training for teachers in the development of effective remediation plans for students in alternative education, and in the development of skills, techniques, and innovative strategies to assist such students. In evaluating programs funded under subsection (b), the commissioner shall consult with the department of public health, the department of mental health, and the advisory committee established pursuant to said subsection.” The amendment was **adopted**.

Messrs. Tarr, Lees, Knapik, Mrs. Sprague, Messrs. Hedlund and Brown moved that the bill be amended by adding, at the end thereof, the following new section:-

“SECTION _____. There is hereby established a study commission to evaluate the feasibility and potential academic impact, if any, of providing school districts the flexibility to adjust the number of days in the school year by not more than five, provided that such adjustment would result in no net diminution of actual attendance time in school. Said evaluation shall consider any potential cost savings to be achieved by providing such flexibility through such means as reduced physical plant operating costs of school buildings. In addition, said study shall determine whether providing such flexibility may have any positive or adverse impacts on the hearing environment or student learning or performance. The Commission shall be comprised of the Commissioner of the Department of Education or his designee, the Secretary of Administration and Finance, or his designee, 3 members from the House Committee on Education, at least one being a member of the minority party, and 3 members from the Senate Committee on Education, at least one being a member of the minority party. Said Commission shall file a report together with any recommendations for legislative changes with the Joint Committee on Education, Arts and Humanities both the Senate and House Committees on Ways and Means and the House and Senate Clerks not later than November 30, 2004.”

The amendment was *rejected*.

Mr. Brewer and Ms. Resor moved that the bill be amended by inserting at the end thereof the following new section:-

“SECTION _____. A special commission is hereby established to study the establishment of regional grief counselors for city, town and regional school districts. Said commission shall be comprised of three members appointed by the speaker of the house including the house chair of the joint committee on education, three members appointed by the senate president including the senate chair of the joint committee on education, the secretary of the department of education or his designee, a designee from the Massachusetts Teachers Association, a designee from the Massachusetts Federation of Teachers, along with members of the medical profession. Said commission shall submit a report, including legislative recommendations, if any, to the joint committee on education and the house and senate committees on ways and means by June 15, 2005.”

The amendment was *rejected*.

Mr. Tolman moved that the bill be amended by inserting, after Section 362, the following new Section:-

“SECTION 363. Section 4E of Chapter 40 of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by adding the following sentence:- The provisions of sections 41, 42, 42 D and 43 of Chapter 71 shall apply to each category of employees named in those sections who serve in education collaboratives.”

The amendment was **adopted**.

Mr. Antonioni moved that the bill amended by inserting, after Section 362, the following new section:-

“SECTION 363. Section 19 of Chapter 65 of the Acts of 2004 is hereby repealed.”

The amendment was *rejected*.

Messrs. Antonioni and Magnani moved that the bill be amended by inserting, after Section 122, the following 2 sections: -

SECTION 122A. Section 11 of chapter 69 of the General Laws is hereby amended by striking out the tenth paragraph, as amended by section 19 of chapter 65 of the acts of 2004, and inserting in place thereof the following paragraph:-

Annually, the principal of each school, jointly with the school council established pursuant to this section, shall adopt student performance goals for the schools consistent with the school performance goals established by the department of education pursuant to state and federal law and regulations and, consistent with any educational policies established for the district shall assess the needs of the school on light of those goals and formulate a school plan to support improved student performance. The school’s plan to support improved student performance shall include, but not be limited to, the same components required for district improvement plans and shall conform to department and district specifications to ensure that such school improvement plans meet state and federal law requirements. Each school improvement plan shall be submitted to the superintendent and the school committee for review and approval not later than July 1 of the year in which said plan is to be implemented, according to a plan development and review schedule established by the district superintendent.

SECTION 122B. Section 59C of Chapter 71 of the General Laws, as amended by section 82 of Chapter 46 of the Acts of 2003, is hereby amended by striking out the fifth paragraph and inserting in place thereof the following paragraph:-

The principal of each school, jointly with the school council established pursuant to this section, shall on an annual basis, in conformity with the provisions of section 11 of chapter 69, develop and submit for approval by the district superintendent and school committee a plan for improving student performance. Said plan shall be prepared in a manner and form prescribed by the department of education and shall conform to any policies and practices of the district consistent therewith. If said school improvement plan is not reviewed by the school committee within thirty days of said school committee receiving said school plan, the plan shall be deemed to have been approved by said school committee.

The amendment was *rejected*.

Mr. Joyce moved that the bill be amended by inserting, after Section ____, the following new Section:-

“SECTION _____. The Department of Education is hereby directed to reimburse the Town of Milton for the actual project costs of all school building projects in Milton under the School Building Assistance Program, including, but not limited to, the Collicot School and Cunningham Schools project, such reimbursement shall be at the same rate and in addition to reimbursements within the total project cost reimbursement limit established, pursuant to paragraph three of section 11 of chapter 15 of the General Laws, as appearing in the 1998 Official Edition.”

The amendment was *rejected*.

Ms. Resor moved that the bill be amended by inserting after section 27 the following new section:-

“SECTION 27A. Said section 1E of chapter 15, as so appearing, is hereby amended by inserting, in line 9, after the word “governor” the following words:- “The five additional members shall be selected from a list developed by the Massachusetts Association of School Committees.”

The amendment was *rejected*.

Mr. McGee moved that the bill be amended by inserting at the end thereof the following section:-

“SECTION _____. Notwithstanding the provisions of any general or special law to the contrary, in any city or town where the state treasurer directed the deduction of more than fifty percent of the total education aid, as defined in chapter 70, for payment of charter school tuition for the fiscal year beginning July 1, 2003 and ending on June 30, 2004, such payment for charter school tuition in fiscal year July 1, 2004 and ending on June 30, 2005, shall not be in excess of the total amount deducted for the fiscal year beginning July 1, 2003 and ending on June 30, 2004.”

The amendment was *rejected*.

Mr. McGee moved that the bill be amended by inserting, at the end thereof the following section: -

“Section _____. Notwithstanding the provisions of any general or special law to the contrary, for the fiscal year beginning July 1, 2004 and ending on June 30, 2005, the Department of Education shall approve a reimbursement rate of 100 percent of the per-pupil charter school tuition for all school districts with charter schools approved after January 1, 2004.”.

The amendment was *rejected*.

Mr. Hedlund moved that the bill be amended after Section ____, the following new Section:-
“SECTION ____ . Section 1. Section 6 of chapter 46 of the acts of 1997 is hereby repealed.

Section 2. Notwithstanding subsection (i) of section 89 of chapter 71 of the general laws or any other general or special law to the contrary, the commissioner of education may assess additional charter school tuition charges to the Hull, Nauset, and Up Island school districts’ net school spending not to exceed 13% of the Hull school district’s net school spending, 12% of the Up Island school district’s net school spending, and 11% of the Nauset regional school district’s net school spending in order to provide for the continuing education of students from said districts enrolled in charter schools as of October 1, 2004.”.

The amendment was *rejected*.

Messrs. Hart, Morrissey, Hedlund, Joyce, Ms. Wilkerson and Mr. Barrios moved that the bill be amended, in section 2, in item 1599-4121, in line 24, by inserting after the word “UAW” the following words:-
“and the Service Employees International Union, Local 888 (formerly Local 285), AFL-CIO, Classified Unit”.

The amendment was *rejected*.

Mr. Joyce moved that the bill be amended, in section 2, in item 7070-0065, in line 51, by inserting after “program” the following: “; and provided further, that University of Massachusetts of Boston shall waive the fees for not less than 50 students over the age of 60 in the Manning Certificate Program;”.

The amendment was *rejected*.

Messrs. Berry and Montigny moved that the bill be amended, in section 2, in item 7070-0065, in line 5, by inserting after the word “for” the following: “Foster Furcolo”; and inserting, after Section 362, the following new Section:-

“SECTION ____ . not withstanding any general or special law to the contrary, the community college access grant program funded in item 7070-0065 shall henceforth be known as the Foster Furcolo Community College Access Grants program.”

After remarks, the amendment was **adopted**.

Mr. Nuciforo moved that the bill be amended, in section 2, by inserting after item 7113-0100 the following item:-
“7113-0105

For capacity building at Massachusetts College of Liberal Arts in conjunction with a pilot wireless learning initiative in conjunction with the Massachusetts Technology Collaborative \$250,000”.

The amendment was *rejected*.

Mr. Hart moves to amend the bill, in Section 2, inserting after item 1599-4122, the following new item:-
“1599-4123

For a reserve for the payment of a portion of the salary adjustments and other economic items provided for in the collective bargaining agreement between the University of Massachusetts and the Service Employees’ International Union, Local 888, AFL-CIO, Classified Unit; provided, that said payment shall fund the fiscal year 2004 payments associated with salary adjustments and other economic benefits provided for in such collective bargaining agreements; provided that the salary of each employee covered by the terms of the collective bargaining agreement shall be increased by the amount of money which shall cause said employee to be paid, effective on January first, two thousand and four, the salary specified in this contract which would have been in effect as of January first, two thousand and four in accordance with the provisions of the agreement; provided further that the president of the University of Massachusetts is authorized and directed to expend these funds for such salary adjustments and other economic items in accordance with the provisions herein and the terms of the collective bargaining agreement; provided, further, that any requirement that the employer shall submit to the general court a request for an appropriation necessary to fund cost items in a collective bargaining agreement shall not apply to the funding for salary adjustments and other economic items set forth in this section, notwithstanding the provisions of chapter one hundred and fifty E of the General Laws or any other general or special law or collective bargaining agreement to the contrary 690,000”.

The amendment was *rejected*.

Ms. Chandler moved that the bill be amended in section 2, in item 7004-3036, by inserting after item 7116-0101 the following new item:-
"7116-0105.

For a matching grant for improvements to rockwood field located at Worcester State College; provided, that said match shall be one dollar of private funds for every dollar of state funds raised through alumni contributions; provided, that no funds shall be expended until an equal or greater amount has been raised through alumni contribution and committed by Worcester State College foundation for said project; and provided further, that said college shall work with the city of Worcester.....\$250,000”.

The amendment was *rejected*.

Mr. Panagiotakos moved that the bill be amended in Section 253 by inserting after the words “Lowell community.” the following words:-

“Suitable markers bearing such designation and a visual rendering of Edwin Poitras shall be erected by Middlesex Community College”.

The amendment was **adopted**.

Messrs. Hedlund and Lees moved that the bill be amended by striking out Section 33.

Pending the question on adoption of the amendment, Mr. Antonioni moved that the amendment be amended by striking Section 33 and insert in place thereof the following new Section language:-

“SECTION 33. Section 9 of said chapter 15A of the General Laws, as most recently amended by section 52 of said chapter 26, is hereby further amended by adding the following paragraph:-Notwithstanding any general or special law to the contrary, for the purpose of determining eligibility for in-state tuition rates and fees at public institutions of higher education, except the University of Massachusetts Medical School, an individual, other than a non-immigrant alien within the meaning of paragraph 15 of subsection (a) of Section 1101 of Title 8 of the United States Code, who has attended high school in the commonwealth for 3 or more years and has achieved graduation from a high school in the commonwealth or attained the equivalent thereof, shall be eligible for in-state tuition rates and fees at the University of Massachusetts, or any commonwealth state or community college upon determination by the board of higher education that no person qualified for instate tuition rates and fees under chapter 15A shall be denied such instate tuition and fees upon the granting of eligibility under this paragraph; but, in the case of an individual who is not a citizen or permanent resident of the United States, the individual shall provide the University of Massachusetts, or the state or community college with an affidavit stating that the individual has filed an application to become a citizen or permanent resident of the United States, or shall file an application at the earliest opportunity the individual is eligible to do so.”

After remarks, the further amendment was **adopted**.

After remarks, the question on adoption of the pending amendment was determined by a call of the yeas and nays, at seven minutes before ten o'clock P.M., on motion of Mr. Hedlund, as follows, to wit (yeas 39 – nays 0) [**Yeas and Nays No. 544**]:

YEAS.

Antonioni, Robert A.	Menard, Joan M.
Baddour, Steven A.	Montigny, Mark C.
Barrios, Jarrett T.	Moore, Richard T.
Berry, Frederick E.	Morrissey, Michael W.
Brewer, Stephen M.	Murray, Therese
Brown, Scott P.	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.	Sprague, Jo Ann
Hedlund, Robert L.	Tarr, Bruce 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 —

39.

Melconian, Linda J.

NAYS — 0.

The yeas and nays having been completed at two minutes before ten o'clock P.M., the pending amendment was **adopted**.

Mr. Moore moved that the bill be amended by adding at the end thereof the following new Section:-

SECTION __. Chapter 75 of the General Laws is hereby amended by inserting after section 34 the following section:--

Section 34A. If tuition for the medical school is set at a lower amount for residents of the commonwealth, a resident shall be deemed to be a person who has resided in the commonwealth for 7 consecutive years or more prior to enrollment or a person whose immediate family has resided in the commonwealth for 7 consecutive years or more prior to his enrollment."

The amendment was *rejected*.

Mr. Moore moves to amend the bill by adding at the end thereof the following new Section:-

“SECTION XXX. Section 616 of chapter 26 of the Acts of 2002 is hereby amended in subsection (k) by inserting at the end thereof the following:- For the purpose of this section in order to preserve the public’s health and safety any nursing faculty positions made vacant by the retirement of any employee receiving benefits in accordance with this act shall be deemed a position of critical and essential nature and shall be included on the schedule provided by the board of higher education to the house and senate committee on ways and means as set forth in this section.

Said Section 616 of Chapter 26 of the Acts of 2002 is hereby further amended in subsection (m) by inserting at the end thereof the following:- For the purpose of this section in order to preserve the public’s health and safety any nursing faculty positions made vacant by the retirement of any employee receiving benefits in accordance with this act shall be deemed a position of critical and essential nature and shall be included on the schedule provided by the board of higher education to the house and senate committee on ways and means as set forth in this section.”

The amendment was *rejected*.

Ms. Resor moves to amend the bill by inserting after Section __ the following new section:-

“SECTION _____. Notwithstanding any general or special law to the contrary, the University of Massachusetts may insure the Chandler Laboratory, located at 391 to 393 Sabin Street in Belchertown, MA (Hampshire Registry of Deeds Book No. 1284, page 51) and its contents in such amount as the University deems sufficient.”

After remarks, the question on adoption of the amendment was determined by a call of the yeas and nays, at six minutes past ten o’clock P.M., on motion of Mr. Lees, as follows, to wit (yeas 39 – nays 0) [**Yeas and Nays No. 545**]:

YEAS.

Antonioni, Robert A.	Menard, Joan M.
Baddour, Steven A.	Montigny, Mark C.
Barrios, Jarrett T.	Moore, Richard T.
Berry, Frederick E.	Morrissey, Michael W.
Brewer, Stephen M.	Murray, Therese
Brown, Scott P.	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.	Sprague, Jo Ann
Hedlund, Robert L.	Tarr, Bruce 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 —
	39.
Melconian, Linda J.	

NAYS — 0.

The yeas and nays having been completed at nine minutes past ten o’clock P.M., the amendment was **adopted**.

Mr. Magnani moved that the bill be amended by adding at the end thereof the following new Section:

SECTION . Section 6 of Chapter 29 of the general laws is hereby amended by adding at the end of the first sentence the following words:

“, provided that for fiscal years 2006 and thereafter, the recommendations for expenditures and appropriations for state and community colleges which are in excess of those appropriated in fiscal year 2005, shall be consistent with the funding formulas developed by the board of higher education pursuant to section 15B of chapter 15”.
After remarks, the amendment was *rejected*.

Mr. Pacheco moved that the bill be amended by inserting after Section ____, the following new Section: -
“SECTION ____. Section 15 of Chapter 138 of the General Laws is hereby amended by adding the following in line 15 after the word “commonwealth”:- “or participate in decisions regarding purchasing of alcoholic beverages, or purchasing of insurance, or accounting or bookkeeping services, or receive any percentage or fee derived from gross revenues in exchange for management assistance, and participate in any other action designed to effect common results of more than three licensees under this section,”.
The amendment was **adopted**.

Mr. Creedon and Mr. Magnani moved that the bill be amended by adding the following new line item:

0830-0010
For the commission on uniform state laws\$40,000
The amendment was *rejected*.

Messrs. Brown, Hedlund, Hart, Ms. Fargo, Ms. Chandler and Mr. O’Leary moved that the bill be amended by inserting, after Section ____, the following new Section:-
SECTION ____.

- A.) This act may be known and cited as the “Joanne and Alyssa Act.”
- B.) There is hereby established a special commission to consist of the following individuals and organizations: the secretary of health and human services or a designee, the commissioner of mental health or a designee, the attorney general or a designee, the commissioner of public safety or a designee, the commissioner of the department of correction or a designee, the commissioner of the department of social services or a designee, one member from the Sex Offender Registry Board, one member from the Massachusetts District Attorneys Association, one member from the Massachusetts Office of Victim Assistance, one member from the Massachusetts Parole Board, one member from Governor’s Commission on Sexual and Domestic Violence, one member from the Massachusetts Society for Prevention of Cruelty to Children, and two members of the public appointed by the Governor. The Commission shall be chaired by the Office of the Attorney General.

The Commission is established for the purpose of conducting a review of the existing sex offender registry and the current state of identification of sex offenders. The review shall include, but not be limited to, a financial review of the Sex Offender Registry Board, the ability and value of using technology to track sex offenders, including, but not limited to, global positioning systems, the resources available at the Board, the number of cases pending before the Board, the turnover of cases at the Board, the average time to classify sex offenders, the number of unclassified sex offenders, a review of the Board guidelines given to police departments and the communication system between the board and state and local police departments and current training of local and state police of current sex offender registry guidelines and policies.

Said commission shall convene on or before August 1, 2004 and shall file a report not later than November 1, 2004 with the governor, the offices of the clerk of the senate and House of Representatives, and the joint committee on criminal justice. Overall, the report shall include but not be limited to, recommendations for designing, implementing and improving programs, training and services and proposing appropriate statutory and regulatory changes to

reduce the number of crimes by initial and repeat sex offenders, including proposed language to implement lifetime parole for sex offenders.
The amendment was *rejected*.

Mr. Lees moved that the bill be amended, in section 2, by striking the line item 0900-0100 in its entirety and further amends the bill in line item 0920-0300 by inserting in place thereof the following line item:-
“0920-0300
For the operation of the combined office of state ethics and campaign and political finance to be known as the Office of Ethics and Campaign Finance; provided that the head of the agency formerly known as the Office of Campaign and Political Finance maintain the position as lead contact between the functions of the agency \$2,037,059”.
After remarks, the amendment was *rejected*.

Messrs. Glodis and Joyce moved that the bill be amended by inserting, after Section 362, the following new section:-
“Section 9A of Chapter 55 of the Massachusetts General Laws, as appearing in the 2000 Official Edition, is amended by adding in lines 6 and 15 after the word "contributor's" the word "employer.”.
The amendment was **adopted**.

Mr. Joyce moves to amend the bill by inserting, after Section ____, the following new Section:-

“SECTION _____. There shall be a special commission comprised of the governor or his designee, the president of the senate or his designee, the speaker of the house of representatives or his designee and the chairs of the boards of selectmen in the town of Canton and the town of Milton for the purpose of conducting a study of the feasibility and cost to the commonwealth in converting the state property known as Brookwood farm to a residence for the governor. The special commission shall report to the general court the results of its investigation and study, together with recommendations and drafts of legislation necessary to carry out any recommendations, by filing the report with the clerk of the senate and the clerk of the house of representatives on or before February 15, 2005.”

After remarks, the amendment was **adopted**.

Messrs. Lees, Tarr, Knapik and Brown moved that the bill be amended, in section 2, in item 0640-0000, by inserting after the words “General Fund” the words:- “and provided further that the Commission shall study the impact, cost of implementation, and the revenue effects of establishing online lottery games in the Commonwealth, and report to the House and Senate Ways and Means Committees their findings and recommendations no later than December 31, 2004;”.

The amendment was *rejected*.

Ms. Chandler moved that the bill be amended, in section 2, in item 0640-0000, by striking the figure “\$67,022,388” and inserting in place thereof the following figure:- “67,072,388”; and

In section 2, in item 1100-1100, by striking the figure “\$3,297,608” and inserting in place thereof the following figure:- “\$3,247,608”.

The amendment was *rejected*.

Messrs. Brewer, Havern, Ms. Resor, Ms. Tucker, Messrs. Lees, Hedlund, Brown, Tarr, Ms. Fargo, Messrs. Knapik, Moore and Tisei move to amend the bill by striking out Section 303 and inserting in place thereof the following:-

“SECTION 303. For fiscal year two thousand and six, the lottery distribution to cities and towns of the balance of the State Lottery Fund shall be the sum of six hundred sixty-one million, three hundred seventy-eight thousand and one hundred sixty-two dollars, any increase in proceeds for that fiscal year and one-fifth of the difference between the amount distributed to cities and towns in fiscal year two thousand and five and actual lottery proceeds that fiscal year; provided, that for the fiscal years between two thousand and six and two thousand and eleven, the lottery distribution to cities and towns of the balances of the State Lottery Fund shall be the sum of the amount distributed in the prior fiscal year, any increase in lottery proceeds for that year, and one-fifth of the difference between the amount distributed to cities and towns in fiscal year two thousand and five and actual lottery proceeds for that fiscal year; provided further that for fiscal years including and following fiscal year two thousand and eleven, the lottery distribution to cities and towns of the balance of the State Lottery Fund shall be the sum of the amount distributed in the prior fiscal year and any increase in the lottery proceeds for that year.”

After remarks, the question on adoption of the pending amendment was determined by a call of the yeas and nays, at nineteen minutes past ten o'clock P.M., on motion of Mr. Brewer, as follows, to wit (yeas 39 – nays 0) [**Yeas and Nays No. 546**]:

YEAS.

Antonioni, Robert A.	Menard, Joan M.
Baddour, Steven A.	Montigny, Mark C.
Barrios, Jarrett T.	Moore, Richard T.
Berry, Frederick E.	Morrissey, Michael W.
Brewer, Stephen M.	Murray, Therese
Brown, Scott P.	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.	Sprague, Jo Ann
Hedlund, Robert L.	Tarr, Bruce 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 —
39.
Melconian, Linda J.

NAYS — 0.

The yeas and nays having been completed at twenty-two minutes past ten o'clock P.M., the amendment was **adopted**.

Ms. Chandler, Messrs. Brewer and Moore moved that the bill be amended, in section 2, in item 0340-0400, by striking out the figure "\$6,877,075", and inserting in place thereof the following figure:- "\$7,129,961".
The amendment was *rejected*.

Mr. Berry moved that the bill be amended in Section 260 by adding the following words:-
" , provided further that notwithstanding any general or special law to the contrary, the Salem Retirement Board may, in accordance with guidelines established by the Public Employee Retirement Administration Commission, purchase the real property located at 20 Central Street, Suite 110, Salem, Massachusetts for the purpose of the use of the property for the administrative office of the Salem Retirement Board, and may purchase or lease equipment and employ any such personnel necessary for the proper administration and transaction of business of the retirement system."
After remarks, the amendment was **adopted**.

Mr. Tolman moved that the bill be amended in Section 309 by striking out "...The commission shall consist of 11 members" and inserting in place thereof the following new language "The Commission shall consist of 13 members" and adding after "...the chairman of public employee retirement association or his designee, " the following "the President of the Massachusetts AFL-CIO or his designee and the President of the Massachusetts Teachers Association or their designee."
After remarks, the amendment was **adopted**.

Messrs. Tolman, McGee, and O'Leary moved that the bill be amended by striking out Section 83.
The amendment was **adopted**.

Mr. Morrissey moved that the bill be amended in section 83 by inserting after the words "regular compensation for any member" the following words:- " ,except for unionized employees,".
The amendment was *rejected*.

Messrs. Morrissey and Havern moved that the bill be amended in Section 84 by inserting before the word "accumulated" in line 3 the following words: - "one half of the";

In Section 85 by inserting before the word "actuarial" in line 2 the following words:- "one half of the";

By striking out Section 360 and inserting in place thereof the following new section:-

Section 360. Sections 84 and 85 of this act shall apply to those who become members in service on or after July 1, 2005.
The amendment was **adopted**.

Messrs. Lees, Tisei, Tarr, Knapik, Hedlund and Brown moved that the bill by inserting, after Section _____, the following two Sections:-
"SECTION _____. Subsection (4A) of section 3 of chapter 32 of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by inserting after the word "service," in line 444, the following words:- member retired,; and by inserting after the word "before", in line 454, the following words:- "or after"

SECTION _____. Subsection (4) of section 3 of chapter 32 of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraph:-

For the purposes of this subdivision the words "service in any other state for any previous period as a teacher, principal, supervisor or superintendent in the public day schools or other day school under exclusive public control and supervision" shall be deemed to include service rendered in an overseas dependent school conducted under the supervision of the department of defense of the government of the United States, service rendered in the public schools of the Commonwealth of Puerto Rico, and service rendered in the public schools of the United States Territory of Guam; provided, that any credit to be allowed shall not exceed the maximum credit of 10 years allowable for service in other states as provided in this section."
The amendment was *rejected*.

Mr. Nuciforo moved that the bill be amended by inserting at the end thereof the following section:-
Section ----

Paragraph (g) of subdivision (2) of section 3 of Chapter 32 of the General Laws, as appearing in the 1998 Official Edition, is hereby amended by inserting after the word "more;"; in line 337, the words:— "investigators and attorneys of the Committee for Public Counsel Services who have been employed full-time in such capacity for ten or more years; assistant attorney general for criminal matters which shall include individuals whose primary responsibility is the prosecution of criminal matters on behalf of the attorney general, as so certified by the attorney general".

After remarks, the amendment was *rejected*.

Mr. Hart moved that the bill be amended by inserting, after Section ____, the following new Section: -
"SECTION _____. Section 3 of chapter 32 of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by inserting after the word "section", in line 307, the following words:- ; uniformed employees of a municipal or public emergency medical service who are certified at any level as emergency medical technicians by the department of public health, if they are members of the state retirement system, or, upon acceptance of this classification in the same manner as in subsection (a) of section 103, if they are members of any system other than the state employees' retirement system and the teacher's retirement system."

The amendment was *rejected*.

Communication.

COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS SENATE
STATE HOUSE, BOSTON 02133-1059

William Welch
Massachusetts Senate Clerk
State House, Room 335
Boston, MA 02133

Dear Mr. Clerk,

On Wednesday May 19, 2004, I was away from the State House and was therefore unable to be present for a roll call vote on Amendment #6 entitled "Department of Correction". Had I been present I would have been recorded in the negative.

I respectfully request that this letter be printed in the Senate Journal as part of the official record for May 19, 2004. Thank you for your assistance in this matter.

Sincerely,
Joan M. Menard
State Senator

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

At twenty minutes before eleven o'clock P.M., the President declared a recess until the following day at eleven o'clock P.M.; and, at seven minutes past eleven o'clock A.M. on Thursday, May 20, the Senate reassembled, the President in the Chair.

Thursday, May 20, 2004.

[being the legislative session of Wednesday, May 19, 2004]

At seven minutes past eleven o'clock A.M., the Senate reassembled, the President in the Chair.

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

Resolutions.

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

Resolutions (filed by Mr. Glodis) "urging His Excellency Mitt Romney, Governor of the Commonwealth, to declare June 6, 2004 as "Lewis & Clark Day" in the Commonwealth;
Resolutions (filed by Ms. Murray and Mr. O'Leary) "congratulating the Cape and Islands Emergency Medical Services System, Inc."; and
Resolutions (filed by Mr. Tisei) "commending International Training In Communication."

Distinguished Guests.

The President handed the gavel to Senator Morrissey who introduced Rockland High School Division III Basketball Champions. The team was accompanied by Representative Nyman of Hanover and their coach Bob Fisher. Coach Fisher has won the Patriot League coach of the year numerous times and owns an impressive 422-105-career record. Coach Fisher briefly addressed the Chamber and along with the team withdrew from the Chamber,

Bill Previously Recalled from the Governor Laid before the Senate.

The President in the Chair, the engrossed Bill relative to the Jacob Sears Memorial Library (see House, No. 3746, amended) which, at a previous session, had been returned by His Excellency the Governor, at the request of the Senate,-- was laid before the Senate.

There being no objection, on motion of Mr. Shannon, the Senate reconsidered the vote by which, at a previous session, it had passed the bill to be enacted.

On motion of the Ms. Wilkerson, Senate Rule 49 was suspended.

Mr. O'Leary moved that the bill be amended by adding the following section:-

"SECTION 2. This act shall take effect upon its passage."

The amendment was **adopted**.

Sent to the House for concurrence in the amendment.

Orders of the Day

The Orders of the Day were considered as follows:

The House Bill making appropriations for the fiscal year 2005 for the maintenance of the departments, boards, commissions, institutions and certain activities of the Commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements (House, No. 4601),- was further considered, the main question being on ordering it to a third reading, with the Ways and Means amendment pending.

Mr. Hart moved that the bill be amended by inserting, after Section ____, the following new Section: -

"SECTION __. Section 3 of Chapter 32 is hereby amended by adding the words "members of the fire alarm division" after the words assistant fire control men as appearing in line 267 of the 2002 Official Edition."

The amendment was *rejected*.

Mr. Hart moved that the bill be amended by inserting, after Section _____, the following new Section:-

"SECTION _____. Chapter 32 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting in section 3 (g) in line 293 after the word "supervisor" the following new words:- "associate probation officers, probation officer, assistant chief probation officer, probation officer-in-charge and day reporting center probation officer, first assistant chief probation officer, chief probation officer, court officer I, court officer II, assistant and chief court officer and court officer-in-charge."

The amendment was *rejected*.

Mr. Tolman moved that the bill be amended by inserting, after Section 362, the following new Section:-

"SECTION 363. The Public Employee Retirement Administration Commission in consultation with the state and state teacher's retirement boards, is hereby authorized and directed to analyze, study, and evaluate the costs and actuarial liabilities attributable to increasing the base to which cost of living adjustments are applied under Section 102 of Chapter 32 of the General Laws. The study shall include the cost and actuarial liability associated in increasing the base from 12,000 to 22,000 incrementally by the thousand. In order to effectuate the funding for the change in the base, the commission shall prepare supplemental pension funding schedules which shall be designed to reduce the actuarial unfunded liability, attributable to the increased COLA base, to zero on or before June 30, two thousand and twenty-eight and shall provide two alternative schedules providing the option of reducing said unfunded liabilities to zero by June 30, two thousand and thirty-four and June 30, two-thousand thirty-eight, respectively; provided that in preparing such schedules, the commission shall consider the actuarial value and the market value of the system's assets and liabilities, the long term investment rate of return on the systems assets and the system's unfunded actuarial liability. The commission shall file said study together with its recommendations and proposed funding schedule to the House and Senate Committees on Ways and Means, along with the Joint Committee on Public Service on or before December 31, 2005. In addition, the commission shall provide assistance in developing funding schedules for the purpose of increasing the COLA base to city, town, county, regional, district and authority retirement systems at the request of the appropriate retirement board."

After remarks the amendment was **adopted**.

Messrs. Joyce and Rosenberg moved that the bill be amended by inserting, after Section ____, the following new Section:-

"SECTION __. Section 1 of Chapter 32 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by adding after line 470 the following definition: --

“Sabbatical Leave”, leave which the applicable public college or university has determined will contribute to the development of the faculty member or professional employee in the areas of teaching, research, creative or scholarly activity, or professional service capability, and hence will contribute to the institution as a whole upon the return to the institution for at least one year following the academic year in which said leave takes place.

SECTION 2. Subdivision (1) of section 4 of Chapter 32, as so appearing, is hereby amended by adding after line 355 the following: -

(s) Credible service in the case of any member who retires on or after the effective date of this act shall include the period of any sabbatical leave awarded at a public institution of higher education to a faculty member or professional employee regardless of whether the sabbatical leave is granted with full or partial compensation, provided, however, that such credible service shall be granted at a rate of one half for sabbatical leave where the member has contributed at half the rate of his or her regular rate and full credible service where the member has contributed at the full rate and provided, further, that a faculty member or professional employee who had such full-year sabbatical leave or leaves approved prior to July 29, 1991, shall, for the first of such leaves, contribute the regular deductions which would ordinarily be assessed based upon the date of such persons entry into the retirement system.”

The amendment was *rejected*.

Mr. Joyce moved that the bill be amended by inserting, after Section ___, the following new Section:-

“SECTION ___. Section 3(g) of Chapter 32 of the Massachusetts General Laws is hereby amended by inserting the titles “operation and maintenance employees of water departments, water districts, sewer departments, sewer districts, water and sewer departments, water and sewer districts, and wastewater facilities” in Group 2 of the retirement system.”

The amendment was *rejected*.

Mr. Morrissey moved that the bill be amended after section 353 by inserting the following new section:-

SECTION ___. Section 90C $\frac{3}{4}$ of Chapter 32 of the General Laws, as appearing in the 1998 Official Edition, is hereby amended by striking the title and inserting in place thereof the following:- “Increasing allowance of former state and metropolitan district police officers retired after at least twenty years of service.”

SECTION ___. Section 90C $\frac{3}{4}$ of Chapter 32 of the General Laws, as appearing in the 1998 Official Edition, is hereby amended by striking the text contained therein and inserting in place thereof the following:-

Section 90C $\frac{3}{4}$. A former state or metropolitan district police officer, retired prior to July 1, 1993, who has been retired under any provision of this chapter or similar provision or earlier law on account of superannuation after having served in the state or metropolitan district police force for a period of not less than 20 years shall have his retirement allowance increased to an amount not exceeding one-half the rate of regular compensation payable to state police officers holding similar positions, at the time of increasing such allowance, in the comparable grade or classification occupied by such former officer at the time of his retirement. The amendment was *rejected*.

Mr. Hedlund moved that the bill be amended by inserting at the end of thereof the following new Section:-

“SECTION ___. Notwithstanding any provisions of chapter 32 or any other general or special law or rule or regulation to the contrary, the state board of retirement is hereby authorized and directed to credit Michael P. Boyle and James P. Costello with service they rendered as members of the staff of the joint labor management committee from January, 1980 to August, 1987 inclusive, for the purpose of determining their superannuation retirement allowance pursuant to the provisions of paragraph (a) of subdivision (2) of section 5 of said chapter 32. Eligibility for said creditable service shall be conditioned upon payment into the Annuity Savings Fund of the state employees retirement system of an amount equal to the contributions they would have otherwise paid into the retirement system for said period of service based upon the salary each received for said period together with regular interest thereon. Such payments shall be made in one sum or installments as the state board of retirement shall prescribe.”

The amendment was *rejected*.

Mr. Hart moved that the bill be amended in section 2, in item 0521-0000, in line 4 by inserting after the word "Worcester" the following: "provided further, that not more than \$15,000 shall be expended for a voter registration and education program operated by the Ella J. Baker House;"

The amendment was *rejected*.

Mr. Joyce moved that the bill be amended in section 2, in item 0526-0100, in line 2, by inserting after “Heritage Commission archives” the following:

“; and provided further, that not less than \$100,000 shall be expended for renovations and repairs to the historic Corkin Building, so-called, in the town of Randolph.”

The amendment was *rejected*.

Messrs. Lees, Tarr, Knapik and Brown and Mrs. Sprague moved that the bill be amended by inserting, after Section _____, the following new Sections:-

“SECTION _____. Section 14 of chapter 36 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after the word “book”, in line 1, the following words:- , which may be in electronic form, .

SECTION _____. Section 15 of said chapter 36, as so appearing, is hereby amended by striking out, in line 1, the word “He” and inserting in place thereof the following words:- Each register of deeds using non-electronic record books.

SECTION _____. Said section 15 of said chapter 36, as so appearing, is hereby further amended by inserting after the first paragraph the following paragraph:-

Each register of deeds using electronic record books shall record all instruments electronically. Each register shall note any changes or amendments made to the recorded instrument after the initial entry of the instrument in the electronic record book and shall ensure that all methods of electronically recording instruments conform to any federal law requirement. Each register shall make duplicate copies, which may be in electronic format, of all books in his registry in which deeds, certificates and other instruments have been electronically recorded or entered.

SECTION _____. Section 17 of said chapter 36, as so appearing, is hereby amended by inserting after the word “books”, in line 2, the following words:- , which may be in electronic form.”
The amendment was *rejected*.

Mr. Hart moved that the bill be amended by inserting, after Section _____, the following new section:

“SECTION _____. Notwithstanding the provisions of any general or special law to the contrary any funds remaining with the City of Boston in account #201-13196N-1997 of deeds excise tax revenue, under Chapter 64D-12 of the General Laws (deeds excise monies) shall immediately be transferred to line item 0540-2001 (Suffolk County – deeds excise fund) and provided further that said funds shall be expended no later than June 30, 2005.”

After remarks, the amendment was **adopted**.

Mr. Nuciforo moved that the bill be amended by inserting at the end thereof the following section:-

SECTION --- Notwithstanding any general or special law or regulation to the contrary, there shall be a special commission to study and report on the distribution of additional assistance. The commission shall consist of three representatives of the Senate Committee on Ways and Means, appointed by the President, and three representatives of the House Committee on Ways and Means, appointed by the Speaker. The scope of the commission's inquiry shall include, but shall not be limited to: the formula used to distribute additional assistance, an evaluation of the equity of the distribution of additional assistance and recommendations on modifications to the formula. This inquiry shall include at least 3 public hearings, which shall be held in at least 3 different counties of the commonwealth. The commission shall submit its report to the house and senate committees on ways not later than December 1, 2004, along with drafts of any legislation.

The amendment was **adopted**.

Ms. Chandler moved that the bill be amended, in section 2, in item 0611-5510, by inserting at the end the following wording:-
“; provided further, that not less than \$100,000 shall be reimbursed to the Town of West Boylston”;l

In section 2, in item 0611-5510, by inserting at the end the following wording:-
“; provided further, that not less than \$100,000 shall be reimbursed to the Town of Princeton”; and

In section 2, in item 0611-5510, by inserting at the end the following wording:- “; provided further, that not less than \$85,000 shall be reimbursed to the town of Boylston”.

The amendment was *rejected*.

Messrs. Tisei, Morrissey, and Hedlund moved that the bill be amended by inserting, after Section 362, the following new section:-
“SECTION _____. Chapter 58, section 13 of the Massachusetts General Laws, is hereby amended by inserting after the word "purpose" in line sixteen, the following:- "; and all land formerly owned or under the control of the former metropolitan district commission, which is now under the control of the department of conservation and recreation.”

The amendment was *rejected*.

Mr. Havern moved that the bill be amended by inserting the following section at the end thereof:-

“Section _____. There shall be established and set up on the books of the commonwealth a separate fund to be known as the Underground Storage Tank Petroleum Cleanup Fund. There shall be credited to such fund: any fees, penalties, and other amounts collected pursuant to chapter twenty-one J; and appropriation, grant, gift, or other contribution explicitly made to such fund; and any interest earned on monies within the fund. Amounts credited to said fund shall be used, subject to appropriation, for the purposes set forth in chapter twenty-one J.”

The amendment was *rejected*.

Ms. Melconian moved that the bill be amended by inserting, after Section _____, the following new Section:-
“SECTION _____. Chapter 64C, Section 14(a) of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out the last sentence, and replacing it with the following:-

Any such retailer or wholesaler violating this subsection shall be punished by--

- (1) a fine of not more than ten thousand dollars for a first offense.
- (2) a fine of not more than twenty-five thousand dollars and a fourteen-day suspension of their license to distribute for a second offense.
- (3) a fine of not more than fifty thousand dollars and revocation of their license to distribute for a third offense.”

After remarks, the amendment was **adopted**.

Messrs. Lees, Tisei, Tarr, Knapik and Brewer and Mrs. Sprague moved that the bill be amended by inserting, after Section ____, the following new Section:-

“SECTION _____. Chapter 64C of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by inserting after section 10 the following new section:-

Section 10A.

Online Cigarette Sales.

It is unlawful for any public or private postal or package delivery service to knowingly deliver a tobacco product to a person under the age of 18 years. A tobacco product shall not be accepted for delivery by such a package delivery service if the package does not have affixed thereto a label which plainly and visibly states that the package contains tobacco and that it is not for delivery to any person under age 18. Any public or private postal or package delivery service that knowingly delivers a tobacco product directly to a purchaser shall:

- (a). Deliver solely to the purchaser at the address given by the purchaser as specified on a valid Massachusetts driver's license, passport, state issued identification, United States military identification, or immigration card.
- (b). Require the signature of the purchaser.
- (c). Receive and inspect the identification of the purchaser showing the purchaser's date of birth to verify that he is 18 years of age or older.
- (d). Receive an attestation from the purchaser, on a form prepared by the delivery service, certifying that the information on the identification required under subsection (a) of this section truly and correctly identifies the purchaser, his current address and age. The certification shall be retained on file by the distributor for no less than one year.
- (e). Submit a copy of the invoice for each delivered package to the Department of Revenue which shall ensure that the appropriate excise taxes are paid thereon. To be accepted by the delivery service, each invoice shall include the name and address of the purchaser, the brand, and the type and quantity of tobacco.

Any person who delivers a tobacco product in violation of this act shall be fined no less than \$250 or more than \$1,000 for each offense. A person who falsely certifies information required by this act shall be fined no less than \$100 or more than \$500 for each offense.”

The amendment was **adopted**.

Ms. Walsh in the Chair, Mr. Lees moved that the bill be amended by inserting at the end thereof the following new Section:-
“SECTION _____. Chapter 34B of the General Laws, as so appearing, is hereby amended by deleting sections 1 and 2 and inserting in place thereof the following sections: -

Section 1. The government of each of the following counties, in this chapter called an "abolished county" is hereby abolished as of the following date, in this chapter called the "transfer date", or on such earlier date 30 days after the commissioner of revenue certifies in writing that the county has failed to make a required payment on an outstanding bond or note:

- (a) Middlesex county, as of July 11, 1997;
- (b) Hampden and Worcester counties, as of July 1, 1998;
- (c) Hampshire county, as of January 1, 1999; provided, however, that all functions, duties and responsibilities for the operation and management of the jail, house of correction and registry of deeds of Hampshire county and all duties and responsibilities for operation and management of property occupied primarily by the sheriff, registry of deeds and the trial courts in Hampshire county are hereby transferred to the commonwealth, effective September 1, 1998, subject to the provisions of this chapter;
- (d) Essex county as of July 1, 1999;

(e) Berkshire county on July 1, 2000, but all functions, duties and responsibilities for the operation and management of the registries of deeds of Suffolk and Berkshire counties and all duties and responsibilities for the operation and management of property occupied primarily by the registries of deeds in Berkshire and Suffolk counties are hereby transferred to the commonwealth, effective on July 1, 1999, subject to the provisions of this chapter; and

(f) Suffolk county as of July 1, 2004.

Section 2. Notwithstanding the provisions of any general or special law to the contrary, the government of each abolished county, except the office of county treasurer, is hereby abolished as of the transfer date for all purposes, including, but not limited to, the purposes established pursuant to chapters 34, 34A, 35 and 36 or as otherwise authorized by this chapter. The office of an abolished county's treasurer shall expire on December 31, 2004. Nothing in this chapter shall affect the existing county boundaries."

After debate, the question on adoption of the amendment was determined by a call of the yeas and nays, at twenty-nine minutes before twelve o'clock noon, on motion of Mr. Lees, as follows, to wit (yeas 8 – nays 29) [**Yeas and Nays No. 547**]:

YEAS.

Brown, Scott P.	Rosenberg, Stanley C.
Hedlund, Robert L.	Sprague, Jo Ann
Knapik, Michael R.	Tarr, Bruce E.
Lees, Brian P.	Tisei, Richard R. — 8.

NAYS.

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.
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.	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 — 29.
Menard, Joan M.	

ABSENT OR NOT VOTING.

Berry, Frederick E.	Creedon, Robert S., Jr. — 2.
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The yeas and nays having been completed at twenty-four minutes before twelve o'clock noon noon, the amendment was *rejected*.

Mr. Morrissey moved that the bill be amended by inserting, after Section 362, the following new Section:-
Section _____. Section 18 of chapter 138 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting at the end of Section 18 the following new paragraph:-

It shall be unlawful for any licensee under this section to purchase alcoholic beverages from any source other than the primary American source of supply unless authorized by the primary American source of supply. "Primary American source of supply" shall mean the distiller, bottler, brewer, vintner, brand owner, or designated agent of any such distiller, bottler, brewer, vintner, or brand owner.

The amendment was **adopted**.

Mr. Tarr moved that the bill be amended by adding the following new section at the end thereof:-
Section ___. There is hereby established a commission to study revenue sharing by the Commonwealth to assist municipalities in

the financing of services including but not limited to police and fire protection, education, the construction, repair and maintenance of non-school municipal buildings and the construction, repair and maintenance of municipal roads and bridges. Said commission shall identify the current mechanisms used to facilitate revenue sharing and their efficiency, effectiveness and sustainability. In addition, the commission shall investigate alternative mechanisms to provide cities and towns with adequate resources to provide municipal services.

Said commission shall consist of the Secretary of Administration and Finance or his designee, the Commissioner of the Department Revenue or his designee, three members of the Senate, one of which shall be a member of the minority party, three members of the House of Representatives, one of which shall be a member of the minority party, a representative of the Massachusetts Taxpayer's Foundation, a representative of the Massachusetts Municipal Association, three members appointed by the Governor whom shall represent citizens of the Commonwealth, and three members appointed by the Governor whom shall be elected municipal officials representing geographically and demographically diverse areas of the state.

Said commission shall report its findings, together with any legislative recommendations, to the Ways and Means Committees of the House and Senate no later than October 31, 2005.

The amendment was *rejected*.

Messrs. Moore and Baddour moved that the bill be amended by adding at the end thereof the following new Section:-
SECTION ___:

SECTION 1. Section 18 of Chapter 59 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after line 92, the following clauses:

Eighth, Motor vehicles or trailers, used in the conduct of a business and owned by a business entity, shall be assessed in the city or town in which the principal place of business in the commonwealth of the business entity is located unless: (i) the registrar has provided the assessor pursuant to the provisions of chapter 60A with calendar year information about the motor vehicles or trailers, including the make, model, year, vehicle identification number, weight, valuation, and the name and address of the person or business entity that owns or leases said motor vehicles or trailers and the owner has shown proof of payment of the automobile excise tax or (ii) said motor vehicles or trailers are exempt from the excise imposed by chapter 60A.

Eighth A, For purposes of this clause the following words shall have the following meanings: -

“Business entity”, used in this clause shall include a business corporation as defined in chapter 156, a professional corporation organized under chapter 156A, a subchapter S corporation as defined in section thirteen hundred sixty-one of the Internal Revenue Code, a limited liability corporation, a limited liability partnership, a partnership, voluntary association or sole proprietorship conducting business in the commonwealth.

“Motor vehicles or trailers”, used in the clause shall be applicable to motor vehicles or trailers which have not been assessed and taxed subject to the provisions of Chapter 60A and Chapter 63.

“Fair cash value”, the motor vehicle or trailer's list price for motor vehicles or trailers of the same make, type, model, and year of manufacture, or in the case of motor vehicles or trailers which are part of a larger fleet of substantially similar motor vehicles or trailers, the average fair cash value of the motor vehicles or trailers in the fleet.

“Fairly apportioned”, allocated so as to reflect only the amount of time during which the motor vehicle or trailer was physically located in a city or town, according to records kept by the business entity in the regular course of its business.

The assessed value of such motor vehicles and trailers shall be their fair cash value fairly apportioned.

SECTION 2. Section 6 of said chapter 60A is hereby amended by inserting after section 6, the following section: -

Section 6½A. In any instance where a motor vehicle or trailer is the subject of a lease agreement for a period of 30 days or more, the excise locally assessable under this chapter, shall be laid and collected at the address of the lessee of the motor vehicle or trailer. If the lessee is an individual, the address will be the domicile of said individual. If the lessee is a business entity, as defined in clause eighth A of section 18 of chapter 59, the address will be its principal place of business in the commonwealth.

SECTION 3. Section 49A of chapter 62C of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after line 41, the following subsection:-

(d) Any person who owns or leases a motor vehicle or trailer that is required to be registered in the commonwealth under the provisions of chapter 90, and improperly registers said motor vehicle or trailer in another state or misrepresents the place of garaging of the motor vehicle or trailer in another city or town, shall be considered in violation of laws of the commonwealth relating to taxes provided for in chapter 60A, chapter 64H or chapter 64I; provided, that such right, license, or contract provided for in paragraphs (a) and (b) shall not be issued or renewed, unless and until the person or business entity has paid all taxes due at the time of application for said right, license, or contract.

(e) Any person who, for the purpose of evading payment of a tax pursuant to chapters 59, through 64J inclusive, willfully makes and subscribes any return, form, statement or other document pursuant to the provisions of paragraphs (a), (b) or (d) above that contains or is verified by a written declaration that is made under penalties of perjury which information he does not believe to be true and correct as to every material matter that he has complied with all laws of the commonwealth relating to taxes, shall be subject to the provisions, and punishable by the appropriate fines, as outlined in section 73 of this chapter.

SECTION 4. Section 25B of chapter 64H, as so appearing, is hereby amended by inserting the following sections: -

25C. The owner of any motor vehicle or trailer that is sold through a private sale shall notify the registrar of motor vehicles on any form prescribed by the registrar under this section of the private sale of the motor vehicle or trailer within three days of the transfer. The original owner shall provide the name and address of the buyer, a description of the make, model and vehicle identification number of said motor vehicle or trailer.

25D. The owner of any motorboat that is sold through a private sale shall notify the director of the division of motorboats on any form prescribed by the director under this section of the private sale of the motorboat within three days of the transfer. The original owner shall provide the name and address of the buyer, a description of the make, model and any state or federal identification number of said motorboat.

SECTION 5. Section 3 of said chapter 90, as so appearing, is hereby amended in lines 11-15, by striking out the words: - "on more than thirty days in the aggregate in any one year or, in any case where the owner thereof acquires a regular place of abode or business or employment within the commonwealth, beyond a period of thirty days after acquisition thereof,".

SECTION 6. Said section 3 of said chapter 90, as so appearing, is hereby further amended by adding at the end of the first paragraph the following sentence: - The owner or operator of such a motor vehicle or trailer must, while operating such a motor vehicle or trailer, have on his person in an easily accessible place, proof of a policy providing such insurance or a certificate of an insurance company stating that such a policy has been issued and is currently in effect.

SECTION 7. Said section 3 of said chapter 90, as so appearing, is hereby amended in line 120 by striking out the word "three", and inserting in place thereof the word: - "two".

SECTION 8. Section 34H of said chapter 90 is hereby amended after line 51, by inserting the following new paragraph: -

The registrar, upon receipt of evidence in a form satisfactory to the registrar, that a non-resident has operated a motor vehicle or trailer upon the roads of the commonwealth without the compulsory motor vehicle liability insurance required by section 3 of chapter 90 with respect to such motor vehicle or trailer, shall revoke the non-resident driving privileges of such person. Said uninsured motor vehicle or trailer may be impounded and stored by a duly authorized police officer, who shall take possession of the registration plates. The owner or non-resident driver must submit evidence satisfactory to the registrar that said motor vehicle or trailer is registered and insured pursuant to said section 3 before the registration plates are returned and the motor vehicle or trailer may be lawfully propelled upon the roads of the commonwealth, and the non-resident driving privileges reinstated.

SECTION 9. Section 2 of chapter 90C of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after the word "ninety," in line 22 the following sentence: — In any case where a question is raised whether the motor vehicle or trailer is properly insured under section 34 of chapter 90, the time for the issuance of a citation shall remain open until such time as the validity of any certificate of insurance is verified.

SECTION 10. Section 49 of chapter 90C of the General Laws, as appearing in the 2002 Official Edition, is amended at the end of line four by inserting the following: -

The owner of any aircraft that is sold through a private sale shall notify the aeronautics commission on any form prescribed by the commission under this section of the private sale of the aircraft within three days of the transfer. The original owner shall provide the name and address of the buyer, a description of the make, model and any state or federal identification number or federal certificate of said aircraft.

SECTION 11. In order to encourage the proper registration of motor vehicles and trailers in the commonwealth and the payment of taxes and fees owed under the provisions of chapter 60A, chapter 64H, chapter 64I, and chapter 90 to the commonwealth and its municipalities on a voluntary basis, the registrar of motor vehicles and the commissioner of revenue are hereby authorized and directed to establish a three month period during which all penalties for the non-payment of the taxes and fees imposed by chapter 60A, chapter 64H, chapter 64I and chapter 90 shall be waived if any owner voluntarily registers a motor vehicle or trailer that was unregistered, uninsured, or improperly registered in another state or another city or town. Said three month period shall commence on or before January 1, 2002. Such waiver shall also apply to unpaid taxes, interest and/or fees that would have been assessed on a properly registered motor vehicle or trailer. The registrar and the commissioner of revenue may determine other terms and conditions.

SECTION 12. The registrar of the registry of motor vehicles is hereby authorized and directed to study the costs and benefits of periodic replacement of motor vehicle license plates issued by said registry. Said study shall include, but not be limited to, three, five and seven year replacement schedules, the costs related to mandating two plates per vehicle, the time period required to implement the above stated changes, and any recommendations, including legislation necessary to effectuate the orderly and cost effective implementation of these proposed changes. Said study shall be filed with the joint committee on taxation and house and senate committees on ways and means on or before December 1, 2004.

The amendment was *rejected*.

Mr. Rosenberg moved that the bill be amended by inserting, after Section ____, the following new Section:-

"SECTION ____. There is hereby established a special commission to examine the effectiveness of requiring combined reporting for all corporate excise tax filers in the Commonwealth. Combined reporting would require corporations, when filing their tax returns, to list all of the profits they have earned – including the profits earned by any subsidiary with which they are engaged in a unitary business – and to calculate their profits subject to apportionment based on that total. Said commission shall include the following members: the House and Senate chairs of the Joint Committee on Taxation, one of whom shall serve as the non-voting chair of said commission, the House and Senate chairs of the Joint Committee on Commerce and Labor, the House and Senate vice-chairs of the Joint Committee on Taxation, the ranking minority House and Senate members of the Joint Committee on Taxation, the Commissioner of Revenue, and one member appointed by each of the following organizations: the Federal Reserve Bank of Boston, the Multistate Tax Commission, the Massachusetts Taxpayers' Foundation, the Massachusetts Budget and Policy Center, the Associated Industries of Massachusetts, the Massachusetts AFL-CIO, and the Massachusetts Municipal Association. The scope of the commission's inquiry shall include, but shall not be limited to an examination of the following: the decline in corporate excise tax revenue relative to personal income in Massachusetts, whether corporate excise tax revenue is lost due to tax avoidance strategies, whether combined reporting would be effective in combating and minimizing such strategies, the long-term revenue implications for the Commonwealth of adopting combined reporting, the contribution that combined reporting would make in improving the Commonwealth's ability to enforce the corporate excise tax, the economic impact of adopting combined reporting, and the experiences of other states that currently use combined reporting. The Commission shall submit its report to the House and Senate Committees on Ways and Means and the Joint Committee on Taxation not later than December 15, 2004. Said report may include any legislation necessary to implement its recommendations."

The amendment was **adopted**.

Mr Rosenberg and Ms. Creem moved that the bill be amended by inserting, after Section ____, the following new Section:-

"SECTION ____. Notwithstanding any special or general law to the contrary the department of revenue is hereby authorized and directed to revise current policy and practice with regard to estate tax filings by minimizing paperwork and filing duplicative forms."

The amendment was *rejected*.

Mr. Nuciforo moved that the bill be amended by inserting at the end thereof the following section:-

SECTION __. Notwithstanding chapter 64G of the General Laws or any general or special law or to the contrary, the Department of Revenue shall deduct from the rooms tax receipts of the town of Lenox no more than the sum of \$221,000 in connection with the settlement in the matter of Canyon Ranch Bellefontaine Associations, L.P. v. Commissioner of Revenue, ATB Docket Nos. F252702 & 260821 Canyon Ranch Management LLC as Agent for Vintage Resorts, LLC – Abatement Claims. No more payments by said town, nor any more deductions from the Department, other than the amount above, shall be required in connection with the settlement.

The amendment was *rejected*.

Mr. Rosenberg moved that the bill be amended by inserting, after Section ____, the following new Section:-

"SECTION ____. Chapter 64H of the General Laws is hereby amended by inserting after section 2 the following section:-

Section 2B. A city or town that accepts this section in the manner provided in section 4 of chapter 4 may impose an excise on the sale of meals at the rate of not more than 3 per cent of the total price of the meal. The vendor shall pay the excise to the commissioner at the same time and in the same manner as he pays the excise due to the commonwealth. All sums received by the commissioner under this section as excise, penalties or forfeitures, interest, costs of suit and fines shall, at least quarterly, be distributed, credited and paid by the state treasurer upon certification of the commissioner to each city or town that has accepted this section in proportion to the amount of the sums received from the sale of meals in each such city or town. This section shall take effect in a city or town on the first day of the calendar quarter following 30 days after its acceptance or on the first day of the later calendar quarter as the city or town may designate; but if the day so designated is less than 15 days after acceptance, it shall take effect on the first day of the second calendar month following acceptance. The city or town, in accepting this section, shall establish the rate of the excise, and shall not revoke, reimpose or change the rate of the excise provided for in this section more often than once in a 12-month period."

The amendment was *rejected*.

Mr. Brewer moved that the bill be amended by adding the following new Section:-

SECTION ____. Section 33 of Chapter 46 of the Acts of 2003 is hereby amended by inserting after the words "computing the debt exclusion" the following:-

“, with the exception of premiums in excess of \$500,000 received prior to January 1, 2003 by communities with a population not greater than ten thousand.”

The amendment was *rejected*.

Ms. Fargo moved that the bill be amended by inserting, after Section __, the following new Section: -

“SECTION __. Section 57 of Chapter 59 of the General Laws, as most recently amended by Section 52 of the Acts of 2003, is hereby amended by striking out the last sentence of the first paragraph and inserting in place thereof the following new sentence: A real estate tax bill sent out for fiscal year 2006 or any subsequent period pursuant to this section shall contain a statement that there exists a delinquency if any tax, betterment assessment or apportionment thereof, water rate, annual sewer use, or other charge which may constitute a lien is overdue more than 90 days.

After remarks, the amendment was adopted.

Mr. Moore moved that the bill be amended by adding at the end thereof the following new Section:-

SECTION __. There is hereby established a commission consisting of the house and senate chairs of the committees on housing and urban development, public safety, one member of the minority from the house appointed by the minority leader of the house of representatives and one member of the minority party in the senate appointed by the minority leader of the senate, the commissioners of the departments of housing and urban development, and public safety, the administrator of the school building assistance bureau, the chairman of the state board of buildings regulations and standards, and the following persons, appointed by the governor, a representative of the building trades, a representative from the Boston society of architects, an individual representing licensed building inspectors and an individual representing general contractors.

Said commission shall make an investigation and study of the enforcement and application of the state building code where any state funds, grants, bonds or other sources of finance are involved in the construction, planning or design of a building which will have a municipal function or purpose. The commission shall focus its investigation on determining whether the state building code is being properly adhered to in such construction and design and whether any buildings are currently occupied in violation of the state building code and whether licensed building inspectors are properly certified in accordance with state law. Said commission shall report its findings, together with drafts of legislation, if any, necessary to implement such recommendations, by filing the same with the Clerks of the House of Representatives and the Senate. The committee shall file its final report on or before the last Wednesday in December 2004.

The amendment was *rejected*.

Mr. Brown, Mrs. Sprague and Ms. Fargo moved that the bill be amended by inserting, after Section __, the following new Section:-
“SECTION __. Notwithstanding the provisions of any special or General Laws to the contrary, contingent on local approval, no state agency of the commonwealth or other subdivision thereof, or any private company under agreement with any state agency of the Commonwealth or a subdivision thereof, shall house or provide funding for the housing of level two and three sex offenders, in a town with residency of 40,000 or less, or within 3 miles of said town, that has within its confines one or more houses of correction of any kind.

The amendment was *rejected*.

Messrs. Lees, Tisei and Knapik moved that the bill be amended by inserting at the end thereof the following new section:-

“SECTION __. Chapter 58A of the General Laws, as appearing in the 2000 official edition, is hereby amended by striking out section 5 in its entirety.”

The amendment was *rejected*.

Messrs. Lees and Knapik moved that the bill be amended by inserting at the end thereof the following new section:-

“SECTION __. Section 19C of chapter 78 of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by inserting after clause (4) the following clause:-

(4A) In addition to the sums provided in clause (3) the Springfield Public Library, as the library of last recourse for reference and research services for the western regions of the Commonwealth, shall be entitled to receive in state aide the sum of \$1.06 for each resident of western Massachusetts; consisting of the counties of Hampden, Hampshire, Berkshire and Franklin.”

The amendment was *rejected*.

Mr. Shannon moved that the bill be amended, in section 2, in item 1150-5100, by striking out the wording and inserting in place thereof the following wording:-

“For the office of the commission, including the processing and resolution of cases pending before the commission that were filed on or before July 1, 2001; provided, that on or before November 1, 2004 the commission shall submit to the house and senate committees on ways and means a report on the total number of all currently pending cases and the total number of such cases in the investigation, conciliation, post-probable cause and pre-public hearing and post-hearing stages; provided further, that the commission shall file an update of the report with such committees on or before March 1, 2005; provided further, that the commission shall identify in such reports the number of cases in which the commission has determined there is probable cause to believe that a violation of chapter 151B of the General Laws has been committed in a case in which Massachusetts Bay

Transportation Authority is named as a respondent; provided further, that the commission shall report to the house and senate committees on ways and means on or before November 1, 2004 the number of cases pending before the commission in which a state agency or state authority is named as a respondent, specifying those cases in which the Massachusetts Bay Transportation Authority is named as a respondent, and the number of such cases in which there is probable cause to believe that a violation of chapter 151B has been committed; provided further, that the commission shall include in such report the total number of new cases filed in fiscal year 2004 and the total number of cases closed by the commission in fiscal year 2004; provided further, that funds made available in this item shall be in addition to funds available in item 1150-5104; provided further, that all positions, except clerical, shall be exempt from chapter 31 of the General Laws; and provided further, that the commission shall pursue the highest allowable rate of federal reimbursement .”

After remarks, the amendment was **adopted**.

Mr. Shannon moved that the bill be amended, in section 2, in item 1150-5104, by striking out the wording and inserting in place thereof the following wording:-

“The Massachusetts commission against discrimination may expend revenues from federal reimbursements received for the purposes of the United States department of housing and urban development fair housing type 1 program and the equal opportunity resolution contract program during fiscal year 2005 and federal reimbursements received for these and other programs in prior years; provided, notwithstanding any general or special law to the contrary, that the commission may also expend revenues generated through the collection of fees and costs so authorized; provided further, that for the purposes of accommodating discrepancies between the receipt of retained revenues and related expenditures, the commission may incur expenses and the comptroller may certify for payment amounts not to exceed the lower of this authorization or the most recent revenue estimate as reported in the state accounting system; provided further, that notwithstanding section 1 or any other general or special law to the contrary, revenues received in excess of \$2,467,982 shall be credited to the General Fund.”

The amendment was *rejected*.

Ms. Tucker moved that the bill be amended, in section 2, in line item 1102-3206, by inserting at the end thereof the following words:-

“and provided further, that the commissioner of the division of capital asset management and maintenance shall complete study number SDE 0301ST1 regarding the site location of the proposed regional holding facility in the county formerly known as Essex by July 31, 2004.”

After remarks, the amendment was **adopted**.

Mr. Shannon moved that the bill be amended by inserting, after Section ____, the following new Section:-

“SECTION ____. Section 3 of chapter 151B, as most recently amended by Section 437 of Chapter 26 of the Acts of 2003, is hereby amended by striking out the second sentence of paragraph 15, which states ‘All amounts received under this clause shall be deposited to the General Fund.’”

The amendment was *rejected*.

Ms. Wilkerson moved that the bill be amended in Section 2 by inserting after item 1102-3231 the following new items: --

“1102-3232

For implementation of a certification process for subcontractors pursuant to the provisions of section 44D of chapter 149300,000”

“1102-3233

For the purposes of conducting a disparity study and analysis of government contracting activities to create opportunities for minority owned businesses and women owned businesses; provided that a report of the findings of said disparity study along with any recommendations relative thereto shall be submitted to the governor, the clerk of the senate, the clerk of the house of representatives, and to the house and senate chairmen of the joint committee on state administration.....500,000”

The amendment was *rejected*.



Distinguished Guests.

There being no objection, during the consideration of the Orders of the Day, Ms. Walsh handed the gavel to Mr. Hedlund, the Senator from Plymouth and Norfolk for the purpose of introducing a special guest. Senator Hedlund introduced David Labadie, Robert Haley, Francis Tucci, Al Donovan and Franklin Fryer of the Weymouth Veterans Council. The members of the council were seated at the back of the chamber and were accompanied by Representative James M. Murphy of Weymouth.

Orders of the Day.

The Orders of the Day were considered as follows:-

The House Bill making appropriations for the fiscal year 2005 for the maintenance of the departments, boards, commissions, institutions and certain activities of the Commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements (House, No. 4601),- was further considered, the main question being on ordering it to a third reading, with the Ways and Means amendment pending.

Mr. Joyce moved that the bill amended by inserting, after Section ____, the following new Sections:-
SECTION ____. :Chapter 32A of the General Laws is hereby amended by inserting after section 17H the following section:-

Section 17I. (a) As used in this section, "Prosthetic device" means an artificial device to replace, in whole or in part, an arm or leg.

(b) The commission shall provide to any active or retired employee of the commonwealth who is insured under the group insurance commission coverage for prosthetic devices that equals the coverage provided for such devices under the federal laws providing health insurance to the aged and disabled, 42 U.S.C. sections 1395k, 1395l and 1395m and 42 C.F.R. 414.202, 414.210, 414.228 and 410.100. Coverage for the prosthetic devices shall be provided for the most appropriate medically necessary model that adequately meets the medical needs of such employees as determined by the treating physician. The commission shall also provide coverage for medically necessary repairs and replacements of prosthetic devices, subject to co-payments and deductibles, if any, unless the repair or replacement is necessitated by misuse or loss.

(c) Nothing in this section shall prohibit the commission from offering greater coverage for prosthetic devices than that required by this section.

SECTION :Chapter 175 of the General Laws is hereby amended by inserting after section 47W, inserted by section 1 of chapter 49 of the acts of 2002, the following section:-

Section 47X. (a) As used in this section, "prosthetic device" means an artificial device to replace, in whole or in part, and arm or leg.

(b) Any individual policy of accident and sickness insurance issued pursuant to section 108 and any group blanket policy of accident and sickness insurance issued pursuant to section 110, except policies providing supplemental coverage to Medicare or to other government programs, that is delivered, issued or renewed within or without the commonwealth shall provide coverage for prosthetic devices that equals the coverage provided for such devices under the federal laws providing health insurance to the aged and disabled, 42 U.S.C. sections 1395k, 1395l, and 1395m and 42 C.F.R. 414.202, 414.210, 414.228 and 410.100. Coverage for the prosthetic devices shall be provided for the most appropriate medically necessary model that adequately meets the medical needs of the policyholder as determined by the treating physician. Coverage shall also be provided for medically necessary repairs and replacements of prosthetic devices, subject to co-payments and deductibles, if any, unless the repair or replacement is necessitated by misuse or loss.

(c) Nothing in this section shall prohibit an insurer from offering greater coverage for prosthetic devices than that required by this section.

SECTION :Chapter 176A of the General Laws is hereby amended by inserting after section 8W, inserted in section 2 of chapter 49 of the acts of 2002, the following section:-

Section 8X. (a) As used in this section, "prosthetic device" means an artificial device to replace, in whole or in part and arm or leg.

(b) Any contract between a subscriber and the corporation under an individual or group hospital service plan, except contracts providing supplemental coverage to Medicare or other governmental programs, that is delivered, issued or renewed within or without the commonwealth shall provide to all individual subscribers and members within the commonwealth and to all group members having a principal place of employment within the commonwealth coverage for prosthetic devices that equals the coverage provided for such devices under the federal laws providing health insurance to the aged and disabled, 42 U.S.C. sections 1395k, 1395l, and 1395m and 42 C.F.R. 414.202, 414.210, 414.228 and 410.100. Coverage for the prosthetic devices shall be provided for the most appropriate medically necessary model that adequately meets the medical needs of such subscribers or members as determined by the treating physician. Coverage shall also be provided for any medically necessary repairs and replacements of prosthetic devices, subject to co-payments and deductibles if any, unless the repair or replacement is necessitated by misuse or loss.

(c) Nothing in this section shall prohibit the corporation from offering greater coverage for prosthetic devices than that required by this section.

SECTION :Chapter 176B of the General Laws is hereby amended by inserting after section 4W, inserted by section 3 of chapter 49 of the acts of 2002, the following section:-

Section 4X. (a) As used in this section, "prosthetic device" means an artificial device to replace, in whole or in part, an arm or leg.

(b) Any subscription certificate under an individual or group medical service agreement, except certificates providing supplemental coverage to Medicare or other governmental programs, that is delivered, issued or renewed within or without the commonwealth shall provide to all individual subscribers and members within the commonwealth and to all group members having a principal place of employment in the commonwealth coverage for prosthetic devices that equals the coverage provided for such devices under the federal laws providing health insurance to the aged and disabled, 42 U.S.C. sections 1395k, 1395l, and 1395m and 42 C.F.R. 414.202, 414.210, 414.228 and 410.100. Coverage for the prosthetic devices shall be provided for the most appropriate medically necessary model that adequately meets the medical needs of such subscribers or members as determined by the treating physician. Coverage shall also be provided for medically necessary repairs and replacements of prosthetic devices, subject to co-payments and deductibles, if any, unless the repair or replacement is necessitated by misuse or loss.

(c) Nothing in this section shall prohibit the corporation from offering greater coverage for prosthetic devices than that required by this section.

SECTION :Chapter 176G of the General Laws is hereby amended by inserting after section 4O, inserted by section 4 of chapter 49 of the acts of 2002, the following section:-

Section 4P. (a) As used in this section, "prosthetic device" means an artificial device to replace, in whole or in part, an arm or leg.

(b) An individual or group health maintenance contract, except contracts providing supplemental coverage to Medicare or to other government programs, shall provide to residents of the commonwealth and to persons having a principal place of employment within the commonwealth coverage for prosthetic devices that equals the coverage and benefits provided for such devices under the federal laws providing health insurance to the aged and disabled, 42 U.S.C. sections 1395k, 1395l, and 1395m and 42 C.F.R. 414.202, 414.210, 414.228 and 410.100. Coverage for the prosthetic devices shall be provided for the most appropriate medically necessary model that adequately meets the medical needs of such subscribers or members as determined by the treating physician. Coverage shall also be provided for medically necessary repairs and replacements of prosthetic devices, subject to co-payments and deductibles, if any, unless the repair or replacement is necessitated by misuse or loss.

(c) Nothing in this section shall prohibit a health maintenance organization from offering greater coverage for prosthetic devices than that required by this section.

SECTION :This act shall apply to all policies, contracts, agreements, plans and certificates of insurance issued or delivered within or without the commonwealth on or after January 1, 2005 , and to all policies, contracts, agreements, plans and certificates of insurance in effect before that date upon renewal on or after January 1, 2005 .

The amendment was *rejected*.

Messrs. Lees, Tisei, Tarr, Knapik, Brown and Brewer and Mrs. Sprague moved that the bill be amended by inserting, after Section __, the following new Section:-

“SECTION __. Chapter 32A of the General Laws is hereby amended by inserting after section 17G, as inserted by section 1 of chapter 81 of the acts of 2000, the following section:-

Section 17H. (a) For purposes of this section, the following words shall have the following meanings:

"Hard of hearing", hard of hearing as defined in section 191 of chapter 6 of the General Laws. "Hearing instrument specialist", a hearing instrument specialist as defined in section 196 of chapter 112 of the General Laws.

"Hearing aid", a hearing aid as defined in section 196 of chapter 112 of the General Laws.

"Out-of-network provider", a health care provider that does not have a contract with the insurer.

(b) The commission shall provide to any active or retired employee of the commonwealth who is insured under the group insurance commission coverage for two hearing aids every three years, unless an employee voluntarily obtains such hearing aids from an out-of-network health care provider, if any. Hearing aid coverage pursuant to this section shall not exceed an amount of \$2,000 for each three-year period.

(c) Nothing in this section shall prohibit the commission from offering greater coverage for hearing aids than that required by this section.

(d) Pursuant to sections 191 to 199, inclusive, of chapter 6 of the General Laws, the Massachusetts Commission for the Deaf and Hard of Hearing shall consult with the Commissioner of Insurance to ensure that sections 1 to 6 of this act are enforced.”

The amendment was *rejected*.

Mr. Panagiotakos and Ms. Fargo moved that the bill be amended by inserting at the end thereof the following new section:-

SECTION _____. The shall be a special commission to investigate, study, and make a report on the safety and security of deposits made by public entities, including the commonwealth, cities, towns, counties, districts and regional school districts, said funds

being deposited in any form whatsoever in any public depository or in a combined investment fund. The report shall assess the necessity of providing further security for said public deposits and include recommendations to establish reasonable standards for protecting public deposits. The Commission shall consist of 11 members; the house and senate chairs of the joint committee on banks and banking who shall serve as co-chairs; the state treasurer or his designee; the state auditor or his designee; the state banking commissioner or his designee; two representatives of the Massachusetts Collectors & Treasurers Association; two representatives of the Massachusetts Bankers Association; a representative of the Massachusetts Credit Union League. The Commission shall file its report, including its recommendations and a draft of any legislation necessary to carry out its recommendations, by filing the same with the clerks of the house of representatives and the senate not later than December 1, 2004. The amendment was *rejected*.

Messrs. Tarr, Lees, Knapik, Hedlund and Brown moved that the bill be amended by adding, at the end thereof, the following new section: -

“SECTION ____ . The Massachusetts Turnpike Authority is hereby authorized and directed to develop a plan for the availability of hydrogen fuel automobiles at each fueling facility/service terminal on the Massachusetts Turnpike. Should the authority determine that facilitating such availability is not feasible, it shall report such findings together with the reasons therefore to the House and Senate Committees on Ways and Means and the Joint Committee on Natural Resources and Agriculture not later than January 31, 2005. Said plan shall provide for such availability no later than January 1, 2010.

The amendment was *rejected*.

Mr. Brewer moved that the bill be amended in section 2, in item 1599-3384, by adding at the end thereof the following:-

“provided further, that \$300,000 shall be expended for Namyl, LLC v. L. Bongiorno et al and its companion cases to be paid to the town of Wilbraham”

The amendment was *rejected*.

Mr. Pacheco moved that the bill be amended, in section 2, by striking out item 1775-0124 and inserting in place thereof the following item:-

“The operational services division may expend an amount not to exceed \$300,000 from revenue collected in the recovery of cost-reimbursement and non-reimbursable over billing and recoupment for health and human service agencies and as a result of administrative reviews, as determined during the division's audits and reviews of providers pursuant to section 274 of chapter 110 of the acts of 1993; provided that, the division may only retain revenue collected in excess of \$207,350.
.....\$300,000”

The amendment was **adopted**.

Mr. Knapik moved that the bill be amended by inserting, after Section ____, the following new Section:-

“SECTION__ Notwithstanding any general or special law or regulation to the contrary, any Massachusetts based reseller/integrator of computer equipment and technology, that has been in business for five consecutive years, has achieved ISO 9001 Certification and that has a minimum level of \$10 million dollars in sales and services in the last fiscal year, shall be deemed eligible to bid on any of the Commonwealth's Information Technology Hardware contracts offered for Original Equipment Manufacturers (OEMs).”

The amendment was *rejected*.

Mr. Creedon moved that the bill be amended at the end of the bill inserting the following new section:

SECTION__ “Notwithstanding any general or special law or regulation to the contrary, the operational services division of the executive office of administration and finance shall require both for-profit and not-for-profit vendors that contract with the commonwealth to provide human and social services to complete the UFR Surplus Revenue Retention Schedule and that both the not-for-profit and for-profit businesses shall be limited to a 5% annual retention of surplus revenue. Taxes paid will be considered an allowable expense. No prior year surpluses may be recouped from such for-profit vendors if the applicable contract for such year(s) did not contain a commercial fee.”

The amendment was *rejected*.

Mr. Morrissey moved that the bill be amended by striking out Sections 26, 159, 160, 161, 162, and 163;

By inserting after Section 353 the following new sections: -

SECTION ____ . Chapter 13 of the General Laws, as appearing in the 2002 Official Edition is hereby amended by inserting after section 9B the following new section:—

Section 9C. Each board of registration shall be immune from liability for actions taken in good faith in the discharge of its responsibilities. Board members acting in good faith in the discharge of their duties shall be defended by the attorney general and shall be eligible for indemnification of all costs and damages arising from claims and suits against them.

SECTION ____ . Section 61 of Chapter 112 as appearing in the 2002 Official Edition, is hereby amended by striking the first paragraph and inserting in place thereof the following paragraphs:-

Each board of registration under the supervision of the division of professional licensure may discipline the holder of any license, certificate, registration or authority issued pursuant to the provisions of this chapter or chapters 141 and 143 if such a holder has, after a full adjudicatory proceeding conducted pursuant to chapter 30A:

been found guilty of engaging in conduct which places into question the holder's competence to practice his or her profession including, but not limited to, gross misconduct; practicing his or her profession fraudulently; practicing his or her profession beyond the authorized scope of said license, certificate, registration or authority; practicing his or her profession with gross incompetence; and/or practicing his or her profession with negligence on more than one occasion;

1. been found guilty of engaging in the practice of his or her profession while the ability to practice was impaired by alcohol or drugs;
2. been found guilty of violating any law, rule or regulation of the board of registration governing the practice of his or her profession;
3. been convicted of a criminal offense which is reasonably related to the practice of his or her profession;
4. been found guilty of engaging in dishonesty, fraud or deceit which is reasonably related to the practice of his or her profession;
5. been found guilty of knowingly permitting, aiding, or abetting an unauthorized person to perform activities requiring a license, registration or authority; or
7. had a license, certificate, registration, or authority issued by another state or territory of the United States, the District of Columbia, or foreign state or nation with authority to issue such a license, certificate, registration, or authority revoked, canceled, suspended, or otherwise acted against, or the holder has been disciplined, if the basis for the action would constitute a basis for disciplinary action in the Commonwealth.

Notwithstanding any general or special law to the contrary, each board of registration under the supervision of the division of professional licensure may by a majority vote and after a full adjudicatory proceeding conducted pursuant to chapter 30A, upon determination made that the holder of a license, certificate, registration or authority issued by such board of registration has engaged in any of the offenses enumerated in this section, undertake one or more of the following actions:

1. suspend, revoke, cancel or place on probation such license, certificate, registration or authority;
2. reprimand or censure a holder;
3. assess upon such holder a fine, as determined by the board, not to exceed one hundred dollars for the first offense; five hundred dollars for the second offense; one thousand five hundred dollars for the third offense; two thousand five hundred dollars for the fourth offense; and five thousand dollars for the fifth and any subsequent offense;
4. require such a holder to perform, for each violation, up to one hundred hours of public service in a manner and time to be determined by the board;
5. require such holder to complete additional education and training as a condition of retention or future consideration or reinstatement of said license, certificate, registration or authority;
6. require such holder to practice under appropriate supervision for a period of time as determined by the board as a condition of retention or future consideration of reinstatement of such license, certificate, registration or authority;
7. require such holder to participate in an alcohol or drug rehabilitation program or undergo drug testing, or both, as a condition of retention or future consideration of reinstatement of said license, certificate, registration or authority.

Nothing in this section shall be deemed a limitation on any board's authority to impose such reasonable sanctions as deemed appropriate by the board after hearing or by a consent agreement.

SECTION ____ .Said chapter 112, as so appearing, is hereby further amended by striking section 65 in its entirety and inserting in place thereof the following:

Section 65. Each board of registration under the supervision of the division of professional licensure may, after an adjudicatory proceeding held pursuant to chapter 30A, assess and collect a fine of up to five thousand dollars for each violation upon any person who practices any trade or profession at a time when his or her license, certificate, registration or authority to do so is not valid because it has been suspended, revoked or canceled by the board of registration that issued said license, and upon any person who knowingly practices any trade or profession at a time when his or her license, certificate, registration or authority authorizing him or her to do so has expired; provided that, if a licensee has, in accordance with any law and with board regulations, made timely and sufficient application for a renewal, his license shall not expire until his application has been finally determined by the agency; provided further, that prior to the assessment of a fine under this section said board shall notify the licensee and grant said licensee a minimum of ninety days after the date of expiration within which to submit an application for renewal during which time the board may waive any applicable penalties pursuant to this section. Each board may make application to the appropriate court for an order enjoining unlicensed practice and obtaining a restraining order or other order as may be appropriate.

SECTION ____ . Said chapter 112, as so appearing, is hereby further amended by inserting after said section 65 the following new sections:-

Section 65A. Except as otherwise permitted by law, each board of registration under the supervision of the division of professional licensure, after an adjudicatory proceeding held pursuant to chapter 30A, may assess and collect a fine of up to five thousand dollars upon any person who, without holding the required license, certificate, registration, or authority, engages in the practice of any trade or profession for which a license, certificate, registration, or authority is required. Nothing contained in this section shall be construed as affecting, restricting, diminishing or limiting any other existing penalty or remedy provided by law. Each board may make application to the appropriate court for an order enjoining unlicensed practice, or ordering payment of any assessed fine, or both. Upon a showing by the board that such person has engaged in unlicensed practice, an injunction, restraining order or other order as may be appropriate shall be granted by the court.

Section 65B. Each board of registration under the supervision of the division of professional licensure having jurisdiction over a licensee whose continued practice poses an immediate and serious threat to the public health, safety or welfare may suspend or refuse to renew the holder's license, certificate, registration, or authority pending a hearing on the merits of the allegation against the holder; provided however, that the board shall hold a hearing pursuant to chapter 30A on the necessity for the emergency action within 10 days of the action. The board shall issue to the licensee a written summary suspension which specifies the findings of the board and the reasons for its summary suspension and which includes notice of the date, time and place of the aforementioned 10 day hearing. At the request of the licensee the board may reschedule this hearing to a date and time mutually agreeable to the board and licensee. Any such rescheduling of the hearing granted at the licensee's request shall not operate to lift or stay the summary suspension order. If such hearing is not held within 10 days of the board's emergency action, the license, certificate, registration, or authority against which action was taken shall be deemed reinstated. At the adjudicatory hearing on the necessity for summary suspension, the board shall, by a preponderance of the evidence, establish why said summary suspension order should continue in effect pending the final disposition of the complaint; provided further, that the board shall issue a preliminary written decision within seven days of said summary suspension hearing. Following said hearing, any continuing suspension imposed by a board shall remain in effect until the conclusion of any formal adjudicatory proceeding on the merits of the allegations against the holder; provided however, that said proceeding shall occur within sixty days of the initial summary suspension order, or as the parties may otherwise agree; provided further, that said board shall render its written decision no later than thirty days after the formal adjudicatory proceeding, or as the parties may otherwise agree. A licensee facing any disciplinary action pursuant to this section shall have the right to seek judicial review of the board's decision pursuant to the procedures established by chapter 30A. The division, after proper notice and hearings, shall adopt rules and regulations governing the emergency suspension procedure authorized by this section.

Section 65C. After the filing of a complaint with any board of registration under the supervision of the division of professional licensure alleging that any holder of a license, certificate, registration, or authority issued by said board may be incompetent or unable to practice his or her profession or trade with reasonable skill and safety because such holder's ability to practice is impaired due to mental illness or physical illness, the board may order such holder to be examined by one or more physicians or psychotherapists approved by the board at the board's expense. If the individual fails or refuses to comply with an order by the board for such examination, and upon reasonable notice to the holder, the board may apply to superior court for an order compelling the holder to submit to such examination. If the board's application is granted, the court may, after an opportunity for a hearing, require the individual to pay the board its reasonable expenses, up to a maximum of one thousand dollars, incurred in obtaining the order, including attorney's fees, unless the court finds such an award unjust. The holder's failure to comply with a court order issued under this section shall constitute grounds for disciplinary action by the board including, but not limited to, the sanctions listed in section 61 of this chapter. The report of the examiners shall be made available to the holder and may be received as direct evidence in any formal adjudicatory proceeding pursuant to chapter 30A. Said report shall remain confidential except to the extent it is disclosed in such proceedings.

Section 65D. One half of all fines assessed pursuant to sections 61 and 65 through 65C of this chapter shall be deposited in the division of professional licensure trust fund as established pursuant to section 35 V(a) of chapter 10; the remaining one-half shall be deposited in the General Fund.

Section 65E. Each board of registration under the supervision of the division of professional licensure which takes any action against an individual who practices any trade or profession at a time when his or her license, certificate, registration or authority to do so is not valid because it has been suspended, revoked or canceled by said board of registration that issued said license, certificate, registration or authority shall report said individual to the attorney general of the commonwealth for review.

SECTION ____ . Section 87I of said chapter 112, as so appearing, is hereby further amended by striking in the first sentence the words "and shall furnish to the board a certificate of a registered physician that such student is not afflicted with any contagious or infectious disease" in lines 8 through 10, inclusive.

SECTION ____ . Said section 87I, as so appearing, is hereby further amended by striking in lines 47 through 49 inclusive, the following:- A certificate of a registered physician stating that said apprentice or student is not afflicted with any contagious or infectious disease shall be filed with each application for such permit or renewal thereof.

SECTION ____ . Said section 87I, as so appearing, is hereby further amended by striking in lines 54 through 55 inclusive, the following:- with a physician's statement as aforesaid, and; and inserting in place thereof the following words:- and pays

SECTION ____ . Section 87J of said chapter 112, as so appearing, is hereby amended by striking in lines 10 through 12 inclusive, the following:- "upon the presentation of a certificate from a registered physician as to the freedom from contagious or infectious disease of the holder of such card or insignia".

SECTION ____ . Section 87K of said chapter 112, as so appearing, is hereby amended by striking in lines 9 through 10, the following:- "or that infectious or contagious disease has been imparted thereat,"

SECTION ____ . Said section 87K, as so appearing, is hereby further amended by striking in lines 13 through 15 the following:- "or it is determined by a member of the board that infectious or contagious disease has been imparted to any person thereat,"

SECTION ____ . Section 87L of said chapter 112, as so appearing, is hereby amended by striking in lines 2 through 4 the following:- "for having epilepsy or other disease endangering the health and safety of persons whom he may serve,"

SECTION ____ . Said section 87L, as so appearing, is hereby further amended by striking in line 6 the following:- "or for having imparted any contagious or infectious disease,"

SECTION ____ . Section 87CC of said chapter 112, as so appearing, is hereby amended by striking out lines 22 through 29, inclusive.

SECTION ____ . Said section 87CC, as so appearing, is hereby further amended by striking out lines 51 through 55, inclusive. The amendment was *rejected*.

Mr. Rosenberg moved that the bill be amended by striking out Section 335 and inserting in place thereof the following Section:-
"SECTION 335. (a) The jury commissioner shall establish an administrative records list of the commonwealth's residents 17 years and older for the purpose of testing the feasibility of using such a list for the creation of jury pools. The following state agencies shall provide in electronic form a list of residents 17 years and older contained in their respective databases: the state secretary, registry of motor vehicles, department of revenue, department of transitional assistance, and division of unemployment assistance. In addition, cities and towns that conduct an annual census shall provide such data, and all public and private colleges and universities shall provide such data from enrollment records. The lists shall contain, name, residential address, mailing address and date of birth to the extent that they possess this information, in a format to be specified by the jury commissioner. In those cases where a federal waiver or authorization is needed in order to provide this information, each agency or entity shall take all necessary steps to seek such authorization or waiver. No information shall be provided to the jury commissioner beyond that required to create the administrative records list. The jury commissioner shall treat the lists and the information contained in them as confidential to the extent required by law, and none of these lists or information shall be public records. Nothing shall be included in any printed administrative records list that would indicate from which source list the information on any individual resident was derived. The commissioner may secure and use additional lists from non-governmental institutions and sources in order to create the administrative records list. The commissioner shall provide in electronic form a copy of the administrative records list to the state secretary for purposes of testing its use to maintain voter registration lists and testing its use as a source for street lists for the cities and towns of the commonwealth. Testing of the administrative records list shall not replace or alter any requirement of present law for creating jury pools, maintaining voting lists or establishing street lists, until further act of the general court. The jury commissioner and the state secretary shall report their findings and recommendations based on the testing required by this section to the clerks of the senate and house of representatives not later than June 30, 2006.

(b) To advise the jury commissioner and the state secretary in carrying out subsection (a), there shall be an administrative records census task force, which shall consist of the jury commissioner or her designee, the state secretary or his designee, the secretary of administration and finance or his designee, and 1 person appointed by each of the president of the senate, the speaker of the house of representatives, the Massachusetts Municipal Association, the Massachusetts City Clerks Association and the Massachusetts Town Clerks Association. The chair of the task force shall rotate annually among the jury commissioner, the state secretary, and the secretary of administration and finance, or their respective designees. The task force shall consult persons with appropriate technical expertise, and may ask them to attend task force meetings. The task force shall meet as often as necessary, but at least once every 6 months.

The amendment was **adopted**.

Mr. Shannon moved that the bill be amended in section 2, in line item 0321-1510, by inserting the following:-
provided further, that the rates of compensation for private counsel services from this item shall increase to \$59 an hour beginning in Fiscal Year 2006.

The amendment was *rejected*.

Messrs. Havern, Pacheco, Ms. Resor, Mr. Nuciforo, Ms. Tucker, Ms. Wilkerson and Mr. Joyce moved that the bill be amended in item 0321-1510, line 5, by striking out the following: -
"and provided further, that the rates of compensation paid for private counsel services from this item shall be the same as the rates

paid in fiscal year 2004", and inserting in place thereof the following:-

"provided, however, such compensation shall not be less than \$60 per hour."; and in said item by striking out the figure "\$67,404,445 " and inserting in place thereof the figure "\$90,000,000."

The amendment was *rejected*.

Messrs. Creedon and McGee moved that the bill be amended in section 2, in item 0321-1510, by striking out the item and inserting in place thereof the following:

0321-1510

For compensation paid to private counsel assigned to criminal and civil cases under subsection (b) of section 6 of chapter 211D of the General laws , pursuant to section 12 of said chapter 211D; provided, that not more than \$1,000,000 of the sum appropriated herein may be expended for services rendered prior to fiscal year 2005; provided further, that the rate of compensation for private counsel services provided for murder cases shall be \$60 per hour; and provided further, that the rate of compensation paid for services for superior court criminal cases, so-called and for all non-criminal cases, so-called, except those stated below, shall be \$45 per hour; and provided further, that the rate of compensation paid for services for all other criminal cases, so-called and, for non-criminal cases under section 12S of chapter 112 of the General Laws and section 39F of chapter 119 of the General Laws, shall be \$40 per hour.....\$86,285,239

The amendment was *rejected*.

Mr. Havern, Mr. Pacheco, Ms. Resor, Mr. Nuciforo, Ms. Tucker, Ms. Wilkerson and Mr. Joyce moved that the bill be amended by striking outside Section 23 and inserting in place thereof the following section :-

SECTION 23. Said chapter 10 is hereby further amended by inserting after section 35Z, inserted by section 22 of this act, the following section:-

Section 35AA. There is hereby established a separate fund to be known as the Counsel for Indigent Salary Enhancement Trust Fund. Said fund shall not in any way be intended to be a substitute for direct appropriation at rates set pursuant to General Laws chapter 211D. There shall be credited to the fund revenues collected pursuant to an initial filing fee of \$25.00 for a private application for a criminal complaint for a misdemeanor by a party, not being a law enforcement officer or prosecutor, in a court of the commonwealth; from grants, gifts, contributions from any entity public or private; and revenue derived from the investment of amounts credited to the fund. The chief counsel for the committee for public counsel services shall expend funds, without further appropriation, solely for hourly rate enhancements for private bar advocates for the indigent. No expenditures from the fund shall cause the fund to be in deficiency at the end of a fiscal year. The chief justice for administration and management, in consultation with the comptroller and the chief counsel of the committee for public counsel services, shall report monthly to the house and senate committees on ways and means on the status of the fund. In the event that the chief justice for administration and management, in consultation with the chief counsel for the committee for public counsel services, determines that the receipts for that fiscal year will be insufficient to pay hourly rate enhancements previously authorized, the chief counsel shall adjust hourly rate enhancements to ensure that the trust fund will have a positive balance at the end of the fiscal year.

On October 15 of each year the chief justice for administration and management, in consultation with the comptroller, shall certify and report to the house and senate committees on ways and means and the chief counsel for the committee for public counsel services the amount of trust fund receipts for the first quarter of the fiscal year and shall estimate total receipts for the fiscal year. Funds shall not be expended from the trust before the submission of the report. Upon receipt of the report, the chief counsel for the committee for public counsel services shall determine the hourly rate enhancement to be paid for that fiscal year, including retroactive payments for hours billed on or after July 1 of that fiscal year. Hourly rate enhancements funded from this trust shall not be construed as a funding obligation in the general appropriation act or supplemental appropriations acts. Nor shall enhancements pursuant to this fund be considered in lieu of rates set by CPCS pursuant to c. 211D, but solely as enhancements or bonus supplementation.

The amendment was *rejected*.

Mr. Pacheco moved that the bill be amended by inserting after section ____, the following new section:-

SECTION _____. Section 3 of Chapter 150E of the General Laws is hereby amended by inserting at the end thereof the following new paragraph:-

The appropriate bargaining unit in the case of employees of the committee for public counsel services created by chapter 211D of the General Laws, shall be a professional unit composed of attorneys and all non managerial and non confidential staff. The employer shall be the committee for public counsel services or any individual who is designated by the committee to represent the committee and act in its interests in dealing with such employees. The amendment was adopted.

Mr. Lees moved that the bill be amended by inserting at the end thereof the following new section:

SECTION _____. Section 1 of chapter 211D of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraph:-

The provisions of chapter 268A shall apply to all members, officers and employees of the committee. No member of the committee may have any direct or indirect financial interest in any matter within the scope of the committee's duties and responsibilities. The amendment was *rejected*.

Mr. Lees moved that the bill be amended, in section 2, in item 0321-1600, by striking the figure, \$7,564,142 and inserting in place thereof the following figure:- \$6,807,728. The amendment was *rejected*.

Messrs. Barrios, Creedon, and McGee and Ms. Creem moved that the bill be amended in section 2, in item 0321-2100, by striking out the figure \$500,000 and inserting in place thereof the following figure:- \$600,000. The amendment was *rejected*.

Mr. Havern , Mr. Nuciforo, Mr. Creedon and Mr. Antonioni moved that the bill be amended in section 2, by inserting after item 0321-2205 the following new item:

0321-2206
For the social law library to operate the electronic law database project.....\$294,000.
The amendment was *rejected*.

Mr. Shannon moved that the bill be amended, in section 2, in line item 0330-0410, by striking out the wording provided further, that not less than \$36,947 shall be expended for the Somerville Mediation Program and by striking out the wording provided further, that not less than \$11,084 shall be expended for the Winchester Mediation Program and inserting in place thereof the following wording:- provided further, that not less than \$48,031 shall be expended for the Somerville Mediation Program. The amendment was **adopted**.

Mr. Creedon moved that the bill be amended in Section 2, in item 0330-3200, by striking out the figure 48,344,429 and inserting in place thereof the following figure:- 51,954,016. The amendment was *rejected*.

Mr. Creedon moved that the bill be amended in item 0332-0100, by striking out the figure 34,702,985 and inserting in place thereof the figure 34,782,985. The amendment was *rejected*.

Mr. Moore moved that the bill be amended in section 2, in line item 0332-7800 by striking out the figures 294,137 and inserting in place thereof the figures 363,137. The amendment was *rejected*.

The President in the Chair, Mr. Lees moved that the bill be amended in section 2 by striking out item 0335-0001; and in section 2, in item 0332-0100, by striking out the figures 34,702,985 and inserting in place thereof the figures 42,436,787 and by inserting at the end thereof the following sections:-
SECTION _____. Chapter 211B of the General Laws, as so appearing, is hereby amended by striking section 1 and inserting in place thereof the following section:-

Section 1. There shall be a trial court of the commonwealth which shall consist of the following departments: the superior court department, the housing court department, the land court department, the probate and family court department, the juvenile court department, and the district court department. The trial court, as an administrative unit, shall consist of no more than 378 justices and special justices. There shall be selected as herein after provided, a chief justice for administration and management and a chief justice for each of the departments of the trial court; provided however, there shall be one chief justice who shall serve as the chief justice for the district court department, including all divisions previously within the Boston Municipal Court Department.

SECTION _____. Section 2 of said chapter 211B, as amended by section 449 of chapter 26 of the acts of 2003, is hereby further amended by striking the first sentence and inserting in place thereof the following sentence:-

There shall be 82 justices appointed to the superior court department, 10 justices appointed to the housing court department, 6 justices appointed to the land court department, 51 justices appointed to the probate and family court department, 41 justices appointed to the juvenile court department, and 188 justices appointed to the district court department.

SECTION _____. Section 9A of said chapter 211B, as appearing in the 2002 Official Edition, is hereby amended by striking, in line 28, the words Boston municipal and inserting in place thereof the following:- district

SECTION _____. Section 10B of said chapter 211B, as so appearing, is hereby amended by striking subparagraph (a) and inserting in place thereof the following subparagraph:-

(a) The exclusive authority to select and appoint assistant clerks in the district court, juvenile court and housing court shall be vested in the clerks of said courts and such authority shall not be subject to the review or approval of any other person, except as provided in this section.

SECTION _____. Section 13 of said chapter 211B, as so appearing, is hereby amended in the first sentence by striking the following words:- Boston municipal

SECTION _____. Said section 13 of said chapter 211B, as so appearing, is hereby further amended in the second paragraph by striking the word housing, and Boston municipal and inserting in place thereof the following:- and housing

SECTION _____. Section 17 of said chapter 211B, as so appearing, is hereby amended in the fourth sentence of the second paragraph by striking the following words:- Boston municipal

SECTION _____. Paragraph (f) of section 3 of chapter 211E of the General Laws, as so appearing, is hereby amended in the final sentence by striking the words court, district court, and the Boston municipal court and inserting in place thereof the following:- court and district court

SECTION _____. Chapter 218 of the General Laws, as amended by section 1 of chapter 45 of the acts of 2003, is hereby further amended by striking section 1 and inserting in place thereof the following section:-

Section 1. The district court department, established under section 1 of chapter 211B, shall consist of divisions, one for each of the judicial districts hereinafter enumerated, and whenever the words district court, municipal court, or court are used in this chapter, or some other clearly contrary intent, such words shall refer to a division of the district court department. Unless the context refers only to a person appointed to the municipal court of the city of Boston or to a juvenile court, the words justice and special justice shall mean, respectively, an associate justice and a special justice of the trial court appointed to a division of the district court department; and the words clerk or clerk of court shall mean the clerk of such court; and the words assistant clerk, deputy assistant clerk, temporary clerk or temporary assistant clerk shall mean, respectively, an assistant clerk, deputy assistant clerk, temporary clerk or temporary assistant clerk of such court.

The Boston municipal court shall be a division of the district court department of the trial court. Except where separate or contrary provisions with respect to the same subject matter are made applicable to Boston municipal court in sections 50 to 56, the provisions of this chapter relative to the divisions of the district court department shall apply to the Boston municipal court. Whenever used in this chapter or other general or special law, the words Boston municipal court department, shall mean the Boston municipal court division of the district court department of the trial court established under chapter 211B. Whenever used in this chapter, the words chief justice, chief justice of the Boston municipal court department, or chief justice of the department, shall mean the chief justice of the district court department, unless the context clearly refers to a chief justice of another department established under chapter 211B, the chief justice for administration and management, or the chief justice of the supreme judicial court.

The judicial districts of the Boston municipal court and of the several other divisions of the district court department shall continue to comprise the following cities, towns, wards and territory in the following counties respectively.

The first district court of Barnstable, held at Barnstable; Barnstable, Sandwich and Yarmouth. The second district court of Barnstable, held at Orleans; Provincetown, Truro, Wellfleet, Eastham, Orleans, Brewster, Chatham, Harwich and Dennis. The third district court of Barnstable, held at Falmouth; Mashpee, Falmouth and Bourne. Cases of delinquent children under sections 52 to 84, inclusive, of chapter 119 and petitions brought under sections 24 and 39E of chapter 119 are excepted from the jurisdiction of all of the above courts of this county.

The district court of northern Berkshire, held at Adams, North Adams and Williamstown; Adams, North Adams, Williamstown, Clarksburg, Florida, New Ashford, Cheshire, Savoy, Hancock, and Windsor; the district court of central Berkshire exercising concurrent jurisdiction in Windsor and Hancock.

The district court of central Berkshire, held at Pittsfield; Pittsfield, Hancock, Lanesborough, Peru, Hinsdale, Dalton, Washington, Richmond, Lenox, Becket and Windsor; the district court of southern Berkshire exercising concurrent jurisdiction in Lenox and Becket and the district court of northern Berkshire exercising concurrent jurisdiction in Windsor and Hancock.

The district court of southern Berkshire, held at Great Barrington and Lee; Sheffield, Great Barrington, Egremont, Alford, Mount Washington, Monterey, New Marlborough, Stockbridge, West Stockbridge, Sandisfield, Lee, Tyringham, Otis, Lenox and Becket; the district court of central Berkshire exercising concurrent jurisdiction in Lenox and Becket.

Cases of delinquent children under sections 52 to 84, inclusive, of chapter 119 and petitions brought under sections 24 and 39E of said chapter 119 are excepted from the jurisdiction of all of the above courts of this county.

The first district court of Bristol, held at Taunton; Taunton, Rehoboth, Berkley, Dighton, Seekonk, Easton and Raynham.

The second district court of Bristol, held at Fall River; Fall River, Somerset, Swansea, Freetown and Westport; the third district court of Bristol exercising concurrent jurisdiction in Freetown and Westport.

The third district court of Bristol, held at New Bedford; New Bedford, Fairhaven, Acushnet, Dartmouth, Freetown and Westport; the second district court of Bristol exercising concurrent jurisdiction in Freetown and Westport.

The fourth district court of Bristol, held at Attleboro; Attleboro, North Attleborough, Mansfield and Norton.

Cases of delinquent children under sections 52 to 84, inclusive, of chapter 119 and petitions brought under sections 24 and 39E of said chapter 119 are excepted from the jurisdiction of all of the above courts of this county.

The district court of Dukes County, held at Oak Bluffs, Edgartown and Tisbury; Dukes County. Cases of delinquent children under sections 52 to 84, inclusive, of chapter 119, and petitions brought under sections 24 and 39E of said chapter 119, are excepted from the jurisdiction of the above court of this county.

The first district court of Essex, held at Salem; Salem, Beverly, Danvers, Middleton and Manchester-by-the-Sea.

The second district of Essex, held at Ipswich; Ipswich, Hamilton, Topsfield and Wenham.

The central district court of northern Essex, held at Haverhill; Haverhill, Groveland, Georgetown, Boxford and West Newbury; the district court of Newburyport exercising concurrent jurisdiction in West Newbury.

The district court of eastern Essex, held at Gloucester; Gloucester, Rockport and Essex.

The district court of southern Essex, held at Lynn; Lynn,

The district court of Lawrence, held at Lawrence and Methuen; Lawrence, Andover, North Andover and Methuen.

The district court of Newburyport, held at Newburyport; Amesbury, Merrimac, Newbury, Newburyport, Rowley, Salisbury and West Newbury; the central district court of northern Essex exercising concurrent jurisdiction in West Newbury.

The district court of Peabody, held at Peabody; Peabody and Lynnfield.

Cases of delinquent children under sections 52 to 84, inclusive, of chapter 119 and petitions brought under sections 24 and 39E of said chapter 119 are excepted from the jurisdiction of all of the above courts of this county.

The district court of Franklin, held at Greenfield, Franklin county, except Orange and Erving; Warwick, Wendell; Leverett,

Shutesbury and New Salem. Sessions may also be held at Shelburne Falls in Shelburne and Buckland at such times and places as the justice of said court may determine.

The district court of eastern Franklin, held at Orange; Athol, Orange, Erving, Warwick, Wendell, Leverett, Shutesbury and New Salem. Said court shall be held in Athol at least one day each week of the year.

Cases of delinquent children under sections 52 to 84, inclusive, of chapter 119 and petitions brought under sections 24 and 39E of said chapter 119 are excepted from the jurisdiction of all of the above courts of this county.

The district court of eastern Hampden, held at Palmer; Palmer, Brimfield, Hampden, Monson, Holland, Wales, Wilbraham, Ludlow and East Longmeadow.

The district court of western Hampden, held at Westfield and Chester; Westfield, Chester, Granville, Southwick, Russell, Blandford, Tolland, Montgomery and Agawam.

The district court of Chicopee, held at Chicopee; Chicopee.

The district court of Holyoke, held at Holyoke; Holyoke.

The district court of Springfield, held at Springfield; Springfield, West Springfield and Longmeadow.

Cases of delinquent children under sections 52 to 84, inclusive, of chapter 119 and petitions brought under sections 24 and 39E of said chapter 119 are excepted from the jurisdiction of all of the above courts of this county.

The district court of Hampshire, held at Northampton, Cummington, Huntington and Easthampton; Hampshire county, except Amherst, Belchertown, Granby, Hadley, South Hadley, Pelham and Ware and any violation of law committed on the land of the metropolitan district commission comprising the Quabbin reservation or used for the supply or protection of the Quabbin reservoir.

The district court of eastern Hampshire, held at Belchertown, Amherst, Granby, Hadley, South Hadley, Pelham, Ware, and any violation of law committed on the land under the care and control of the department of conservation and recreation comprising the Quabbin reservation or used for the supply or protection of the Quabbin reservoir.

Cases of delinquent children under sections 52 to 84, inclusive, of chapter 119 and petitions brought under sections 24 and 39E of said chapter 119 are excepted from the jurisdiction of all of the above courts of this county.

The district court of central Middlesex, held at Concord; Concord, Acton, Bedford, Carlisle, Lincoln, Maynard, Stow, and Lexington.

The first district court of northern Middlesex, held at Ayer; Ayer, Dunstable, Groton, Pepperell, Townsend, Ashby, Shirley, Westford, Littleton, Boxborough and the Devens Regional Enterprise Zone.

The first district court of eastern Middlesex, held at Malden; Malden, Wakefield, Melrose and Everett.

The second district court of eastern Middlesex, held at Waltham; Waltham, Watertown and Weston.

The third district court of eastern Middlesex, held at Cambridge; Cambridge, Arlington and Belmont.

The fourth district court of eastern Middlesex, held at Woburn; Woburn, Winchester, Burlington, Wilmington, Stoneham, Reading and North Reading.

The first district court of southern Middlesex, held at Framingham; Framingham, Ashland, Holliston, Hopkinton, Wayland, and Sudbury.

The district court of Lowell, held at Lowell; Lowell, Billerica, Tewksbury, Dracut, Chelmsford and Tyngsborough.

The district court of Marlborough, held at Marlborough; Marlborough and Hudson.

The district court of Natick, held at Natick; Natick and Sherborn.

The district court of Newton, held at Newton; Newton.

The district court of Somerville, held at Somerville; Somerville and Medford.

Cases of delinquent children under sections 52 to 84, inclusive, of chapter 119 and petitions brought under sections 24 and 39E of said chapter 119 are excepted from the jurisdiction of all of the above courts of this county.

The district court of Nantucket, held at Nantucket; Nantucket county. Cases of delinquent children under sections 52 to 84, inclusive, of chapter 119 and petitions brought under sections 24 and 39E of said chapter 119 are excepted from the jurisdiction of the above court of this county.

The district court of northern Norfolk, held at Dedham; Dedham, Dover, Norwood, Westwood, Medfield, Wellesley and Needham.

The district court of East Norfolk, held at Quincy; Quincy, Braintree, Cohasset, Weymouth, Holbrook, Randolph and Milton; and, in criminal cases, concurrently with the second district court of Plymouth, that part of Scituate described in chapter 394 of the acts of 1912. Arrests and service of process in such cases may be made by an officer qualified to serve criminal process in Cohasset.

The district court of southern Norfolk, held at Stoughton; Stoughton, Avon, Canton and Sharon.

The district court of Western Norfolk, held at Wrentham; Franklin, Walpole, Foxborough, Medway, Millis, Norfolk, Wrentham and Plainville.

The municipal court of Brookline, held at Brookline; Brookline.

Cases of delinquent children under sections 52 to 84, inclusive, of chapter 119 and petitions brought under sections 24 and 39E of said chapter 119 are excepted from the jurisdiction of all of the above courts of this county.

The second district court of Plymouth, held at Hingham; Hingham, Rockland, Hull, Hanover, Scituate and Norwell.

The third district court of Plymouth, held at Plymouth; Plymouth, Kingston, Plympton, Pembroke, Duxbury, Halifax, Hanson and Marshfield.

The fourth district court of Plymouth, held at Wareham; Middleborough, Wareham, Lakeville, Marion, Mattapoisett, Rochester and Carver.

The district court of Brockton, held at Brockton; Brockton, Bridgewater, East Bridgewater, Whitman, Abington and West Bridgewater. Said court may adjourn to the Massachusetts correction institution, Bridgewater, whenever the public convenience seems to the first justice to render such adjournment expedient.

Cases of delinquent children under sections 52 to 84, inclusive, of chapter 119 and petitions brought under sections 24 and 39E of said chapter 119 are excepted from the jurisdiction of all of the above courts of this county.

The municipal court of the city of Boston, held at Boston; wards 6, 7, 8, 9, 10, 11, 12, 16, 17 and 18 of Boston as they existed on February 1, 1882; and in criminal cases, concurrently with the municipal courts of the Roxbury and Brighton districts, the second and third district courts of eastern Middlesex and the district court of Newton, respectively, so much of the Charles river basin, as defined in section 2 of chapter 524 of the acts of 1909, as affected by chapter 245 of the acts of 1916 as is within the districts of said courts.

The municipal court of the Brighton district, held at Brighton in Boston; ward 25 of Boston as it existed on February 1, 1882.

The municipal court of the Charlestown district, held at Charlestown in Boston: wards 3, 4 and 5 of Boston as they existed on February 1, 1882; provided, however, that in criminal matters, said court shall have exclusive jurisdiction in that part of said wards which is in so much of the Charles river basin, as defined in section 2 of chapter 524 of the acts of 1909, as affected by chapter 245 of the acts of 1916 under the care and control of the department of conservation and recreation as is within the districts of said court.

The district court of Chelsea, held at Chelsea; Chelsea, and Revere.

The municipal court of the Dorchester district, held at Dorchester in Boston; ward 24 of Boston as it existed on February 1, 1882, and the territory comprised within the limits of precinct 12 of ward 13 of Boston as it existed on November 2, 1948.

The East Boston district court, held at East Boston in Boston; Winthrop and wards 1 and 2 of Boston as they existed on March 1, 1886; provided, however, that said court shall have territorial jurisdiction in matters that arise in the Sumner tunnel and Lieutenant William F. Callahan, Jr. tunnel, including any property, toll plazas and approach roads thereto under the ownership, care, custody and control of the Massachusetts Turnpike Authority as provided in chapter 598 of the acts of 1958.

The municipal court of the Roxbury district, held at Roxbury in Boston; wards 19, 20, 21 and 22 of Boston as they existed on February 1, 1882, excepting ward 10, save as hereinafter provided, as it existed on February 1, 1976; provided, however, that, notwithstanding any other law, said court shall have jurisdiction over matters arising in precincts 1, 6 and 7 of ward 10.

The municipal court of the South Boston district, held at South Boston in Boston; wards 13, 14 and 15 of Boston as they existed on February 1, 1882.

The municipal court of the West Roxbury district, held at West Roxbury in Boston; ward 23 of Boston as it existed on February 1, 1882, the territory comprised within the limits of the former town of Hyde Park which was annexed to Boston by chapters 469 and 583 of the acts of 1911, and ward 10, except precincts 1, 6 and 7 of said ward 10, as existing on February 1, 1976.

Cases of delinquent children under sections 52 to 84, inclusive, of chapter 119 and petitions brought under sections 24 and 39E of said chapter 119 are excepted from the jurisdiction of all of the above courts of this county. The juvenile court located in the city of Boston, heretofore known as the Boston juvenile court, shall have the territorial jurisdiction provided in section 57 and, with respect to children in Suffolk county, shall have exclusive jurisdiction of petitions brought under said sections 24 and 39E of said chapter 119.

The central district court of Worcester, held at Worcester; Worcester, Auburn and Millbury.

The first district court of northern Worcester, held at Gardner; Gardner, Petersham, Hubbardston and Westminster.

The first district court of eastern Worcester, held at Westborough and Grafton; Westborough, Grafton, Southborough, Northborough and Shrewsbury.

The second district court of eastern Worcester, held at Clinton; Clinton, Berlin, Bolton, Boylston, Harvard, Lancaster, Sterling and West Boylston.

The first district court of southern Worcester, held at Southbridge and Webster; Southbridge, Webster, Sturbridge, Charlton, Dudley and Oxford.

The second district court of southern Worcester, held at Uxbridge; Uxbridge, Blackstone, Douglas, Northbridge, Millville and Sutton.

The third district court of Southern Worcester, held at Milford; Milford, Mendon, Upton, Bellingham and Hopedale.

The district court of western Worcester, held at North Brookfield; East Brookfield, Brookfield, Spencer, North Brookfield, West Brookfield, Warren, Hardwick, Leicester, New Braintree, Barre, Oakham, Paxton and Rutland. Said court may adjourn to any town within its district other than North Brookfield whenever the public convenience seems to the presiding justice to render such adjournment expedient.

The district court of Fitchburg, held at Fitchburg; Fitchburg and Lunenburg.

The district court of Leominster, held at Leominster; Leominster, Holden and Princeton.

The district court at Winchendon, held at Winchendon; Winchendon, Ashburham, Phillipston, Royalston and Templeton.

Cases of delinquent children under sections 52 to 84, inclusive, of chapter 119 and petitions brought under sections 24 and 39E of said chapter 119 are excepted from the jurisdiction of all of the above courts of this county.

Each division of the district court department may be referred to by the name of the principal place for the holding of that court.

SECTION _____. Section 43 of said chapter 218, as appearing in the 2002 Official Edition, is hereby amended by striking the last sentence.

SECTION _____. Said chapter 218, as amended by section 478 of chapter 26 of the acts of 2003, is hereby further amended by striking section 50 and inserting in place thereof the following section:-

Section 50. The Boston municipal court division of the district court department shall consist of 11 associate justices of the trial court appointed to said division.

The chief justice of the district court department, subject to the approval of the supreme judicial court and the chief justice for administration and management, may make, from time to time, rules for regulating the practice and conducting the business therein in all cases not expressly provided for by law.

The chief justice of the district court department shall have the power to appoint the first justice of the Boston municipal court in accordance with section 6.

SECTION _____. Section 51A of said chapter 218, as amended by section 479 of chapter 26 of the acts of 2003, is hereby repealed.

SECTION _____. Said chapter 218, as appearing in the 2002 Official Edition, is hereby amended by striking section 52 and inserting in place thereof the following section:-

Section 52. In addition to the powers conferred in section 10 of chapter 211B, the chief justice of the district court department may from time to time make assignments for the attendance of a justice at the several times and places appointed for holding court. Said chief justice, or, in case of his death, illness or incapacity, the first justice of the Boston municipal court, if in his opinion the public business so requires, may provide for additional sessions in the division, and for the appointment of special justices to hold such additional sessions.

SECTION _____. Chapter 218 of the General Laws, as amended by section 488 of chapter 26 of the acts of 2003, is hereby further amended by striking section 70 and inserting in place thereof the following section:-

Section 70. Notwithstanding the provisions of any special or general law to the contrary, there shall be one administrative office which shall provide administrative support to both the district court department and the Boston municipal court located within the city of Boston. Such administrative office may employ no more than one tape librarian and two legal counsels, and such other personnel as deemed necessary or appropriate by the chief justice of the district court department.

SECTION _____. Section 80A of said chapter 218, as amended by section 490 of chapter 26 of the acts of 2003, is hereby repealed.

After debate, the President in the Chair, the question on adoption of the amendment was determined by a call of the yeas and nays, at twenty-four minutes before one o'clock PM, on motion of Mr. Lees, as follows, to wit (yeas 17 - nays 21) [**Yeas and Nays No. 548**]:

YEAS.

Brewer, Stephen M.	Melconian, Linda J.
Brown, Scott P.	Moore, Richard T.
Chandler, Harriette L.	O'Leary, Robert A.

Creem, Cynthia Stone Resor, Pamela
Glodis, Guy W. Rosenberg, Stanley C.
Hedlund, Robert L. Sprague, Jo Ann
Joyce, Brian A. Tarr, Bruce E.
Knapik, Michael R. Tisei, Richard R. — 17.
Lees, Brian P.

NAYS.

Antonioni, Robert A. Montigny, Mark C.
Baddour, Steven A. Morrissey, Michael W.
Barrios, Jarrett T. Murray, Therese
Berry, Frederick E. Nuciforo, Andrea F., Jr.
Creedon, Robert S., Jr. Pacheco, Marc R.
Fargo, Susan C. Panagiotakos, Steven C.
Hart, John A., Jr. Shannon, Charles E.
Havern, Robert A. Tolman, Steven A.
Magnani, David P. Tucker, Susan C.
McGee, Thomas M. Wilkerson, Dianne — 21.
Menard, Joan M.

ANSWERED “PRESENT”.

Walsh, Marian — 1.

The yeas and nays having been completed at nineteen minutes before one o'clock PM, the amendment was *rejected*.

Communication.

COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS SENATE
STATE HOUSE, BOSTON 02133-1059

William Welch
Clerk of the Senate
State House, Room 335
Boston, MA 02133

Dear Mr. Clerk,

This correspondence is to inform you that I will be voting present on the amendment that pertains to the reorganization of the Boston Municipal Court due to a conflict of interest.

I request that this statement be printed in the Journal of the Senate.

Thank you very much.

Respectfully,
Marian Walsh
Suffolk & Norfolk District

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

Distinguished Guests.

There being no objection, the President handed the gavel to Senator Baddour who introduced seated in the rear of the Chamber Mayor Mary Ann Clancy of Newburyport.

The President in the Chair, the President recognized, seated in the gallery, members of Project Bread from Braintree. They were the guests of Senator Morrissey.

Ms. Menard in the Chair, Mr. Panagiotakos moved that the bill be amended in Section 2, in item 0339-1001, in line 13 by adding after the word parole the following words:- and probation.

After remarks, the amendment was **adopted**.

Mr. Creedon moves to amend the bill, Senate 2400, by striking section 216 in its entirety.

The amendment was *rejected*.

Mr. Creedon moved that the bill be amended in section 247, in lines 6 and 7, by striking the words, the committee for public counsel services shall enter into a service agreement with a consulting firm to and inserting in place thereof the following:- Probation shall;

In section 247, in lines 8 to 11, the words, the consulting firm shall be selected through a competitive bidding process. The competitive bidding process shall require that all bidders be qualified and experienced in the use of information technology to achieve rapid and accurate retrieval of data comparable to the data needed for this program from systems comparable in size and scope to the systems being used as information resources in this program.

By further amendment, Mr. Creedon moved that the bill be amended in section 247, in line 19, the words, the consultant and inserting in place thereof probation.

By further amendment, Mr. Creedon moved that the bill be amended in section 247, in line 23, the words, and the consultant.

The amendment was *rejected*.

Mr. O'Leary moved that the bill be amended by inserting, after Section 362, the following new Section:-

Section ___. Section 29B of Chapter 217 of the General Laws is hereby amended by striking the last two sentences and inserting in place thereof the following:-

The Judge may designate 1 employee as deputy assistant register with the same powers as assistant register and may revoke any such designation at will. A deputy assistant register shall receive as additional compensation, subject to appropriation, an amount equal to 15 per cent of the annual salary of the Nantucket county register of probate.

The amendment was *rejected*.

Mr. Moore moved that the bill be amended by adding at the end thereof the following new Section:-

SECTION ___. Section 10 of Chapter 218 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after line 24 the following:--

third district court of Southern Worcester, provided, that said position shall only be designated to a trial court employee in said court currently performing the duties and functions of an assistant clerk and shall not be construed as adding any additional positions to the trial court;"

The amendment was *rejected*.

Mr. Creedon moved that the bill be amended by adding at the end thereof the following section:

SECTION ___. Notwithstanding section 6 of chapter 218 of the acts of 2001, the acting clerk-magistrate of the Barnstable division of the district court department shall receive the salary provided for in section 79 of chapter 218 of the General Laws from February 1, 2002 to April 10, 2002, inclusive. The gross amount of salary differential for said time period shall be \$2,701.

In section 2, in line item 0332-1100, by striking out the figure \$518,876 and inserting in place thereof the figure \$521,577.

The amendment was *rejected*.

Ms. Fargo moved that the bill be amended by inserting, after Section ___, the following new Section: -

SECTION ___. Chapter 265 of the General Laws is hereby amended by inserting after Section 13L the following section:-

Section 13M. A person who uses, or causes to be used, an alias, fictitious name or fictitious identification to deceive, mislead or otherwise hide the person's legal identity to another person with the intent to lure, induce, solicit, or invite such other person for the purpose to commit a sex offense shall be punished by imprisonment for not more than 2 ½ years in a house of correction nor more than 5 years in state prison or by a fine of not more than \$5,000, or by both such fine and imprisonment. The term sex offense for the purpose of this section shall have the same respective meaning as defined in Section 178C of Chapter 6.

After remarks, the amendment was *rejected*.

Messrs. Tisei, Lees, Knapik, Tarr, and Brown moved that the bill be amended in section 2, by inserting after item 7004-0099 the following new item:-

7004-1000

For the playground initiative fund, so-called, a grant program for cities and towns of the commonwealth, to provide up to \$10,000 per grant for the acquisition, development, renovation of, or equipment for playgrounds or ball fields; provided, the grants shall be administered by the Department of Housing and Community Development and shall be awarded on a first-come-first serve basis to municipalities submitting applications meeting program requirements.....1,000,000

The amendment was *rejected*.

Ms. Chandler moved that the bill be amended in section 2, in item 7004-0099, by inserting at the end the following wording:-
; provided further, that not less than \$50,000 shall be expended for the Pleasant Street Neighborhood Network Center in the City of Worcester.

The amendment was *rejected*.

Messrs. Brown and Magnani moved that the bill be amended in section 2, item 7004-0099, by inserting after the words community technology centers; the following wording:-

provided further, that \$50,000 may be expended for Cedar Gardens task force in Natick;

The amendment was *rejected*.

Ms. Chandler, Ms. Creem, Messrs. Havern, Brewer, Barrios, Tisei, and Nuciforo moved that the bill be amended, in section 2, in item 7004-3036, by striking out the figure \$400,000 and inserting in place thereof the following figure:- \$505,000.

After remarks, the amendment was **adopted**.

Messrs. Tisei, Tarr and Brown and Mrs. Sprague moved that the bill be amended in section 22 by striking out the words Available revenues from the sale of state surplus lands and inserting in place thereof the following: -

Proceeds allocated by section 35BB of chapter 10 of the general laws, inserted by section 236 of this Act.

The amendment was *rejected*.

Mr. Lees moves to amend the bill in Section 245 by striking out the Section in its entirety.

The amendment was *rejected*.

Mr. Morrissey, Mr. Barrios, Ms. Wilkerson and Mr. Creedon moved that the bill be amended in Section 245 by adding the following words after the word any in sentence 2:- additional;

By striking the word this as it appears in sentence 2 and inserting in place thereof the following words:- a statewide application;

By striking out the words March 31, 2005 as they appear in sentence 5 and inserting in place thereof the following words:- October 1, 2004.; and

By striking out the words December 31, 2005 as they appear in sentence 6 and inserting in place thereof the following words:- March 31, 2005..

The amendment was *rejected*.

Mr. McGee and Ms. Melconian moved that the bill be amended in section 2, by striking out item 7002-0800 and inserting in place thereof the following item:-

7002-0800

For the operation of the board of conciliation & arbitration..... \$725,978.

The amendment was *rejected*.

Mr. Nuciforo moved that the bill be amended in section 2, in item 7006-0010, by striking out the figure 10,596,006 and inserting in place thereof the following figure:- 10,831,630.

The amendment was **adopted**.

Mr. Lees and Mrs. Sprague moved that the bill be amended in item 7006-0020 at the end thereof by striking the figure \$8,685,881 and inserting in place thereof the figure \$9,779,622 and further moves to amend item 7006-0020 by striking the figure \$8,685,881 in the last line thereof and inserting in place thereof the figure \$9,779,622.

The amendment was **adopted**.

Ms. Resor moved that the bill be amended by amending section 2, in line item 7006-0020, in line 16, by inserting after regulations promulgated under section 2 of said chapter 218 the following:- provided further that not less than \$60,000 shall be allocated for administrative support personnel for the Automobile Insurers Appraisal Board.

The amendment was *rejected*.

Messrs. Glodis and Creedon moved that the bill be amended by inserting, after Section 362, the following new section:-
SECTION __. Section 17 of Chapter 176H of the General Laws, in the 2002 Official Edition, is hereby amended by inserting the following sentences at the end thereof:-

Individuals exclusively selling legal service plans under this chapter shall be required to only pass a legal services examination administered by a company registered with the Commissioner under chapter 176H; provided that said examination shall be approved by the Commissioner. 'Legal services examination' for purposes of this section shall mean an examination which solely tests an applicant's knowledge of legal service plans and consumer protection laws regarding legal service plans.
The amendment was *rejected*.

At one o'clock P.M., at the request of Mr. Lees, for the purpose of a minority party caucus, the President declared a recess; and, at two o'clock P.M., the Senate reassembled, the Mr. Havern in the Chair.

Orders of the Day.

The Orders of the Day were considered as follows:-

The House Bill making appropriations for the fiscal year 2005 for the maintenance of the departments, boards, commissions, institutions and certain activities of the Commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements (House, No. 4601),-
was further considered, the main question being on ordering it to a third reading, with the Ways and Means amendment pending

Messrs. Lees, Tisei, Tarr, Knapik and Brown and Mrs. Sprague moved that the bill be amended in Section 2 in item 8200-0200 by striking the figure "2,426,412" and inserting in place thereof the following:- "2,496,050"
The amendment was **adopted**.

Mr. Barrios, Ms. Tucker, Ms. Fargo, Ms. Wilkerson, Mr. Hedlund, Mr. Tolman, Mr. O'Leary, Mr. Tarr, Mr. Tisei, and Ms. Creem moved that the bill be amended by inserting after section 113 the following 2 sections:-

SECTION 113A. Section 6I of chapter 62 of the General Laws, as so appearing, is hereby amended by striking out, in line 53, the word 'five' and inserting in place thereof the following figure:- 10. SECTION 113B. Said section 6I of said chapter 62, as so appearing, is hereby further amended by striking out, in line 54, the figure '2005' and inserting in place thereof the following figure:- 2010; and inserting after section 114 the following 2 sections:-

SECTION 114A. Section 31H of chapter 63 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out, in line 55, the word "five" and inserting in place thereof the following figure:- 10.

SECTION 114B. Said section 31H of said chapter 63, as so appearing, is hereby further amended by striking out, in line 56, the figure '2005' and inserting in place thereof the following figure:-2010; and by striking out sections 353 and 354.
The amendment was **adopted**.

Messrs. Tisei and Tarr, Mrs. Sprague, Ms. Resor, Mr. Brewer, Ms. Creem, Messrs. Creedon, Moore and Barrios, Ms. Murray, Mr. Morrissey, Ms. Wilkerson, Messrs. O'Leary and Joyce, Ms. Walsh and Mr. Rosenberg moved that the bill be amended in section 2, in item 2800-0100, by striking out the figure "\$3,773,905" and inserting in place thereof the figure "\$5,023,416".
The amendment was **adopted**.

Ms. Melconian, Messrs. Montigny, Barrios, Ms. Menard, Messrs. Moore, Ms. Chandler, Messrs. Morrissey, O'Leary, McGee, Nuciforo, Pacheco, Ms. Fargo, Ms. Creem, Ms. Wilkerson, Messrs. Antonioni, Glodis, Rosenberg, Magnani, Tolman, Hart, Shannon and Havern moved that the bill be amended by inserting after section 242 the following section:-

"SECTION 242A. (a) The governor or his designee shall request the United States Department of Health and Human Services to provide a waiver to the office of pharmaceutical information to act as an agent for residents of the commonwealth in providing information regarding the purchase of prescription drugs from the commonwealth and Canadian sources, as provided in sections (b) and (c). Once the waiver is provided, said sections (b) and (c) shall apply

(b) Subject to appropriation, there shall be in the department of public health the office of pharmaceutical information for the purpose of providing information to residents of the commonwealth regarding the purchase of prescription drugs including from Canadian sources, as provided in subsection (a). Notwithstanding any general or special law to the contrary, the office of pharmaceutical information shall act as a central agency through which residents of the commonwealth may obtain information on procuring prescription drugs at reduced prices.

(c) The office, in providing advice on purchasing prescription drugs from Canada, shall establish relationships only with Canadian suppliers that are licensed by appropriate Canadian agencies. The office shall maintain a registry providing the name,

place of business, phone number, fax number, or email address of: the establishment, the manufacturers of the drugs the establishments distribute and of any of the establishment's agents in the United States. The office shall periodically update this information on the establishments.

(d) The office shall provide advice only on prescription drugs that have been approved by appropriate federal agencies in Canada as to the drugs' formulation, source and specification of active ingredients, processing methods, manufacturing controls, container/closure/packaging system, appearance, storage, shipping and handling practices; and the office shall advise only on prescription drugs that are packaged and shipped using tamper-proof containers and are certified by the importer as meeting all the requirements of the bill.

(e) In order to ensure the safety of prescription drugs procured from licensed Canadian pharmacies, the office will only work with consumers in the commonwealth who are purchasing prescriptions that:

- (i) are for personal use only
- (ii) will not be used for resale
- (iii) are for a quantity limited to 90 days or less
- (iv) accompanied by a copy of a valid prescription

(f) The office may conduct, or contract with an entity to conduct, a study of prescription drug imports permitted pursuant to this bill. The study shall include, but not be limited to, evaluation of the importers' compliance with state and federal laws, including Canadian laws.

(g) The office shall serve as a central agent to which any safety concerns or adverse events occur regarding the process of procuring medications from Canada may be reported by Massachusetts consumers and health care professionals. If any safety concerns or adverse events occur with respect to the process of importing prescriptions from Canada, such as if a particular distributor is found to no longer meet the required safety standards, a safety report of the problem shall be filed and a record kept in the office. Consumers and health care providers in the database will be notified of the safety reports by the office.

(h) The office of pharmaceutical information may promulgate a consent agreement explaining the potential risks and injuries associated with obtaining services, materials, or information from the office and disclaiming liability for those risks and injuries. The office may require any resident of the commonwealth to sign the consent agreement before receiving services, information or materials from the office. The office shall keep any signed consent agreement on file.

(i) The office of pharmaceutical information may develop an indemnification agreement designed to indemnify the office for any injury or damage that results from a resident's use of a supplier's product, and hold harmless any pharmacists who rely upon the information contained in the website to advise consumers. The office may require any supplier listed with the office to sign the indemnity agreement before its products are listed with the office. The office shall keep any signed indemnification agreement on file. Chapter 258 of the General Laws shall apply to this section

(j) the department of public health shall promulgate regulations to implement this section, including but not limited to, the process by which the office of pharmaceutical information may determine which pharmacies would be included on the informational website; the certification process, if any, that Massachusetts pharmacists would participate in before advising patients seeking assistance; and any other rules and regulations necessary for implementation of this section."

After debate, Mrs. Sprague in the Chair, the question on adoption of the amendment was determined by a call of the yeas and nays, at a quarter past three o'clock PM, on motion of Mr. Montigny, as follows, to wit (yeas 39-nays 0) **[Yeas and Nays No. 549]:**

YEAS.

Antonioni, Robert A. Menard, Joan M.
Baddour, Steven A. Montigny, Mark C.
Barrios, Jarrett T. Moore, Richard T.
Berry, Frederick E. Morrissey, Michael W.
Brewer, Stephen M. Murray, Therese
Brown, Scott P. 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.	Sprague, Jo Ann
Hedlund, Robert L.	Tarr, Bruce 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 —
	39.
Melconian, Linda J.	

NAYS — 0.

The yeas and nays having been completed at nineteen minutes past three o'clock PM, the amendment was **adopted**.

Messrs. Montigny, Barrios, Ms. Melconian, Ms. Chandler, Messrs. O'Leary, McGee, Ms. Wilkerson, Messrs. Tisei, Nuciforo, and Joyce and moved that the bill be amended by inserting the following 5 sections:-
SECTION ____. Chapter 112 of the General Laws is hereby amended by adding, after section 42A, the following new section:-

Section 42B. Registration and Disclosure of Pharmaceutical Marketing Activities

(a) As used in this section, the following words shall have the following meanings:

Gift, a payment, entertainment, subscription, advance, services or anything of value, unless consideration of equal or greater value is received. Gift" shall not include a commercially reasonable loan made in the ordinary course of business, anything of value received by inheritance, or a gift received from a member of the reporting person's immediate family or from a relative within the third degree of consanguinity of the reporting person or of the reporting person's spouse or from the spouse of any such relative.

"Immediate family", a spouse and any dependent children residing in the reporting person's household.

"Person", a business, individual, corporation, union, association, firm, partnership, committee, or other organization or group of persons.

Pharmaceutical marketer, a person who, while employed by or under contract to represent a pharmaceutical manufacturing company, engages in pharmaceutical detailing, promotional activities, or other marketing of prescription drugs in this state to any physician, hospital, nursing home, pharmacist, health benefit plan administrator, or any other person authorized to prescribe, dispense, or purchase prescription drugs. The term does not include a wholesale drug distributor licensed under section 36A, a representative of such a distributor who promotes or otherwise markets the services of the wholesale drug distributor in connection with a prescription drug, or a retail pharmacist registered under section 37 if such person is not engaging in such practices under contract with a manufacturing company.

Pharmaceutical manufacturing company, any entity which is engaged in the production, preparation, propagation, compounding, conversion, or processing of prescription drugs, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, or any entity engaged in the packaging, repackaging, labeling, relabeling, or distribution of prescription drugs. The term does not include a wholesale drug distributor licensed under section 36A or a retail pharmacist registered under section 37.

Prescription drugs, any and all drugs upon which the manufacturer or distributor has placed or must, in compliance with federal law and regulations, place the following or a comparable warning: Caution federal law prohibits dispensing without prescription.

(b) Every pharmaceutical manufacturing company shall annually disclose to the board of pharmacy the value, nature and purpose of any gift, fee, payment, subsidy or other economic benefit provided in connection with detailing, promotional or other marketing activities by the company, directly or through its pharmaceutical marketers, to any physician, hospital, nursing home, pharmacist, health benefit plan administrator or any other person in the commonwealth authorized to prescribe, dispense, or purchase prescription drugs in this state.

(c) Disclosure shall be made on a form and in a manner prescribed by the board. The board shall provide to the office of the attorney general complete access to the information disclosed under this section. The board, after consultation with the office of the attorney general and subject to paragraph (e), shall report annually to the General Court on the disclosures made under this section on or before March 1 of each year.

(d) Each company subject to the provisions of this section shall also disclose annually to the board the name and address of the individual responsible for the company's compliance with the provisions of this section.

(e) The board of pharmacy and the office of the attorney general shall keep confidential all trade secret information, as determined by the attorney general. The disclosure form prescribed by the board shall permit the company to identify any information that it believes is a trade secret.

(f) Any gift, fee, payment, subsidy or other economic benefit the value of which is less than \$25.00 shall be exempt from disclosure.

(g) The attorney general on behalf of the board may bring an action in superior court for injunctive relief, costs, and attorney's fees, and to impose on a pharmaceutical manufacturing company that fails to disclose as required by this section a civil penalty of no more than \$10,000.00 per violation. Each unlawful failure to disclose shall constitute a separate violation.

(h) The board shall promulgate regulations to implement this section. The board may require, if necessary to the efficient implementation of this section, pharmaceutical manufacturing may collect fees necessary to cover the costs of administering this section.

SECTION ____. Chapter 118E of the General Laws is hereby amended by inserting after section 12 the following sections:

Section 12A.

Consumer Protection Rules; Prior Authorization of Prescription Drugs

(a) Any prior authorization process required by the division before it authorizes coverage for a prescription drug shall comply with the consumer protections in this section and with 42 U.S.C. section 1396r-8(d).

(b) Coverage for a prescription drug that is not covered by the division without prior authorization shall be authorized if a patient's health care provider certifies, in a manner companies to be registered or licensed as a condition of doing business in the commonwealth, and determined by the division, that:

(i) the drug is medically necessary; and

(ii) in the case of a prescription drug that is not the preferred choice in a therapeutic category on the preferred drug list,

(A) the preferred choice has not been effective, or with reasonable certainty is not expected to be effective in treating the patient's condition; or

(B) the preferred choice causes or is reasonably expected to cause adverse or harmful reactions in the patient.

(c) The prescriber's certification concerning whether a particular drug has been ineffective, is expected to be ineffective in treating the patient, or is expected to cause an adverse or harmful reaction shall be final.

(d) (1) The division's prior authorization process shall be designed to minimize administrative burdens on prescribers, pharmacists, and consumers.

(2) The prior authorization process shall ensure real-time receipt of requests, by telephone, voice mail, facsimile, electronic transmission, or mail on a 24-hour basis, seven days a week.

(3) The prior authorization process shall provide an in-person response to emergency requests by a prescriber with telephone answering queues that do not exceed 10 minutes.

(4) Any request for authorization or approval of a drug that the prescriber indicates, including the clinical reasons for the request, is for an emergency or urgent condition shall be responded to in no more than 4 hours from the time the program or participating health benefit plan receives the request.

(5) In emergency circumstances, or if the response to a request for prior authorization is not provided within the time period established in subdivision (4) of this subsection, a 72-hour supply of the drug prescribed shall be deemed to be authorized by the program or the participating health benefit plan, provided it is a prescription drug approved by the United States Food and Drug Administration, and provided, for drugs dispensed to a Medicaid beneficiary, it is subject to a rebate agreement with the Centers for Medicare and Medicaid Services.

(6) The division shall provide to participating providers a prior authorization request form designed to permit the prescriber to make prior authorization requests in advance of the need to fill the prescription, and designed to be completed without unnecessary delay. The form shall be capable of being stamped with information relating to the participating provider and, if feasible, at least one form capable of being copied shall contain known patient information.

(e) The division's prior authorization process shall require that the prescriber, not the pharmacy, request a prior authorization exception to the requirements of this section. The division may exempt a prescriber from the need to secure prior authorization for a specific drug category if the division determines that the prescriber has written a minimum number of scripts in that category, and the prescriber prescribes prescription drugs on the preferred drug list at or above the minimum threshold for that category.

(f) If the patient is denied authorization of coverage, the denial shall be subject to an administrative fair hearing and to all rights under section 14 of chapter 30A of the general laws.

(g) The division shall, using bulletins, manuals, notices or other appropriate means, educate prescribers and pharmacists who treat MassHealth patients about the requirements of the prior authorization process, including the obligations of providers and pharmacists and the rights of consumers.

Section 12B.

Supplemental Rebates

(a) The commissioner, separately or in concert with the authorized representatives of any health benefit plan participating in the prescription drug fair pricing program established by chapter 118H, shall use the division's preferred drug list of prescription drugs covered without a prior authorization requirement to negotiate with pharmaceutical companies for the payment to the commissioner of supplemental rebates or price discounts for Medicaid. The commissioner may also use the preferred drug list to negotiate for the payment of rebates or price discounts in connection with drugs covered under any other health benefit plan within or outside this state participating in the prescription drug fair pricing program established by chapter 118H. Such negotiations and any subsequent agreement shall comply with the provisions of 42 U.S.C. section 1396r-8. The program established by chapter 118H, or such portions of the program as the commissioner shall designate, shall constitute a state pharmaceutical assistance program under 42 U.S.C. section 1396r-8(c)(1)(C). The provisions of this section do not authorize agreements with pharmaceutical manufacturers whereby financial support for medical services covered by the Medicaid program is accepted as consideration for placement of one or more prescription drugs on the preferred drug list or for excluding a drug from any prior authorization requirement.

(b) The commissioner shall provide quarterly reports on the progress of negotiating supplemental rebates pursuant to this section to the joint committee on health care and the house and senate committees on ways and means. By September 1, 2003, the commissioner shall provide with the next occurring quarterly report a cost benefit analysis of alternative negotiation strategies, including strategies used by the state Medicaid agencies in states of Florida and Michigan to secure supplemental rebates and any other alternative negotiation strategy that might secure lower net prescription drug costs.

(c) The commissioner shall prohibit the public disclosure of information revealing company-identifiable trade secrets obtained by the department, and by any officer, employee or contractor of the department in the course of negotiations conducted pursuant to this section. Such confidential information shall be exempt from public disclosure.

Section 12C.

Discount Program Waiver

(a) The division shall seek a prescription drug discount program waiver from the Centers for Medicare and Medicaid Services pursuant to section 1115(a) of the Social Security Act. The prescription drug discount program shall provide eligible individuals with a financial subsidy for prescription drugs equal to the average rebate paid to the Medicaid program by pharmaceutical manufacturers. Eligible individuals shall include Medicare-eligible individuals whose financial eligibility exceeds 188 per cent of federal poverty level and who do not have an insurance policy that covers drugs and other individuals whose financial eligibility does not exceed 300 per cent of the federal poverty level who do not have an insurance program that includes a prescription drug benefit.

(b) The division may establish, as part of the discount program, an annual enrollment fee. Subject to appropriation, the division shall make a payment of at least 2 percent of the cost of each prescription or refill dispensed to individuals enrolled in the program.

(c) In implementing the program, the division may contract with a nonprofit corporation or other entity to administer the program. Such corporation or entity shall agree to assist individuals enrolled in the program to access other free or discount prescription drug programs offered by private entities, including pharmaceutical manufacturers.

(d) The division shall report to the house and senate committees on ways and means and the joint committee on health care, not later than 60 days after the effective date of this section, on the division's progress in implementing this section and shall report every 90 days thereafter on its progress in obtaining the waiver to those committees.

SECTION __. The General Laws are hereby amended by inserting the following new chapter:

Chapter 118H.

The Massachusetts Prescription Drug Fair Pricing Program

Section 1.

Program Established

(a) There is hereby established a program to reduce the cost to the Commonwealth of providing prescription drugs to its citizens while maintaining high quality in prescription drug therapies. The program shall include, but shall not be limited to, the following components:

- (1) the development and use of a statewide, uniform preferred list of covered prescription drugs that identifies preferred choices within therapeutic classes for particular diseases and conditions, including generic and therapeutic equivalents;
- (2) the creation of a single purchasing unit for the purchase of prescription drugs by the commonwealth;
- (3) the use of strategies to negotiate with pharmaceutical manufacturers to lower the cost of prescription drugs for program participants, including a supplemental rebate program;
- (4) the development of educational programs, including a counterdetailing program, designed to provide information and education on the therapeutic and cost-effective utilization of prescription drugs to consumers, physicians, pharmacists and other health care professionals authorized to prescribe and dispense prescription drugs;
- (5) the utilization of any available cost containment tools that meet program objectives by reducing the cost to the commonwealth of obtaining and providing prescription drugs, including clinical management tools, utilization review procedures, a prior authorization review process, duplicate prescription monitoring, and refill and supply controls;
- (6) the observance of consumer protection rules to maintain high quality in prescription drug therapies and to protect access to needed prescriptions; and
- (7) the operation of a discount program to provide the benefit of negotiated price discounts to uninsured citizens.

(b) The following state agencies shall participate in the program authorized in this chapter, to the extent permitted by federal law:

- (1) the division of medical assistance;
- (2) the executive office of elder affairs;
- (3) the group insurance commission;
- (4) the department of public health;
- (5) the department of mental health;
- (6) the department of mental retardation;
- (7) the department of corrections; and
- (8) the division of employment and training.

(c) Any other public or private health benefit plan that purchases prescription drugs may elect to participate in all or portions of the program.

Section 2.

Bulk Purchasing Agreements

(a) State agencies and other participants in the program shall act as a single purchasing unit for the negotiation of a contract to purchase prescription drugs on behalf of the commonwealth.

(b) The prescription drug procurement unit created by section 62 of chapter 177 of the Acts of 2001 shall implement all or part of the program to the extent permitted by federal law. The secretary of the executive office of elder affairs, the commissioner of the group insurance commission and the commissioners of the departments of public health, mental health and mental retardation may renegotiate or amend existing contracts for the purchase of prescription drugs, including a contract made in conformance with said section 62, if such renegotiation or amendment is necessary to implement all or part of the program and will be of economic benefit to the health benefit plans subject to such contracts, and to the beneficiaries of such plans. Any renegotiated or substituted contract shall be designed to improve the overall quality of integrated health care services provided to beneficiaries of such plans.

Section 3.

Pharmaceutical Benefits Manager

(a) State agencies and other participants in the program may contract with a third party pharmacy benefit manager to assist in implementation of the program. Such pharmacy benefit manager shall be a non-profit corporation with expertise in the management of pharmacy benefits.

(b) No contract shall be signed with a pharmacy benefit manager unless the pharmacy benefit manager has agreed to disclose to the commonwealth, in a manner that preserves the confidentiality of any proprietary information:

- (1) operating statements of the pharmacy benefit manager;
- (2) total revenue attributable to pharmaceutical manufacturer rebates and total revenue not attributable to pharmaceutical manufacturer rebates;
- (3) all sources of rebate revenue and non-rebate revenue, and amounts of revenue from such sources;
- (4) rebate management fees collected;
- (5) the terms and conditions of any contract with any subcontractor, including contracts with the pharmacy benefit manager's pharmacy network; and
- (6) the terms and conditions of any sale or exchange of prescription drug data concerning beneficiaries or the prescribing practices of the providers.

(c) No contract shall be signed with a pharmacy benefit manager that has entered into an agreement or engaged in one or more of the following practices unless a majority of state agency participants in the program determines, after consideration of all relevant circumstances, that such agreement or practice furthers the financial interests of the commonwealth, and does not adversely affect the financial or medical interests of beneficiaries:

- (1) any agreement with a pharmaceutical manufacturer to favor the manufacturer's products over a competitor's products, or to switch the drug prescribed by the patient's health care provider with a drug agreed to by the pharmacy benefit manager and the manufacturer;
- (2) any agreement with a pharmaceutical manufacturer to share manufacturer rebates and discounts with the pharmacy benefit manager, or to pay soft money, so-called, or other economic benefits to the pharmacy benefit manager;
- (3) any agreement to share revenue with a mail order or internet pharmacy company;
- (4) any agreement or practice to bill the commonwealth's health benefit plans for prescription drugs at a cost higher than the pharmacy benefit manager pays the pharmacy; or
- (5) any agreement to sell prescription drug data concerning beneficiaries, or data concerning the prescribing practices of health care providers.

Section 4.

Cost Containment Tools

(a) The program shall include the following components:

(1) A preferred list of covered prescription drugs that identifies preferred choices within therapeutic classes for particular diseases and conditions, including generic alternatives.

(i) The preferred drug list shall be implemented as a uniform, statewide, preferred drug list for use by state agencies participating in the program and health benefit plans in the Commonwealth shall be encouraged to participate in the program.

(ii) The program may utilize the MassHealth Drug List developed by the division of medical assistance as its preferred drug list. In order to assist the state agencies participating in the program with the development, modification and timely revision of the preferred drug list, such agencies shall appoint a Drug List Review Board. The board may be comprised in whole or in part of representatives of state agencies, including the Drug Use Board established by the division of medical assistance pursuant to federal law, or may be established by contract with a public or private non-profit organization. The board shall:

(A) make recommendations for the adoption and maintenance of the preferred drug list based upon considerations of clinical efficacy, safety, and cost-effectiveness;

(B) meet at least quarterly;

(C) to the extent feasible, review all drug classes included in the preferred drug list at least every 12 months, and recommend additions to or deletions from the preferred drug list;

(D) establish board procedures for the timely review of prescription drugs newly approved by the federal Food and Drug Administration, including procedures for the review of newly-approved prescription drugs in emergency circumstances, including early refill review standards, a prior authorization review process, duplicate prescription monitoring, and quality and supply controls;

(E) encourage health benefit plans to implement the preferred drug list as a uniform, statewide preferred drug list by inviting the representatives of each health benefit plan providing prescription drug coverage to residents of the commonwealth to participate as observers or nonvoting members in the commissioners drug utilization review board, and by inviting such plans to use the preferred drug list in connection with the plans' prescription drug coverage.

(iii) Members of the board shall receive per diem compensation and reimbursement of board related expenses. The board shall consult with a preferred drug list advisory group which shall include 1 designee of the commissioner of mental health; 1 designee of the commissioner of public health; 1 designee of the secretary of the executive office of elder affairs; 1 physician with experience treating MassHealth patients; 1 practicing pediatrician with experience treating MassHealth patients; 1 practicing pharmacist with experience serving MassHealth patients; 1 pharmacologist with expertise in psychiatric drugs; 1 representative of a senior citizens advocacy group; 1 representative of a disability advocacy group; and 1 representative of a statewide advocacy group representing the interests of MassHealth members.

(2) A series of educational programs including a counterdetailing program, designed to provide information and education on the therapeutic and cost-effective utilization of prescription drugs to consumers, physicians, pharmacists and other health care professionals authorized to prescribe and dispense prescription drugs.

(3) Consideration of alternative pricing mechanisms including consideration of using maximum allowable cost pricing for generic and other prescription drugs.

(4) Consideration of alternative coverage terms, including consideration of providing coverage of over-the-counter drugs where cost-effective in comparison to prescription drugs, and authorizing coverage of dosages capable of permitting the consumer to split each pill if cost-effective and medically appropriate for the consumer.

(5) Development of a simple, uniform prescription form, designed to implement the preferred drug list, and to enable prescribers and consumers to request an exception to the preferred drug list choice with a minimum of cost and time to prescribers, pharmacists and consumers.

Section 5.

Consumer Protection Rules

(a) The program shall authorize pharmacy benefit coverage when a patient's health care provider prescribes a prescription drug not on the preferred drug list, if a patient's health care provider certifies that:

(i) the drug is medically necessary; and

(ii) in the case of a prescription drug that is not the preferred choice in a therapeutic category on the preferred drug list,

(A) the preferred choice has not been effective, or with reasonable certainty is not expected to be effective in treating the patient's condition; or

(B) the preferred choice causes or is reasonably expected to cause adverse or harmful reactions in the patient.

(b) The prescriber's certification concerning whether a particular drug has been ineffective, is expected to be ineffective in treating the patient, or is expected to cause an adverse or harmful reaction shall be final.

(c) The program shall authorize coverage notwithstanding any prior authorization requirement if the patient agrees to pay any additional cost in excess of the benefits provided by the patient's health benefit plan. The provisions of this paragraph shall not apply in circumstances in which their application is inconsistent with federal Medicaid laws and regulations. The provisions of this paragraph shall not affect implementation by a participating health benefit plan of tiered co-payments or other similar cost sharing systems.

(d) The program or any participating health benefit plan shall provide information on how prescribers, pharmacists, beneficiaries, and other interested parties can obtain a copy of the preferred drug list, whether any change has been made to the preferred drug list since it was last issued, and the process by which exceptions to the preferred list may be made.

(e)(1) The program's prior authorization process shall be designed to minimize administrative burdens on prescribers, pharmacists, and consumers.

(2) The prior authorization process shall ensure real-time receipt of requests, by telephone, voice mail, facsimile, electronic transmission, or mail on a 24-hour basis, seven days a week.

(3) The prior authorization process shall provide an in-person response to emergency requests by a prescriber with telephone answering queues that do not exceed 10 minutes.

(4) Any request for authorization or approval of a drug that the prescriber indicates, including the clinical reasons for the request, is for an emergency or urgent condition shall be responded to in no more than 4 hours from the time the program or participating health benefit plan receives the request.

(5) In emergency circumstances, or if the response to a request for prior authorization is not provided within the time period established in subdivision (4) of this subsection, a 72-hour supply of the drug prescribed shall be deemed to be authorized by the program or the participating health benefit plan, provided it is a prescription drug approved by the United States Food and Drug Administration, and provided, for drugs dispensed to a Medicaid beneficiary, it is subject to a rebate agreement with the Centers for Medicare and Medicaid Services.

(6) The program or participating plan shall provide to participating providers a prior authorization request form designed to permit the prescriber to make prior authorization requests in advance of the need to fill the prescription, and designed to be completed without unnecessary delay. The form shall be capable of being stamped with information relating to the participating provider and, if feasible, at least one form capable of being copied shall contain known patient information.

(f) The program's prior authorization process shall require that the prescriber, not the pharmacy, request a prior authorization exception to the requirements of this section. The program may exempt a prescriber from the need to secure prior authorization for a specific drug category if the program determines that the prescriber has written a minimum number of scripts in that category, and the prescriber prescribes prescription drugs on the preferred drug list at or above the minimum threshold for that category.

(g) If the patient is denied authorization of coverage, the denial shall be subject to an administrative fair hearing and to all rights under section 14 of chapter 30A of the general laws.

Section 6.

Discount Card Program.

(a) The commissioner of health and human services or another commissioner of a participating state agency designated by program participants shall implement a pharmacy discount plan, to be known as the Healthy Massachusetts Discount Card Plan, for residents without adequate coverage for prescription drugs. As used in this section, a resident without adequate coverage means a resident of the commonwealth with no insurance coverage for prescription drugs or with coverage for which the annual maximum coverage limit under his health benefit plan has been reached. Such plan shall establish a system through which residents without adequate coverage are able to take advantage of discounted prices for prescription drugs negotiated pursuant to this chapter. Such commissioner shall implement the pharmacy discount program authorized by this section without any financial contribution by the state, and may establish an enrollment fee in such amount as is necessary to support the administrative costs of the plan. The plan shall be designed to work cooperatively with other state prescription drug assistance programs, including any program created pursuant to a discount program waiver granted by the Centers for Medicare and Medicaid Services to the division of medical assistance. Such commissioner may contract with a nonprofit corporation or other entity to administer the program. Such corporation or entity shall agree to assist individuals eligible for the program to access other free or discount prescription drug programs offered by private entities, including pharmaceutical manufacturers.

Section 7.

Reporting and Legislative Oversight

(a) The commissioner of health and human services or another commissioner of a participating state agency designated by program participants shall report quarterly to the joint committee on health care and the house and senate committees on ways and means on progress of the program in implementing a single state purchasing unit for prescription drugs pursuant to section 2. The report shall provide a status report on the formation of or operation of the contract negotiated pursuant to section 2, and shall identify any barriers to full implementation of section 2 and recommend any changes to the program or other legislative changes advisable to

eliminate such barriers. The report shall also report on the program's progress in securing the participation of other health benefit plans with the commonwealth by means of joint purchasing agreements to enhance the commonwealth's purchasing power.

(b) Each year for the duration of the pharmacy benefit manager contract pursuant to section 3, the commissioner of health and human services or another commissioner of a participating state agency designated by program participants shall provide a status report on the contract and the operations of the pharmacy benefit manager to the joint committee on health care and the house and senate committees on ways and means. The report shall include:

- (1) a description of the activities of the pharmacy benefit manager;
- (2) an analysis of the success of the pharmacy benefit manager in achieving each of the department's public policy goals, together with the pharmacy benefit manager's report of its activities and achievements;
- (3) an assessment, based upon information learned in contracting with the pharmacy benefits manager, of administrative costs relating to prescription drug benefits in the Medicaid program and the Prescription Advantage program established pursuant to section 39 of chapter 19A, including any recommendations for increasing the administrative efficiency of such programs;
- (4) any recommendations for enhancing the benefits of or minimizing inefficiencies of the pharmacy benefit manager contract or advancing the commonwealth's public policy goals relating to pharmaceutical costs, quality and access;
- (5) a fiscal report on the costs and savings to the commonwealth of the pharmacy benefit manager contract, including the information disclosed pursuant to paragraph (b) of section 3, in a manner that preserves the confidentiality of any proprietary information; and
- (6) if the pharmacy benefit manager engages in any of the activities described in paragraph (c) of section 3, an explanation of the reasons for finding that such agreement or practice furthers the financial interests of the commonwealth, and does not adversely affect the financial or medical interests of beneficiaries.

(c) The commissioner of health and human services or another commissioner of a participating state agency designated by program participants shall report quarterly to the joint committee on health care and the house and senate committees on ways and means concerning the cost containment aspects of the program undertaken pursuant to section 4. Such report shall include:

- (1) a copy of the preferred drug list, an explanation of the list, a summary of the operation of the prior authorization process or any other cost savings measures instituted as a part of the list, and an estimate of expected cost savings as a result of the preferred drug list;
- (2) a description of the efforts undertaken to educate consumers and health care providers about the preferred drug list and the program's utilization review procedures;
- (3) a description of the efforts undertaken to establish programs to educate health care providers about the costs of prescribing patterns, including counterdetailing programs;
- (4) a report of other cost containment strategies undertaken, including, but not limited to, alternative pricing mechanisms and alternative coverage terms, the expected savings from such strategies, and the effect of such strategies on access to prescription drugs for consumers; and
- (5) a status report on the development of a uniform prescription form and any barriers to such development.

(d) The joint committee on health care shall closely monitor implementation of the program, including the preferred drug list and utilization review procedures, to ensure that the consumer protection standards are not diminished as a result of implementing the preferred drug list and the utilization review procedures, including any unnecessary delay in access to appropriate medications. Such joint committee shall, by means of an oversight hearing or otherwise, ensure that all affected interests, including consumers, health care providers, pharmacists and others with pharmaceutical expertise have an opportunity to comment on the operation of the program, the preferred drug list, and other procedural aspects of the program.

SECTION ____. The commissioner of the division of medical assistance, the secretary of the executive office of elder affairs, the commissioner of the group insurance commission and the commissioners of state agencies participating in the Massachusetts prescription drug fair pricing program established by chapter 118H of the general laws shall take all steps necessary to enable the commonwealth to participate in joint prescription drug purchasing agreements with other states and other health benefit plans. Such steps shall include:

- (1) Active collaboration with the National Legislative Association on Prescription Drug Prices in the Association's efforts;
- (2) Active collaboration with the Pharmacy RFP Issuing States Initiative, so-called, organized by the West Virginia Public Employees Insurance Agency; and
- (3) The execution of any joint purchasing agreements or other contracts with any health benefit plan or organization within or outside the state which such commissioners determines will lower the cost of prescription drugs for the commonwealth and its citizens while maintaining high quality in prescription drug therapies.

SECTION ____ (a) The General Court finds that the National Legislative Association on Prescription Drug Prices is a nonprofit organization of legislators formed for the purpose of making prescription drugs more affordable and accessible to citizens of the member states, including the commonwealth. The General Court further finds that the activities of the Association provide a public benefit to the people of the commonwealth.

(b) Three members of the senate, including one member of the minority party, shall be appointed directors of the Association by the senate president, and three members of the house of representatives, including one member of the minority party, shall be appointed directors of the Association by the speaker of the house. Directors so appointed shall serve until new members are appointed.

(c) The directors of the Association shall report to the house and senate committees on ways and means and the joint committees on health care and insurance on or before January 1 of each year with a summary of the activities of the Association, and any findings and recommendations for making prescription drugs more affordable and accessible to citizens of the commonwealth.

After debate, Mr. Havern in the Chair, the question on adoption of the amendment was determined by a call of the yeas and nays, at twenty-three minutes past three o'clock PM, on motion of Mr. Montigny, as follows, to wit (yeas 39-nays 0) **[Yeas and Nays No. 550]:**

YEAS.

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

39.

Sprague, Jo Ann

NAYS — 0.

The yeas and nays having been completed at twenty-six minutes past three o'clock PM, the amendment was **adopted.**

Mr. Creedon asked unanimous consent the no action having been taken on Amendment No. 425; **but objection was made thereto by Mr. Lees.**

Subsequently, Mr. Creedon moved reconsideration, and after debate, this motion prevailed.

Subsequently, Mr. Lees doubted the vote and asked for a call of the yeas and the nays, and the question on the motion to reconsider was determined by a call of the yeas and nays, at twenty-two minutes before four o'clock PM, on motion of Mr. Lees, as follows, to wit (yeas 25-nays 14) **[Yeas and Nays No. 551]:**

YEAS.

Antonioni, Robert A.	Menard, Joan M.
Berry, Frederick E.	Montigny, Mark C.
Brewer, Stephen M.	Morrissey, Michael W.
Chandler, Harriette L.	Nuciforo, Andrea F., Jr.
Creedon, Robert S., Jr.	Pacheco, Marc R.
Creem, Cynthia Stone	Panagiotakos, Steven C.
Fargo, Susan C.	Rosenberg, Stanley C.
Glodis, Guy W.	Shannon, Charles E.
Hart, John A., Jr.	Tarr, Bruce E.
Havern, Robert A.	Tolman, Steven A.
Magnani, David P.	Walsh, Marian
McGee, Thomas M.	Wilkerson, Dianne —
Melconian, Linda J.	25.

NAYS.

Baddour, Steven A.	Moore, Richard T.
Barrios, Jarrett T.	Murray, Therese
Brown, Scott P.	O'Leary, Robert A.
Hedlund, Robert L.	Resor, Pamela
Joyce, Brian A.	Sprague, Jo Ann
Knapik, Michael R.	Tisei, Richard R.
Lees, Brian P.	Tucker, Susan C. — 14.

The yeas and nays having been completed at eighteen minutes before four o'clock PM, the motion prevailed. The amendment was then **adopted**.

Mr. Magnani in the Chair, Messrs. Montigny, Barrios, Melconian, Ms. Chandler, Messrs. O'Leary, McGee, Ms. Wilkerson, Messrs. Nuciforo, and Joyce moved that the bill be amended by inserting after section 8A the following new section: - SECTION 8B. Said chapter 6A is hereby further amended by inserting after section 16 the following section:-

Section 16A ½. (A) Notwithstanding any general or special law to the contrary, the Secretary of Health and Human Services in consultation with the Secretary of Elder Affairs shall create a program to allow state employees, retirees and their family members who are insured by the Commonwealth, Mass Health recipients and Prescription Advantage enrollees to purchase their prescription medications from Canada through one or more licensed Canadian pharmacies within 90 days of such purchase becoming legal under federal law. The program shall be optional for participants and shall provide financial incentives to enrollees in the form of reduced co-payments or health insurance premiums.

The program shall have the following restrictions:

- 1) Purchases may be made only through a licensed Canadian pharmacy;
- 2) Only drugs that have been approved by the appropriate federal agencies in Canada as to the drugs' formulation, source and specification of active ingredients, processing methods, manufacturing controls, and the container, closure or packaging of the drug may be purchased through this program;
- 3) The Secretary shall establish standards for packaging and shipment of the drugs to participants that include tamper proof requirements and temperature controls for medications that need to be maintained at a specific temperature;
- 4) All purchases through this program must be accompanied by a valid prescription from the enrollee's physician;
- 5) An enrollee may only purchase medications through this program that he or she has taken for at least 30 days as purchased from a pharmacy in the United States;
- 6) Medications purchased through this program may be for personal use only and may not be re-sold in any form; and

7) Purchases may be for no more than a 90-day supply per order.

B) Within 90 days of the establishment of this program, the Secretary of Human Services shall expand the program to assist residents of the Commonwealth without adequate coverage for prescription drugs in purchasing their medications from the same licensed pharmacy or pharmacies in Canada. For the purposes of this section, a resident without adequate coverage means a resident of the commonwealth with no insurance coverage for prescription drugs or with coverage for which the annual maximum coverage limit under his health benefit plan has been reached. All the same requirements of subsection A shall apply. The Secretary may establish an enrollment fee to cover administrative costs of the program for these residents, but all cost savings shall be realized by the enrollee.

C) Any aggregate or bulk purchasing program operated by the secretary of health and human services for the purchase of prescription drugs under section 271 of chapter 127 of the acts of the Acts of 1999 or section 62 of chapter 177 of the Acts of 2001 or any other authority shall include an option for participants to purchase drugs from Canada through the program authorized by this section in order to maximize cost savings of the aggregate purchasing plan.

D) Within 180 days of the establishment of the initial program, the secretary shall file a report with the House and Senate Committees on Ways and Means and the House and Senate Clerk detailing the number of participants in the program, a break down of participants by insurance group, the medications purchased through the program, the amount of savings realized by the Commonwealth, the amount of savings passed on to enrollees and any reports of safety concerns in the implementation of this program.

E) The Secretary shall discontinue the program when medications purchased through the program can be purchased for comparable prices through Massachusetts' pharmacies. The Secretary shall determine if prices are comparable by comparing the cost of the 20 medications most commonly purchased through the program with the cost of the same 20 medications purchased by those insured by the Commonwealth who are not enrolled in the program. The Secretary shall consider prices comparable if the average cost of these 20 medications purchased outside the program are no more than 10% more expensive than the cost of the medications purchased through the program including shipping and handling costs. The Secretary shall annually compare prices in this manner to determine if such comparability exists. When the Secretary has determined that discontinuing the program is appropriate under the requirements of this section, he shall notify all enrollees, the Joint Committee on Health Care, the House and Senate Committees on Ways and Means and the House and Senate Clerk 30 days prior to discontinuing the program.

The question on adoption of the amendment was determined by a call of the yeas and nays, at sixteen minutes before four o'clock PM, on motion of Mr. Lees, as follows, to wit (yeas 38-nays 1) [**Yeas and Nays No. 552**]:

YEAS.

Antonioni, Robert A.
Baddour, Steven A.
Barrios, Jarrett T.
Berry, Frederick E.
Brewer, Stephen M.
Chandler, Harriette L.
Creedon, Robert S., Jr.
Creem, Cynthia Stone
Fargo, Susan C.
Glodis, Guy W.
Hart, John A., Jr.
Havern, Robert A.
Hedlund, Robert L.
Joyce, Brian A.
Knapik, Michael R.
Lees, Brian P.
Magnani, David P.
McGee, Thomas M.
Melconian, Linda J.

Menard, Joan M.
Montigny, Mark C.
Moore, Richard T.
Morrissey, Michael W.
Murray, Therese
Nuciforo, Andrea F., Jr.
O'Leary, Robert A.
Pacheco, Marc R.
Panagiotakos, Steven C.
Resor, Pamela
Rosenberg, Stanley C.
Shannon, Charles E.
Sprague, Jo Ann
Tarr, Bruce E.
Tisei, Richard R.
Tolman, Steven A.
Tucker, Susan C.
Walsh, Marian
Wilkerson, Dianne — **38.**

NAY.

Brown, Scott P. — 1.

The yeas and nays having been completed at twelve minutes before four o'clock PM, the amendment was **adopted**.

At eleven minutes before four o'clock P.M., the Chair (Mr. Magnani) for the purpose of a majority and minority party caucuses, declared a recess; and, at twenty-four minutes past four o'clock P.M., the Senate reassembled, the Mr. Havern in the Chair.

Orders of the Day.

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

The House Bill making appropriations for the fiscal year 2005 for the maintenance of the departments, boards, commissions, institutions and certain activities of the Commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements (House, No. 4601),- was further considered, the main question being on ordering it to a third reading, with the Ways and Means amendment pending.

Mr. Moore moves to amend the bill by adding at the end thereof the following new Section:-

SECTION__ . Section 197 of Chapter 184 of the Acts of 2002 is hereby amended by inserting after "any" and before "substance" the following: -

"beverages with added artificial or refined sweeteners; candy; processed foods containing more than 35 percent of calories from fat, more than 10 percent of calories from saturated fat, or more than 35 percent sugar by weight; fast food restaurants; or any"

The question on adoption of the amendment was determined by a call of the yeas and nays, at a half past four o'clock PM, on motion of Mr. Moore, as follows, to wit (yeas 38-nays 1) [**Yeas and Nays No. 553**]:

YEAS.

Antonioni, Robert A.	Melconian, Linda J.
Baddour, Steven A.	Menard, Joan M.
Barrios, Jarrett T.	Montigny, Mark C.
Berry, Frederick E.	Moore, Richard T.
Brewer, Stephen M.	Morrissey, Michael W.
Brown, Scott P.	Murray, Therese
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.	Sprague, Jo Ann
Hedlund, Robert L.	Tarr, Bruce 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 — 38.

NAY.

Nuciforo, Andrea F., Jr. — 1.

The yeas and nays having been completed at twenty-four minutes past four o'clock PM, the amendment was **adopted**.

Messrs. Creedon and Joyce moved that the bill be amended by adding at the end thereof the following section:

"SECTION. Section 1 of chapter 188 of the General Laws, as amended by chapter 174 of the Acts of 2002, is hereby further amended by striking out any reference to the figure "\$300,000" and inserting in place thereof, in each instance, the following figure: - \$500,000.

SECTION 2. Section 1A of said chapter 188, as amended by chapter 174 of the Acts of 2002, is hereby further amended by striking out any reference to the figure "\$300,000" and inserting in place thereof, in each instance, the following figure: - \$500,000.

SECTION 3. This act shall apply to declarations of homestead recorded or filed for registration pursuant to section 1 or 1A of chapter 188 of the General Laws before, on, or after the effective date of this act, but the increase in the amount of homestead protection for declarations recorded or filed for registration before the effective date of this act shall not have priority over, and shall be subordinate to, any lien, right or interest recorded or filed for registration before the effective date of this act."

After remarks, the amendment was **adopted**.

Mr. Brewer moved that the bill be amended by adding the following new Section:-

SECTION _____. Chapter 148 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after Section _____ the following section:-

Section _____. Notwithstanding any general or special law to the contrary, the Board of Fire Prevention Regulations, established under the provisions of section 4 of chapter 22D of the General Laws, in consultation with, as necessary, the Massachusetts Fire Training Council, established under the provisions of section 164 of chapter 6 of the General Laws, the Massachusetts Fire Service Commission, established under the provisions of section 165B of Chapter 6 of the General Laws, the Massachusetts Fire Safety Commission, established under the provisions of section 200 of chapter 6 of the General Laws, the Board of Building Regulations and Standards, established under the provisions of section 94 of chapter 143 of the General Laws, and the Secretary of Public Safety or his designee, shall promulgate rules and regulations including, but not limited to, the following:

- (1) establishing a nightclub fire safety training program and training materials for employees of every building or structure, or portions thereof, of public assembly with a capacity of 50 persons or more, designed or used for occupancy as a nightclub, dance hall, discotheque, bar or similar purpose;
- (2) establishing and promoting education in the proper use and storage of all forms of fire extinguishers and other similar fire suppressant apparatus for the owners, lessees and mortgagees of all buildings certified under the state building code;
- (3) establishing, in conjunction with the Executive Office of Economic Affairs, methods for owners, lessees, and mortgagees in possession or control of a building or structure, or portions thereof, of public assembly with a capacity of 50 persons or more, designed or used for occupancy as a nightclub, dance hall, discotheque, bar or similar purpose, to install automatic sprinklers at discounted rates, including, but not limited to, no-interest or low-interest loans and insurance cost-containment measures;
- (4) establishing methods for the proper tracking and certification of pyrotechnic displays, and for the usage of fog, hazing, or other fog-producing apparatus, so-called, in all places of public assembly; improving luminescence of egress routes and the widening or upgrading of main exit doors in all places of public assembly; establishing requirements that "balanced design", so-called, be employed in the future construction of large entertainment venues, such as theatres, convention centers and arenas, prohibiting the use of non-flame retardant foam plastics, and of non-flame retardant acoustic materials, in all places of public assembly; and establishing standards, based upon current technology and science, on the proper use of fire-resistant acoustic materials in all places of public assembly; and
- (5) establishing an advisory council on fire safety building materials for the purpose of incorporating comprehensive flame-retardant material standards into the 7th Edition of the State Building Codes. The advisory council shall include a representative from each of the agencies listed in Section _____, together with a representative of the American Fire Safety Council and the Massachusetts Fire Chiefs Association. The advisory council shall also recommend, to the Board of Building Regulations and Standards, flame-retardant material standards that should be incorporated as emergency amendments to the 6th Edition of the State Building Codes.

After remarks, the amendment was **adopted**.

Messrs. Montigny, Moore, Ms. Wilkerson, Mr. Barrios, Ms. Creem, Messrs. Tisei, Tarr, Brown, Ms. Chandler, Ms. Melconian, Messrs. O'Leary, Morrissey, McGee, Joyce, Hart, Havern, Ms. Fargo, Messrs. Nuciforo, Antonioni, Tolman, Ms. Tucker and Ms. Resor moved that the bill be amended, in section 2, in item 4000-0870 by striking out the figure "\$111,642,118" and inserting in place thereof the figure "\$117,242,118;"

And that the bill be further amended by adding the following sections:

"SECTION _____. Section 16D of chapter 118E of the General Laws, as amended by section 322 of chapter 26 of the acts of 2003, is hereby further amended by striking subsection (2) and (3) and inserting in place thereof the following subsections:-

(2) A person who is not a citizen of the United States but who is either a qualified alien within the meaning of section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 or is otherwise permanently residing in the United States under color of law may receive different benefits which shall be not less than the same benefits provided to the eligibility group described in subsection (2)(g) of section 9A of chapter 118E of the General Laws, unless such person:

- (i) is residing in a nursing facility, as defined by 42 U.S.C. section 1396, as of June 30, 1997;
- (ii) was receiving services or benefits pursuant to this chapter as of June 30, 1997;
- (iii) had an application for long-term care services pending on July 1, 1997; or
- (iv) is eligible for federally reimbursed services or benefits; provided, however, that services or benefits other than emergency services shall not be provided to undocumented aliens unless required by federal law.

(3) Benefits for aliens under this section shall not be provided to persons age 19 through age 64 unless such aliens are disabled; but benefits shall not be terminated for persons described in clauses (i), (ii), (iii) and (iv) of subsection (2)."

"SECTION _____. Notwithstanding any general or special law to the contrary, an amount equal to \$5,600,000 from the Federal Medicaid Assistance Percentage Escrow Fund, established by section 14A of chapter 101 of the acts of 2003, and amended by section 1 of chapter 118 of the acts of 2003, shall be designated for expenditure in fiscal year 2005, and shall not contribute to the calculation of the fiscal year 2004 consolidated net surplus, as calculated by the state comptroller as of June 30, 2004, pursuant to section 5C of chapter 29 of the General Laws. Not later than 15 days after the effective date of this act the state comptroller is hereby authorized and directed to transfer said amount from said fund to the General Fund."

After remarks, the amendment was **adopted**.

Messrs. Lees, Tisei, Tarr, Knapik, Brown, Brewer and Joyce and Mrs. Sprague moved that the bill be amended by inserting at the end thereof the following new section:-

"SECTION _____. Chapter 71 of the General Laws is hereby amended by adding the following section:

Section 90.

Prevention of Bullying

The following words and phrases, as used in this section, shall have the following meaning unless context requires otherwise:

(a) "bullying" shall include all forms of harassment and shall be defined as repeated acts, either physical, verbal, written or otherwise, directly or indirectly committed against the will of an individual which causes distress to that individual and/or the loss of esteem, sense of self worth, or damage to the psyche to that individual. The Department of Education, or its successors or assigns, is required to create mandates to all educational systems within its realm of authority to establish a plan which has the objective to establish and maintain an environment for students which is safe, conducive to learning, positive and free of disruption and bullying, in particular. At a minimum, this plan is to incorporate the following features which will be uniformly applied in the Commonwealth of Massachusetts and are described in more detail below: a framework for antibullying policy of no tolerance, a hierarchy for responsibilities and accountability for teachers and administrators, a method for identification and measuring the students' environment at school and in after school environments, a curriculum and continuing professional education on bullying, reporting requirements, safe havens to mitigate legal exposure, a process for improvements and enhancements.

(b) Framework - All districts will establish an antibullying policy which has zero tolerance. Students and their parents or guardians will be required to review and acknowledge a standard Code of Conduct at the beginning of each year, which sets the expectations for behavior and establishes guidelines for disciplinary action. Such Code of Conduct will be applicable in all situations between one or more students regardless of where they occur, whether written, oral or physical in nature. For documented violations of this Code of Conduct, a graduated "4 strike" system will be established as follows:

- (i) First offense - Notification of student and parent and corrective action meeting to be held
- (ii) Second offense - One day automatic suspension
- (iii) Third offense - One week automatic suspension
- (iv) Fourth offense - expulsion for the balance of the school years

(c) Responsibility and Accountability - The DOE will establish a clear hierarchy of responsibility of implementation of this legislation. Superintendents in each district are to be ultimately responsible, followed by the priority positions of administrators for each school. Administrators will be accountable for meeting minimum standards and such evaluation will be a component of each administrator's overall evaluation. The DOE will be required to create disciplinary actions for those administrators in each school district which fail to meet the standards set by the DOE, including grounds for dismissal under certain circumstances.

(d) Identification and ongoing measurement of the environment - Standardized surveys of students are to be developed for various grade levels (1-4, 5-6, 7-8, and 9-12), and are to be completed in October, February and May of each year. Results are to

be compiled by an independent agency and results and rankings made available to the public. Corrective action reports are to be issued by those schools in the bottom 25% of the Commonwealth.

(e) Bullying curriculums and continuing education for educators - The DOE will issue guidelines to its constituents requiring a certain minimum number of hours of the annual curriculum be dedicated towards educating students on the effects of bullying. Administrators and educators are to be required to receive a minimum of 8 hours per year on topics related to bullying.

(f) Reporting and meeting requirements - The DOE will establish guidelines for administrators and educators to report documented events. In addition, administrators will be required to communicate to both students and parents on the results of the surveys and the school rankings against other schools in town and the Commonwealth as a whole. Students will have a requirement to meet with guidance counselors a minimum of 3 times per school year. The DOE will develop a standard "report card" for each student and each educator will be required to include their assessments on the mental health aspects of each student as part of their semester report cards. Bullying and socialization are to be directly addressed. Educators are to have a minimum of 3, thirty-minute mandatory conferences with parents to review report cards and such conferences will include feedback from guidance counselors.

(g) Safe havens from legal exposures - Administrators and educators are the de facto fiduciaries of students. Meeting the objectives of fiduciary responsibilities is addressed in the other subsections. Safe havens are to be established to protect these individuals from litigation provided they have complied with Commonwealth guidelines, are not grossly negligent in their duties, recognizing that they are not psychological professions and their assessments are essentially their opinions.

(h) Process improvements - The DOE will have the responsibility of process improvements. The DOE should work with specialty agencies and community organizations to develop pilot programs whose successes will be duplicated in other districts.

Subparagraphs (a), (b), and (f) shall become effective on September 1, 2004

Subparagraphs (c) and (e) shall become effective on January 1, 2005

Subparagraph (d) shall become effective on August 31, 2005

Subparagraph (g) shall become effective on August 31, 2006

All other provisions of this act shall become effective upon its passage."

After remarks, the amendment was **adopted**.

Messrs. Havern and Antonioni moved that the bill be amended by inserting, at the end thereof the following new section: -

"SECTION ___. Notwithstanding the provisions of any general or special law to the contrary, all funding under the abstinence education project in the department of public health shall be directed towards teaching abstinence education as found in Sec. 510 [42 U.S.C. 710] (b) (2)(a-h) and not for advertisement or any other media campaigns."

The amendment was **adopted**.

Mr. McGee moved that the bill be amended by inserting, after Section 362, the following new Section: -

"Section ___. There is hereby established a special commission to study the impact and effects of the abuse of oxyContin and other prescription and illicit drugs, including but not limited to Duragesic, Klonopin, Methadone, Morphine, Vicodin, as well as their generic equivalents, and cocaine, heroin, GHB, and MDMA, on youth in Massachusetts. The commission shall consist of three members appointed by the Speaker of the House, including the House Chair of the Joint Committee on Health Care, three members appointed by the Senate President including the Senate Chair of the Joint Committee on Health Care, the Commissioner of the Department of Mental Health (DMH), the Commissioner of the Department of Public Health Drug Control Program and three members of the medical and substance abuse treatment community with specialty experience in drug regulation, prescription, treatment and abuse. Said commission shall study the prescription, dispensing, treatment and education of said drugs and shall submit a report, including legislative recommendations, if any, to the Joint Committee on Health Care and the House and Senate committees on Ways and Means by June 15, 2005."

After remarks, the amendment was **adopted**.

Mr. Panagiotakos moved that the bill be amended by adding at the end thereof the following new section: -

SECTION ___. Chapter 94E of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after Chapter 94E the following new Chapter:-

Section 1.

Chapter 94F.

CIGARETTE ENFORCEMENT.

For purposes of this chapter, the following words shall have the following meanings:-

"Cigarette", cigarette as defined in section 1 of chapter 94E.

"Commissioner", the commissioner of the department of public health.

"Package", a pack, box, carton or container of any kind in which cigarettes are offered for sale, sold or otherwise distributed to consumers.

"Counterfeit", any unauthorized reproduction, copy, or colorable imitation offered in connection with the sale, offering for sale, or advertising of any tobacco product.

"Person", an individual, company, corporation or partnership.

Section 2. (a) It shall be unlawful for any person:

(1) to sell, distribute, acquire, hold, own, possess, transport, import or cause to be imported into or in the commonwealth for sale or distribution in the commonwealth, any cigarettes that are counterfeit or do not comply with all requirements imposed under federal law and implementing regulations, including but not limited to the requirements on the filing of ingredients lists under the federal Cigarette Labeling and Advertising Act, 15 U.S.C. J section 1335a; the permanent imprinting of package warning labels in the precise format specified under the federal Cigarette Labeling and Advertising Act, 15 U.S.C. section 1333; the rotation of label statements under the federal Cigarette Labeling and Advertising Act, 15 U.S.C. section 1333(c); restrictions on the importation, transfer and sale of previously exported tobacco (products pursuant to Section 9302 of Public Law 105-33, the Balanced Budget Act of 1997, as amended; the requirements of Title IV of the Imported Cigarette Compliance Act of 2000; and federal trademark and copyright laws;

(2) to alter the package of any cigarettes, prior to sale or distribution to the ultimate consumer, so as to remove, conceal or obscure: I (i) any statement, label stamp, sticker, or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed or used in the United States, including but not limited to labels stating "For Export Only," "U.S. Tax Exempt," "For Use Outside U.S.," or similar wording; or (ii) any health warning that is not the precise warning statement in the precise format specified in the federal Cigarette Labeling and Advertising Act, 15 U.S.C. section 1333; or I (3) to affix any tax stamp or meter impression required pursuant to chapter 64C to the package of any cigarettes that does not comply with the requirements set forth in clause (1) or that is altered in violation of clause (2). j (b) This chapter shall not apply to cigarettes allowed to be (imported or brought into the United States for personal use, or to / cigarettes sold or intended to be sold as duty-free merchandise by a duty-free sales enterprise in accordance with 19 U.S.C. I section 1555(b) and any implementing regulations. However, this i chapter shall apply to any such cigarettes that are brought back I into the customs territory for resale within the customs territory.

Section 3. Cigarettes imported or reimported into the United States for sale or distribution under any trade name, trade dress or I trademark that is the same as, or is confusingly similar to, any , trade name, trade dress or trademark used for cigarettes manufactured in the United States for sale or distribution in the United States shall be presumed to have been purchased outside of the ordinary channels of trade.

Section 4. A violation of section 2 shall constitute an unfair trade practice under chapter 93A and a person who violates section 2 shall be subject the same penalties and remedies as available under chapter 93A in addition to any penalties or remedies set forth in this chapter.

Section 5. (a) The commissioner shall enforce this chapter. At the request of the commissioner, or the commissioner's duly authorized agent, the state police and all municipal police authorities shall also enforce this chapter. The attorney general shall have concurrent jurisdiction with the prosecuting attorneys to prosecute violations of this act. (b) For the purpose of enforcing this chapter, the commissioner and any agency or department to which the commissioner delegates enforcement responsibility under subsection (a) may request information from any state or local agency, and may share information with, and request information from, any federal, state or local agency in the United States.

Section 6. (a) The commissioner may revoke or suspend the license of any licensee under chapter 64C upon finding, after notice and a hearing, of a violation by the licensee of this chapter or any implementing regulation promulgated thereunder by the commissioner. The commissioner may also impose on any person a civil penalty in an amount not to exceed the greater of 500 per cent of the retail value, of the cigarettes involved or \$5,000 upon finding a violation by such person of this chapter or any regulation promulgated thereunder.

(b) Cigarettes that are acquired, held, owned, possessed, transported in, imported into, or sold or distributed in the commonwealth in violation of this chapter shall be deemed contraband and shall be subject to seizure and forfeiture in the same manner as provided for unstamped cigarettes under section 38A of chapter 64C. Any cigarettes so seized and forfeited shall be destroyed. Such cigarettes shall be deemed contraband whether a violation of this act is knowing or otherwise.

Section 7. A person who commits any of the acts prohibited under section 2, either knowing or having reason to know he is doing so, shall be punished by a fine of not more than \$5,000 or imprisonment in the state prison for not more than 5 years, or by both such fine and imprisonment.

After remarks, the amendment was **adopted**.

Ms. Walsh moved that the bill be amended by inserting after Section _____, the following new Section: -
SECTION _____. Chapter 140 of the Acts of 2003 is hereby amended by striking out section 85 and inserting in place thereof, the following: -

"Section 85. Item 4000-0600 of 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 or non-acute chronic disease hospitals with not fewer than 350 licensed beds, and not fewer than 90,000 Medicaid patient days in a state fiscal year, with an established geriatric teaching program for medical students, residents and fellows, students of nursing and other allied health professionals and with an established institute conducting multi-disciplinary research into biomedical, psychological, cognitive behavioral and organizational factors associated with aging, 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 or such non-acute chronic disease hospital that provides kosher food to its residents, establish up to a \$5 per day increase to the standard payment rates to reflect the higher dietary costs incurred in providing kosher food."

After remarks, the amendment was **adopted**.

Messrs. Nuciforo, Joyce and Lees moved that the bill be amended by inserting at the end thereof the following section:-

SECTION ---

A commission shall be established to develop recommendations with regard to an expansion of the existing Massachusetts bottle deposit law to include additional non-alcoholic beverage bottles and alcoholic beverage bottles. The Commission shall include four appointees each of the Speaker of the House of Representatives and the Senate President, and three appointees of the Governor-in each case, one appointee representing environmental interests and one representing industry interests and in the case of the Speaker and the Senate President, one legislative chair and a member of the minority party, and, in the case of the governor, a member of the administration. The commission shall consider such issues as the impact on the environment and present recycling efforts, the potential for revenue, and the concerns of all business sectors that are affected. The commission shall report back to the Speaker, the Senate President, and the Governor by November 1, 2004 with its recommendations.

Pending the question on adoption of the amendment, Mr. O'Leary moved that the amendment be amended by striking out the text and inserting in place thereof the following text:-

SECTION _____. A commission shall be established for the purpose of examining the mandatory deposit system, as created pursuant to Chapter 94 of the General Laws, and analyzing the effectiveness of the current statutory scheme and whether said scheme should be reformed, replaced or repealed. Said commission shall consider, but not be limited to, the cost impacts to consumers and businesses, as well as the effect upon municipal recycling and the environment. Special consideration shall be given to the task of increasing recycling on the municipal level, the greater implementation of curbside recycling programs, and aggressive anti-litter campaigns throughout the Commonwealth. The commission shall include three appointees by the Speaker of the House, one of whom shall be the

After remarks, the further amendment was **adopted**.

The pending amendment was then adopted, as amended.

Ms Fargo and Mr. Havern moved that the bill be amended, in section 2, in line item 6010-0001 by adding at the end thereof:-
"provided further, that said department shall construct 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 constructed 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 in the town of Chelmsford as follows: 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."

After remarks, the amendment was **adopted**.

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

Suspension of Senate Rule 38A.

Ms. Menard moved that Senate Rule 38A be suspended to allow the Senate to continue in session beyond the hour of eight o'clock P.M.; and, there being no objection, on further motion of the same Senator, the rule was suspended without a recorded ye and nay vote.

At four minutes past seven o'clock P.M., Mr. Lees doubted the presence of a quorum; and, a count of the Senate determined that a quorum was not present.

Subsequently, at seven minutes past seven o'clock P.M., the President declared that a quorum was present.

Orders of the Day.

The Orders of the Day were further considered as follows:

The House Bill making appropriations for the fiscal year 2005 for the maintenance of the departments, boards, commissions, institutions and certain activities of the Commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements (House, No. 4601),-

was further considered, the main question being on ordering it to a third reading., with the Ways and Means amendment pending.

Messrs. Tolman and Joyce moved that the bill be amended by inserting, after Section 362, the following new Section:-
"SECTION 363. To augment the current activities of the administration, regulatory agencies, and the insurance industry toward implementing an assigned-risk plan, and in order to provide much-needed financial relief for Massachusetts citizens as soon as possible, to create a business climate more competitive with other states, and to research how best to establish a healthy automobile insurance market, a special commission shall be formed. Said commission shall be composed of nine (9) truly consumer-oriented individuals with no affiliations with either the insurance industry or the trial bar, selected as follows:

Four (4) members of the General Court: one each to be appointed by the speaker of the House of Representatives, the president of the Senate, the minority leader of the House of Representatives, and the minority leader of the Senate;

A representative of the Governor;
A representative of the Attorney-General; and,

Three (3) consumers with comprehensive awareness of Massachusetts automobile insurance issues and with demonstrated commitment to the public good, the method of their selection to be determined by the General Court's Joint Committee on Insurance.

(b) The first task of the commission shall be to develop automobile insurance reform legislation based on the "choice/no-fault" concept of offering consumers the option of a strong no-fault policy, whose benefits according to a series of studies by the Joint Economic Committee of the U.S. Congress include savings for all Massachusetts motorists averaging over \$300 annually, and ranging from over two hundred dollars (\$200) in the Commonwealth's most rural areas to over \$600 for many inner-city residents.

(c) Upon completion of the above task, the commission shall then conduct in-depth research into the issue of competition for the Commonwealth's automobile insurance market. Specific areas of concern shall include but not be limited to:

The affordability of insurance by less-affluent car owners in the high-rated urban areas;
The effect of innovative merit-rating plans such as those currently offered in the other more competitive states;
The extent to which a more competitive rating system will induce more companies to entering the state's insurance market and thus create a healthier market;
The type of regulation of any competitive market that would be best suited to the needs of the Commonwealth;
Methods whereby the current territorial cross-subsidization can be maintained in a competitive market; and,
Upon the request of the Joint Committee on Insurance, other related issues that may arise in the course of the commission's research.

The commission's activities shall not affect the current industry changes towards the implementation of a so-called "assigned risk" method of handling the residual involuntary market.

(d) The commission shall avail itself of the counsel and advice of relevant regulatory bodies in other states, of national insurance information associations, and of major insurance companies, both those currently doing automobile insurance business in the Commonwealth and those currently not doing such business.

(e) The operations of the commission shall be funded by a one-time assessment of ten cents (\$0.10) per policy against all licensed insurers doing automobile insurance business in the Commonwealth, such assessment to produce approximately four hundred thousand dollars (\$400,000) and representing approximately one-hundredth of a percent (0.01%) of the annual cost of the average policy.

(f) The commission shall submit the proposed legislation of subsection (b) above, together with any minority proposal(s), to the General Court no later than November 15, 2004

(g) The commission shall submit a report of the research of subsection (c) above, together with any minority report(s), to the General Court no later than July 1, 2005 .

(h) Upon the completion of both tasks, the commission shall be dissolved at the discretion of the Joint Committee on Insurance. After remarks, the amendment was **adopted**.

Mr. Tolman moves to amend the bill by inserting, after Section 362, the following new Section:-

"SECTION 363. SECTION 1. Chapter 272 of the Massachusetts General Laws is hereby amended by adding the following new section:-

Section 77C. (a) Any person who confines a pregnant pig in an enclosure, or tethers a pregnant pig on a farm in a manner that prevents the pig from turning around freely is guilty of a crime punishable by imprisonment in a county jail for a period of one year, a fine of up to one thousand dollars (\$1,000), or by both that imprisonment and fine.

(b) This section shall not apply during the prebirthing period.

(c) The following definitions shall govern this section:

- (1) "Prebirthing period" means the seven day period prior to the pig's expected date of giving birth.
- (2) "Turning around freely" means turning around in a complete circle without any impediment, including a tether, or in the case of an enclosure, without touching any side of the enclosure.
- (3) "Enclosure" means any cage, crate, or other enclosure in which a pig is kept for all or the majority of any day, including what is commonly described as the "gestation crate."
- (4) "Farm" means the land, buildings, support facilities, and other equipment used in the production of animals for food or fiber.

SECTION 2. Chapter 272 of the Massachusetts General Laws is hereby further amended by adding the following new section:-

Section 77D. (a) Any person who confines a calf in an enclosure, or who tethers a calf, on a farm in a manner that prevents the calf from turning around freely or grooming itself completely is guilty of a crime punishable by imprisonment in a county jail for a period of one year, a fine of up to one thousand dollars (\$1,000), or by both that imprisonment and fine.

(b) Any person who does not feed a calf a daily diet containing sufficient iron to prevent anemia or sufficient solid food to prevent impairment of the development of its rumen is guilty of a crime punishable by imprisonment in a county jail for a period of one year, a fine of up to one thousand dollars (\$1,000), or both that fine and imprisonment.

(c) The following definitions shall govern this section:

- (1) "Enclosure" means any cage, crate, or other enclosure in which a calf is kept for all or the majority of any day, including what is commonly described as the "veal crate."
- (2) "Farm" means the land, buildings, support facilities, and other appurtenances used in the production of animals for food or fiber.
- (3) "Turning around freely" means turning around in a complete circle without any impediment, including a tether, or in the case of an enclosure, without touching any side of the enclosure"

After remarks, the amendment was **adopted**.

Ms. Chandler moved that the bill be amended in section 24, by striking out, in the first sentence, the figure "10" and inserting in place thereof the following figure:- 9;

By striking out section 103 and inserting in place thereof the following section:-

SECTION 103. The General Laws are hereby amended by inserting after chapter 40Q the following chapter:-

CHAPTER 40R
SMART GROWTH ZONING AND HOUSING PRODUCTION

Section 1. It is the purpose of this chapter to encourage smart growth and increased housing production in Massachusetts. Smart growth is a principle of land development that emphasizes mixing land uses, increases the availability of affordable housing by creating a range of housing opportunities in walkable neighborhoods, takes advantage of compact design, fosters distinctive and attractive communities, preserves open space, farmland, natural beauty and critical environmental areas, strengthens existing communities, provides a variety of transportation choices, makes development decisions predictable, fair and cost effective and encourages community and stakeholder collaboration in development decisions.

Section 2. As used in this chapter, the following words shall have the following meanings:

"Affordable housing," housing affordable to and occupied by individuals and families whose annual income is less than 80 percent of the areawide median income as determined by the United States Department of Housing and Urban Development. Affordability shall be assured for a period of no less than 30 years through the use of an affordable housing restriction as defined in section 31 of chapter 184 or other restriction approved by the department.

"Approved smart growth zoning district," a smart growth zoning district that has been adopted by a city or town and approved by the department in accordance with this chapter and the regulations of the department, so as to be eligible for the receipt of financial and other incentives. The department may revoke its approval if the obligations of the city or town are not met.

"Approving authority," a unit of municipal government designated by the city or town to review projects and to issue approvals under section 11.

"Comprehensive housing plan," a plan to be prepared by each city or town that provides an assessment of the housing needs within a city or town and describes specific strategies to address these needs, in accordance with regulations of the department.

"Department," the department of housing and community development.

"Developable land area," that area within an approved smart growth zoning district that can be feasibly developed into residential or mixed use development determined in accordance with regulations of the department. Developable land area shall not include: (1) land area that is already substantially developed, including existing parks and dedicated, perpetual open space within such substantially developed portion, (2) open space designated by the city or town as provided in section 6, or (3) areas exceeding one-half acre of contiguous land that are unsuitable for development because of topographic features or for environmental reasons, such as wetlands. It shall include the land area occupied by or associated with underutilized residential, commercial, industrial or institutional buildings or uses that have the potential to be recycled or converted into residential or mixed use developments as determined in accordance with regulations of the department.

"Eligible locations," (1) areas near transit stations, including rapid transit, commuter rail, and bus and ferry terminals; (2) areas of concentrated development, including town and city centers, other existing commercial districts in cities and towns, and existing rural village districts; or (3) areas that by virtue of their infrastructure, transportation access, existing underutilized facilities, and/or location make highly suitable locations for residential or mixed use smart growth zoning districts.

"Historic district," a district in a city or town characterized by the unique historic quality of the buildings within the district, and in which exterior changes to all buildings and the construction of new buildings are subject to special architectural and design guidelines as voted by the city or town pursuant to state law.

"Letter of eligibility," a letter to a city or town to be issued by the department within 60 days of receiving a complete and approvable application from a city or town for approval of a smart growth zoning district.

"Mixed use development," a development containing a mix of some or all of multifamily residential, single family residential, commercial, institutional, industrial, and other uses, all conceived, planned, and integrated to create vibrant, workable, livable and attractive neighborhoods.

"Multi-family housing," apartment or condominium units in buildings which contain or will contain more than 3 such units.

"New construction," construction of new housing units, the substantial rehabilitation of existing buildings or the conversion to residential use of existing buildings to create additional housing units, to the extent those units could not have been constructed or converted under the underlying zoning.

"Open space," shall include, but not be limited to, land to protect existing and future well fields, aquifers, and recharge areas, watershed land, agricultural land, grasslands, fields, forest land, fresh and salt water marshes and other wetlands, ocean, river, stream, lake and pond frontage, beaches, dunes, and other coastal lands, lands to protect scenic vistas, land for wildlife or nature preserve and land for recreational use.

"Project," a proposed residential or mixed-use development within a smart growth zoning district.

"Smart growth zoning district," a zoning district adopted by a city or town under this statute that is superimposed over 1 or more zoning districts in an eligible location, within which a developer may elect to either develop a project in accordance with requirements of the smart growth zoning district ordinance or by-law, or develop a project in accordance with requirements of the underlying zoning district.

"Smart growth zoning district certificate of compliance," a written certification by the department in accordance with section 7.

"Trust fund," the smart growth housing trust fund established by section 35BB of chapter 10.

Section 3. In its zoning ordinance or by-law, a city or town may adopt a smart growth zoning district, which shall include appropriate areas that are served by any existing infrastructure and utilities and that have pedestrian access to schools, civic facilities, places of commercial or business use, places of employment or recreation or other destinations with frequent use. A smart growth zoning district ordinance or by-law, or any amendment to or repeal of such ordinance or by-law, shall be adopted in accordance with the provisions of section 5 of chapter 40A.

In creating such a district, a city or town may include qualifying areas within development districts approved by the economic assistance coordinating council pursuant to chapter 40Q or any area approved by a city or town as an urban center housing tax-increment financing zone pursuant to section 60 of chapter 40. In smart growth zoning districts, a city or town shall zone for primary residential use as of right and may also permit business, commercial or other uses consistent with primary residential use.

Section 4. (a) Upon application by a city or town, the department shall make a preliminary determination, before the city or town votes on a proposed smart growth zoning ordinance or by-law, whether the district would be eligible for the financial incentives and the priorities for state expenditures set forth in section 10. The department's determination shall be communicated to the city or town in a letter of eligibility. If the department denies the application, it shall inform the applicant of the deficiencies in its submission. A city or town may re-apply for approval after addressing any deficiencies in a prior application. If the department does not act upon a complete and approvable application within 60 days of receipt, the application shall be deemed approved. (b) After issuance of a letter of eligibility, and upon application of the town with proof of adoption of the smart growth zoning district ordinance or by-law included in the application for a letter of eligibility, with any amendment required by the department in the letter of eligibility, the department shall confirm its approval within 15 days of receipt of the application. If the department does not act upon a complete and approvable application within 15 days of receipt, the application shall be deemed approved.

Section 5. The chief executive of a city or town desiring to adopt a smart growth zoning district ordinance or by-law must submit appropriate materials to the department for a preliminary determination of eligibility for approval. The information in the application must:

- (a) identify and describe the boundaries of the proposed smart growth zoning district;
- (b) identify and describe the developable land area within the proposed smart growth zoning district;
- (c) identify and describe other residential development opportunities for infill housing and the residential re-use of existing buildings and under-utilized buildings within already developed areas;
- (d) include a comprehensive housing plan, as set forth in section 8;
- (e) include a copy of the proposed smart growth district ordinance or by-law;
- (f) by narrative and exhibits, establish the elements set forth in section 6.

Section 6. (a) A proposed smart growth zoning district must satisfy the following minimum requirements:

1. The proposed district shall be located in an eligible location.
2. The zoning for the proposed district shall provide for residential use to permit a mix of housing such as for families, individuals, persons with special needs, or the elderly.
3. Housing density in the proposed district shall be at least 20 units per acre for multi-family housing on the developable land area; 8 units per acre for single-family homes on the developable land area; and 12 units per acre for 2 and 3 family buildings on the developable land area.
4. The zoning ordinance or by-law for each proposed district shall provide that not less than 20 percent of the residential units constructed in projects of more than 12 units shall be affordable, as defined in section 2, and shall contain mechanisms to ensure that not less than 20 percent of the total residential units constructed in each district shall be affordable.
5. A proposed district shall permit infill housing on existing vacant lots and shall allow the provision of additional housing units in existing buildings, consistent with neighborhood building and use patterns, building codes, and fire and safety codes.
6. A proposed smart growth zoning district shall not be subject to limitation of the issuance of building permits for residential uses or a local moratorium on the issuance of such permits.
7. A proposed district shall not impose restrictions on age or any other occupancy restrictions on the district as a whole. This provision does not preclude the development of specific projects that may be exclusively for the elderly, the disabled, or for assisted living. Not less than 25 percent of the housing units in such a project shall be affordable housing as defined in this chapter.
8. Housing in a smart growth zoning district shall comply with federal, state and local fair housing laws.
9. A proposed district may not exceed 15 percent of the total land area in the city or town. Upon request, the department may approve a larger land area if such an approval serves the goals and objectives of the chapter.
10. The aggregate land area of all approved smart growth zoning districts in the city or town may not exceed 25 percent of the total land area in the city or town.

11. Housing density in a proposed district shall not over burden infrastructure as it exists or may be practicably upgraded in light of anticipated density and other uses to be retained in the district.

12. A proposed smart growth zoning district ordinance or by-law shall define the manner of review by the approving authority in accordance with section 12 and shall specify the procedure for such review in accordance with regulations of the department.

(b) A city or town may modify or eliminate the dimensional standards contained in the underlying zoning in the smart growth zoning district ordinance or by-law in order to support desired densities, mix of uses, and physical character. The standards that are subject to modification or waiver may include, but are not limited to, height, setbacks, lot coverage, parking ratios and locations, and roadway design standards. Modified requirements may be applied as-of-right throughout all or a portion of the smart growth zoning district, or on a project-specific basis through the smart growth zoning district plan review process as provided in the ordinance or by-law. A city or town may designate certain areas within a smart growth zoning district as dedicated perpetual open space through the use of a conservation restriction as defined in section 31 of chapter 184 or other effective means. The amount of such open space shall not be included as developable land area within the smart growth zoning district. Open space may include an amount of land equal to up to 10 percent of what would otherwise be the developable land area if the developable land would be less than 50 acres, and 20 percent of what would otherwise be the developable land area if the developable land area would be 50 acres or more

(c) The zoning for the proposed district may provide for mixed use development.

(d) A smart growth zoning district may encompass an existing historic district or districts. A city or town, with the approval of the department, may establish a historic district in an approved smart growth zoning district in accordance with chapter 40C, so long as the establishment of the historic district meets requirements for such a historic district and does not render the city or town non-compliant with this chapter, as determined by the department. The historic districts may be coterminous or non-coterminous with the smart growth zoning district. Within any such historic district, the provisions and requirements of the historic district may apply to existing and proposed buildings.

(e) A city or town may require more affordability than required by this chapter, both in the percentage of units that must be affordable, and in the levels of income for which the affordable units must be accessible, provided that affordability thresholds do not unduly restrict opportunities for development.

(f) With respect to any city or town with a population of fewer than 10,000 persons, as determined by the most recent federal decennial census, for hardship shown, the department may, pursuant to regulations adopted under this chapter, approve zoning for a smart growth zoning district with lower densities than provided in this chapter, if the city or town satisfies the other requirements set forth in this section, provided however that such approval shall not be withdrawn solely because, in a future census, the population of the city or town exceeds 10,000.

(g) Any amendment or repeal of the zoning for an approved smart growth zoning district ordinance or by-law shall not be effective without the written approval by the department. Each amendment or repeal must be submitted to the department with an evaluation of the effect on the city or town's comprehensive housing plan described in section 8. Amendments shall be approved only to the extent that the district remains in compliance with this chapter. If the department does not respond to a complete request for approval of an amendment or repeal within 60 days of receipt, the request shall be deemed approved.

(h) Nothing in this chapter shall affect a city or town's authority to amend its zoning ordinances or by-laws under chapter 40A, so long as the changes do not affect the smart growth zoning district.

Section 7. (a) On or before October 1 of each year after the year of approval of a district by the department, the department shall send a smart growth zoning district certificate of compliance to each city or town with an approved district. In order to receive such a certificate, the city or town must verify within the time specified by the department:

1. that the city or town has adopted an approved a smart growth zoning district;
2. that the certification has not been revoked by the department;
3. that the district is being developed in a manner that reasonably complies with the minimum requirements set forth in section 6 for housing density and affordability;
4. that the approving authority has not unreasonably denied plans for projects, or has only denied plans for projects in a manner consistent with its smart growth zoning district ordinance or by-law, the city or town's comprehensive housing plan and this chapter.

(b) If the department is unable to certify compliance, the department shall hold a public hearing subject to chapter 30A. If the department concludes that the city or town is in material non-compliance with the requirements set forth in this section, the department may revoke certification. A revocation of certification shall be recorded with the registry of deeds or land court registry district for the county or district within which the city or town is located, indexed in the grantor index under the name of the city or town. Any revocation of certification or other sanctions imposed by the department shall not affect the validity of the

smart growth zoning ordinance or by-law, or the application of such ordinance or by-law to land, development, or proposed development within the smart growth zoning district.

Section 8. A city or town shall prepare a comprehensive housing plan to be submitted for review and approval to the department before or concurrently with the city or town's application for a letter of eligibility. The plan shall include an estimate of the projected number of units of new construction that could be built in the proposed smart growth zoning district. If a city or town has already completed a comprehensive housing plan, the city or town shall submit with its application to the department a description of how the proposed smart growth zoning district relates to and will further the goals of its comprehensive housing plan, as well as an estimate of the projected number of units of new construction that could be build within the district.

Section 9. Each city or town with an approved smart growth zoning district shall be entitled to payments as described below.

(a) Within 10 days of confirmation of approval by the department of a smart growth zoning district, the commonwealth shall pay from the trust fund a zoning incentive payment, according to the following schedule:

Projected Units of New Construction Payment

Up to 20	\$10,000
21 to 100	\$75,000
101 to 200	\$200,000
201 to 500	\$350,000
501 or more	\$600,000

The projected number of units shall be based upon the zoning adopted in the smart growth zoning district, and consistent with the city or town's comprehensive housing plan.

(b) The commonwealth shall pay from the trust fund a density bonus payment to each city or town with an approved smart growth zoning district. This payment will be \$3,000 for each housing unit of new construction that is created in the smart growth zoning district. The amount due to be paid in any one year under this subsection shall be increased annually starting in fiscal year 2007 in proportion to increases in the Consumer Price Index, using fiscal year 2006 as the base year, such that the increases as of July 1 of subsequent years will be calculated on the difference from the level of the Consumer Price Index on July 1, 2006. The amount due shall be paid on a unit-by-unit basis, within 10 days of submission by a city or town of proof of issuance of a building permit for a particular housing unit or units within the district.

(c) The executive office of environmental affairs, the executive office of transportation, the department of housing and community development and the secretary of administration and finance shall, when awarding discretionary funds, give priority to cities or towns with approved smart growth zoning districts.

(d) The commonwealth shall hold cities and towns harmless from any actual additional net public school costs to which cities and towns become subject as a result of adopting the smart growth zoning districts described in this chapter, and shall use money from the trust fund for such reimbursement. The department shall calculate those additional net costs annually, using a formula it has developed in consultation with the department of education and the division of local services in the department of revenue and that has been approved by law. Any payments to cities and towns under this section shall be made on November 15 of each year.

Section 10. A city or town may adopt, in accordance with the regulations of the department, design standards applicable to projects undergoing review by the approving authority, to ensure that the physical character of development within the smart growth zoning district is complementary to adjacent buildings and structures, is consistent with the comprehensive housing plan, and any applicable master plan or plans for the city or town. Such standards may address the scale and proportions of buildings, the alignment, width, and grade of streets and sidewalks, the type and location of infrastructure, the location of building and garage entrances, off street parking, the protection of significant natural site features, the location and design of on-site open spaces, exterior signs, and buffering in relation to adjacent properties. The standards shall provide for high-density quality development consistent with the character of building types, streetscapes and other city or town features traditionally found in densely settled areas of the city or town or in the region of the city or town.

A design standard shall not be adopted if it will add unreasonable costs to residential or mixed-use developments. A design

standard shall not unreasonably impair the economic feasibility of proposed projects. The department may disapprove a request for the determination of eligibility for a smart growth zoning district on account of a design standard adding such unreasonable costs or unreasonably impairing such feasibility.

Section 11. (a) A city or town may incorporate provisions within the smart growth district zoning ordinance or by-law that prescribe contents of an application for approval of a project. The ordinance or by-law may require the applicant to pay for reasonable consulting fees to provide peer review of the applications for the benefit of the approving authority. Such fees shall be held by the municipality in a separate account, used only for expenses associated with the review of the development application by outside consultants, and any surplus remaining after the completion of such review, including any interest accrued, shall be returned to the applicant forthwith. The smart growth zoning district ordinance or by-law may provide for the referral of the plan to municipal officers, agencies or boards other than the approving authority for comment. Any such board, agency or officer shall provide any comments within 35 days of its receipt of a copy of the plan and application for approval.

(b) An application to an approving authority for approval under a smart growth zoning ordinance or by-law shall be governed by the applicable zoning provisions in effect at the time of the submission, while the plan is being processed, during the pendency of any appeal, and for 3 years after approval. If an application is denied, the zoning provisions in effect at the time of the application shall continue in effect with respect to any further application filed within 2 years after the date of the denial except as the applicant may otherwise choose.

(c) An application for approval under this section shall be filed by the applicant with the city or town clerk and a copy of said application including the date of filing certified by the town clerk shall be filed forthwith with the approving authority. The approving authority shall hold a public hearing for which notice has been given as provided in section 11 of chapter 40A. The decision of the approving authority shall be made, and a written notice of the decision filed with the city or town clerk, within 120 days of the receipt of the application by the city or town clerk. The required time limits for such action may be extended by written agreement between the applicant and the approving authority, with a copy of such agreement being filed in the office of the city or town clerk. Failure of the approving authority to take action within said 120 days or extended time, if applicable, shall be deemed to be an approval of the plan. The applicant who seeks approval of a plan by reason of the failure of the approving authority to act within such time prescribed, shall notify the city or town clerk, in writing within 14 days from the expiration of said 120 days or extended time, if applicable, of such approval and that notice has been sent by the applicant to parties in interest. The applicant shall send such notice to parties in interest by mail and each such notice shall specify that appeals, if any, shall be made pursuant to this section and shall be filed within 20 days after the date the city or town clerk received such written notice from the applicant that the approving authority failed to act within the time prescribed.

(d) The approving authority shall issue to the applicant a copy of its decision containing the name and address of the owner, identifying the land affected, and the plans that were the subject of the decision, and certifying that a copy of the decision has been filed with the city or town clerk and that all plans referred to in the decision are on file with the approving authority. If 20 days have elapsed after the decision has been filed in the office of the city or town clerk without an appeal having been filed or if such appeal, having been filed, is dismissed or denied, the city or town clerk shall so certify on a copy of the decision. If the plan is approved by reason of the failure of the approving authority to timely act, the clerk shall make such certification on a copy of the application. A copy of the decision or application bearing such certification shall be recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or recorded and noted on the owner's certificate of title. The fee for recording or registering shall be paid by the owner or applicant.

(e) The project shall be approved by the approving authority subject only to those conditions that are necessary (1) to ensure substantial compliance of the proposed project with the requirements of the smart growth zoning district ordinance or by-law, or (2) to mitigate any extraordinary adverse impacts of the project on nearby properties. An application may be denied only on the grounds that (i) the project does not meet the conditions and requirements set forth in the smart growth zoning district ordinance or by-law, (ii) the applicant failed to submit information and fees required by the ordinance or by-law and necessary for an adequate and timely review of the design of the project or potential project impacts, or (iii) it is not possible to adequately mitigate significant adverse project impacts on nearby properties by means of suitable conditions.

(f) Any court authorized to hear appeals under section 17 of chapter 40A shall be authorized to hear an appeal from a decision under this section by a party who is aggrieved by such decision. Such appeal may be brought within 20 days after the decision has been filed in the office of the city or town clerk. Notice of the appeal, with a copy of the complaint shall be given to such city or town clerk so as to be received within such 20 days. Review shall be based on the record of information and plans presented to the approving authority. To avoid delay in the proceedings, instead of the usual service of process, the plaintiff shall within 14 days after the filing of the complaint, send written notice thereof, with a copy of the complaint, by delivery or certified mail to all defendants, including the members of the approving authority, and shall within 21 days after the entry of the complaint file with the clerk of the court an affidavit that such notice has been given. If no such affidavit is filed within such time the complaint shall be dismissed.

(g) A complaint by a plaintiff challenging the approval of a project under this section shall allege the specific reasons why the

project fails to satisfy requirements of this chapter or other applicable law and allege specific facts establishing how the plaintiff is aggrieved by such decision. The approving authority's decision in such a case shall be affirmed unless the court concludes the approving authority abused its discretion under subsection (e) in approving the project. The applicant and all members of the approving authority shall be named as parties defendant

(h) A plaintiff seeking to reverse approval of a project under this section shall post a bond in an amount to be set by the court that is sufficient to cover twice the estimated (i) annual carrying costs of the property owner (or a person or entity carrying such costs on behalf of the owner) for the property, as may be established by affidavit, plus, (ii) an amount sufficient to cover the defendants' attorneys fees, all of which shall be computed over the estimated period of time during which the appeal is expected to delay the start of construction. The bond shall be forfeited to the property owner in an amount sufficient to cover the property owner's carrying costs and legal fees less any net income received by the plaintiff from the property during the pendency of the court case in the event a plaintiff does not substantially prevail on its appeal.

(i) An applicant for plan approval who appeals from a project denial or conditional approval shall identify in its complaint the specific reasons why the approving authority's decision fails to satisfy requirements of this chapter or other applicable law. The approving authority shall have the burden of justifying its decision by substantial evidence in the record.

(j) The land court department, the superior court department and the housing court department shall have jurisdiction over an appeal under this section and shall give priority to such an appeal.

(k) The first paragraph of section 16 of chapter 40A shall not apply to applications for projects within a smart growth zoning district.

(l) A project approval shall remain valid and shall run with the land indefinitely provided that construction has commenced within two years after the decision is issued, which time shall be extended by the time required to adjudicate any appeal from such approval and which time shall also be extended if the project proponent is actively pursuing other required permits for the project or there is other good cause for the failure to commence construction, or as may be provided in an approval for a multi-phase project.

Section 12. The department shall be generally responsible for the administration, review, and reporting on the smart growth zoning district program as provided in this chapter. The department shall undertake or cause to be undertaken an annual review and the preparation of a report on the program set forth in this chapter and may require data to be provided by cities and towns with smart growth zoning districts. The report shall be prepared on the basis of such data and shall be made available to the general public and submitted to the general court annually no later than November 15 of each year, and shall cover the status of the program through the end of the prior fiscal year. The report shall identify and describe the status of cities and towns that are actively seeking letters of eligibility. It shall identify approved smart growth zoning districts and the amounts and anticipated timing of density bonus payments during the prior and current fiscal year. It shall summarize the amount of land areas zoned for particular types of projects in both proposed and approved districts, the number of projects being reviewed by cities and towns under section 11, including the number and type of proposed residential units, the number of building permits issued, the number of completed housing units and their type, the number of public school children residing in new construction in approved districts, and it shall set out the density bonus payments made to each city or town. For the then current and the immediately succeeding fiscal years it shall make estimates for the (i) number and size of proposed new districts, (ii) the potential number of residential units to be allowed in new districts, and (iii) anticipated construction activity and increases in public school children living in new housing units constructed in approved districts.

Section 13. A city or town may apply to the department for approval of an existing zoning district as a smart growth zoning district if it meets the requirements for such a district, including the affordability requirements and the density requirements. The application shall be the same as for a new smart growth zoning district. Upon approval, a city or town with an existing district will become entitled to density bonus payments, priority for capital expenditures, and reimbursement for education costs, as provided in section 9, from the date of approval.

Section 14. Notwithstanding any provision of this chapter to the contrary, the department shall coordinate and collaborate with the executive office of environmental affairs and its agencies in promulgating all policies, guidelines, standards, rules or regulations necessary to implement the sections of this chapter. Nothing in this chapter shall be construed as limiting the powers, duties, and functions of the executive office of environmental affairs and its agencies in carrying out their statutory responsibilities; and

By striking out section 307 and inserting in place thereof the following new section:-

SECTION 307. (a) The department of housing and community development, in consultation with the department of education and the division of local services in the department of revenue, shall develop a formula for ascertaining any actual additional net public school costs to which cities and towns may become subject as a result of adopting the smart growth zoning districts under chapter 40R. In developing the formula, the agencies shall take into account new tax and other revenues to which cities and

towns will or may become entitled as a result of adopting those districts, and shall consider the impact of any legislative changes that may be proposed or adopted to chapter 70 education funding. The department of housing and community development shall report on the methodology it recommends, including an analysis of any alternative methodologies they evaluated. The department of housing and community development shall submit its report to the clerks of the house and senate, the house and senate committees on ways and means, the joint committees on taxation, housing and urban development and education, arts and humanities by January 31, 2005.

(b) No density bonus payments shall be made under subsection (a) of section 9, or under section 13, of chapter 40R of the General Laws, inserted by section 103 of this act, before July 1, 2005.

Pending the question on adoption of the amendment, Ms. Creem moved that amendment be amended in Section 9 (c) of such redrafted amendment by adding at the end thereof the following:- ", or other approved zoning policies or initiatives that encourage increased affordable housing production in the Commonwealth, including but not limited to inclusionary zoning so-called."

After remarks, the further amendment was **adopted**.

After further remarks, the pending amendment was **adopted**.

Mr. Nuciforo moved that the bill be amended by inserting at the end thereof the following section:-

Section ___ Section 172A of Chapter 6 of the General Laws as most recently amended by section 1 of chapter 46 of the acts of 2003, is hereby amended by striking section 172A and inserting the following new section:

Section 172A. The criminal history systems board shall assess a fee of \$30 for each request for criminal offender record information. A fee shall not be assessed for a request from a victim of a crime, a witness or a family member of a homicide victim, all as defined in section 1 of chapter 258B, from a governmental agency, or from such other persons as the board shall exempt. Certified agencies that provide services to the elderly, children, victims of crime, medically infirm persons, or the physically or mentally challenged shall be assessed a fee of \$5 in addition to the agency's fee rate on June 30, 2003, unless exempted by the board. The criminal history systems board shall assess a fee of \$25 for each request for criminal offender record information from an individual seeking to obtain criminal offender record information pertaining to himself; provided, however, that if a person shall be found indigent, as defined in section 27A of chapter 261, the board shall not impose a fee. All such fees shall be deposited into the General Fund, excluding a nominal processing fee for online e-payments.

After remarks, the amendment was **adopted**.

Messrs. Rosenberg and Knapik moved that the bill be amended in section 269, by adding the following sentence:-

"The division shall pay \$225,000 for the leases of modular units of the Hampshire county sheriff located at 205 Rock Hill road in the city of Northampton."

After remarks, the amendment was **adopted**.

Mr. Baddour moved that the bill be amended by inserting, after Section ____, the following new Section: -

"; SECTION ____. (a) There is established a task force to study reflectorized safety number plates, within available appropriations. The task force shall study the feasibility of a state-wide license plate reissuance for passenger and commercial vehicles. Such study shall include, but not be limited to:

- (1) The impact on the reduction of unregistered and uninsured motor vehicles;
- (2) the impact on state and local revenue;
- (3) the task force shall examine state-of-the-art digital technology.

(b) The task force shall consist of the following members:

- (1) The Registrar of Motor Vehicles, or designee,
- (2) the Secretary of Public Safety, or designee,
- (3) a representative from the Department of Correction,
- (4) a representative from the Massachusetts Police Chiefs Association,
- (5) a representative from the Massachusetts Municipal Association,
- (6) a representative from the International Brotherhood of Police Officers,
- (7) the Chairmen from the Joint Committee on Public Safety,
- (8) the Chairmen from the House and Senate Committees on Science and Technology,
- (9) a Chairperson appointed by His Excellency, the Governor.

(c) All appointments to the task force shall be made no later than thirty days after the effective date of this section. Any vacancy shall be filled by the appointing authority.

(d) Not later than December 15, 2004, the task force shall submit a report on its findings and recommendations to the joint standing committee of the General Assembly having cognizance of matters relating to transportation. The task force shall terminate on the date that it submits such report."

The amendment was **adopted**.

Mr. Rosenberg moved that the bill be amended, in section 2, in item 8910-0188, by striking out the figure "\$1,200,000" and inserting in place thereof the following figure:- "\$1,300,000;

In said section 2, in said item 8910-0188 by striking out the figure "\$400,000", in line 3, and inserting in place thereof the following figure:- "\$300,000;

In said section 2, in said item 8910-0188 by striking out the figure "100,000" and inserting in place thereof the following figure:- "\$75,000"; and

In said section 2, in said item 8910-0188 by striking out the figure "\$1,200,000", in line 11, and inserting in place thereof the following figure:- "\$1,300,000."

The amendment was **adopted**.

Mr. Rosenberg moved that the bill be amended by inserting, after Section ____, the following new Section:-

"SECTION ____. Section 115 of Chapter 46 of the Acts of 2003 is hereby amended by adding, in every instance, after the words "Essex County", the words "and Franklin County" and by adding at the end of the last paragraph, "Any eligible employees of the Franklin Sheriff's Office must file their application with the board within 90 days of the effective date of this act."

After remarks, the amendment was **adopted**.

Mr. Havern and Ms. Fargo moved that the bill be amended in said section 2 in said item 6010-0001 by adding at the end thereof the following:-

"provided further, that said department shall construct sound barriers in the town 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 constructed 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 in the town of Chelmsford as follows: 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."

After remarks, the amendment was **adopted**.

Mr. Shannon moved that the bill be amended by inserting after section 228, the following sections:-

SECTION 228A. Item "2000-2015" of section 2 of Chapter 236 of the Acts of 2002 is hereby amended by inserting after the words "Holyoke canal walk" the following words;- provided further, that \$30,000 shall be expended for child safety equipment in the town of Milford;

SECTION 228B. Item "2000-2017" of section 2 of Chapter 236 of the Acts of 2002 is hereby amended by inserting after the words "sediment control plan" the following words:- provided further, that \$25,000 shall be expended for aquatic weed control

SECTION 228C. Item "2000-2012" of section 2 of Chapter 236 of the Acts of 2002 is hereby amended by inserting after the words "town of Abington" the following words;- provided further, that not less than \$50,000 shall be expended for the construction of a public boardwalk along the waterfront of rehabilitation of the Plu Island section of the City of Newburyport;

SECTION 228D. Item "2000-2016" of section 2 of Chapter 236 of the Acts of 2002 is hereby amended by inserting after the word "Upton" the following words:- provided further, that not less than \$8,000 shall be expended for the Division of Water Supply Protection for the purchase of materials relating to the rehabilitation of the Wachusett Reservoir and Dam area in the town of Clinton;

SECTION 228E. Item "2000-2017" of section 2 of Chapter 236 of the Acts of 2002 is hereby amended by inserting after the words "North Reading" the following: words;- provided further, that \$275,000 shall be expended for a study, including a water table analysis, storm water runoff and other flood-related issues to the Aberjona River in the Town of Winchester; provided further, that not less than \$250,000 shall be expended for volunteer water monitoring grants;

SECTION 228F. Item "2200-2011" of section 2 of said Chapter 236 is hereby amended by inserting after the words "city of Melrose" the following words' - provided further, that not less than \$250,000 shall be expended for the Town of Clinton for the purpose of conducting a Comprehensive Site Assessment of South Meadow Pond and the presence of leachate from the former Clinton Landfill site; provided further, that not less than \$350,000 shall be expended for coastal pollution remediation for storm water discharge to improve the water quality in Buzzards Bay in the town of Dartmouth; provided further, that not less than \$100,000 shall be expended for the planning and development of a new regional water treatment plant for the Tri-Town Water Board, representing the towns of Braintree, Randolph, and Holbrook; provided further, that not less than \$80,000 shall be used for a Buzzards Bay water quality restoration projects including, but not limited to: engineering and permitting costs for restoration in Mattapoisett of the Eel Pond drainage culvert, storm separators in West Island and Little Bay in the Town of Fairhaven and similar water quality projects in Buzzards Bay;

SECTION 228G. Item "2200-2015" of section 2 of said Chapter 236 is hereby amended by inserting after the words "town of Salem" the following words; - provided further, that not less than \$90,000 shall be provided for Brownfield redevelopment in the city of Lynn; provided further, that \$500,000 shall be expended for the clean up of Lake Quannapowitt in the Town of Wakefield;

SECTION 228H. Item "2420-2012" of section 2 of said Chapter 236 is hereby amended by inserting after the words "development of such sites" the following words; - provided further, that \$75,000 shall be expended on an education and recreation pilot program in the Quaboag and Ware River Valley to be administered by the Massachusetts watershed coalition;

SECTION 228I. Item "2440-2014" of section 2 of said Chapter 236 is hereby amended by inserting after the words "city of Lynn" the following words; - provided further, that \$225,000 for maintenance and infrastructure and repair of the southwest corridor park and shall enter into contracts for personnel and other resources as necessary for such maintenance, including the costs of two management one positions, on foreman and one clerk; provided further, that \$150,000 shall be expended for Legion Park in the town of Weymouth;

Mr. Lees moved that the bill be amended in section 2, in item 2800-0200, by striking out the words "provided, that funds may be expended for the Buttonwood Park Zoo and the Forest Park Zoo" and inserting in place thereof the following wording:- "provided, that not less than \$100,000 shall be expended for the Forest Park Zoo; provided further, that funds may be expended for the Buttonwood Park Zoo"

After remarks, the amendment was **adopted**.

Mr. Berry moved that the bill be amended in section 2, in item 1100-100, by inserting at the end thereof the following:- "provided that, notwithstanding any general or special law or regulation to the contrary, the Secretary of Administration and Finance in consultation with the state secretary shall not later than October 31, 2004 issue a request for purchase through the competitive bidding process for the provision of public records storage, except those records that receive federal reimbursement, for all state agencies within the jurisdiction of the governor in order to achieve cost savings, including, but not limited to those associated with greater efficiencies in the use and payment of records storage, reduction in private office lease costs for administrative personnel, and for more efficient and accessible use of public office space by displacing records with administrative personnel. Said secretary in consultation with the state secretary shall report not later than March 31, 2005 with a plan to improve public records storage and office space efficiencies to the joint committee on State Administration and to the House and Senate Committees on Ways and Means."

In section 2, in line item 0330-0300, by inserting at the end thereof the following:- "provided that, notwithstanding any general or special law or regulation to the contrary, the Chief Justice of Administration and Management of the Trial Court in consultation with the state secretary shall not later than October 31, 2004 issue a request for purchase through the competitive bidding process for the provision of public records storage, except those records that receive federal reimbursement, for all state agencies within the jurisdiction of the trial court in order to achieve cost savings, including; but not limited to those associated with greater efficiencies in the use and payment of records storage, reduction in private office lease costs for administrative personnel, and for more efficient and accessible use of public office space by displacing records with administrative personnel. Said Chief Justice shall in consultation with the state secretary report not later than March 31, 2005 with a plan to improve public records storage and office space efficiencies to the joint committee on State Administration and to the House and Senate Committees on Ways and Means."

By inserting, after Section 362, the following new Section:-

SECTION _____. Notwithstanding any general or special law or regulation to the contrary, the Secretary of Administration and Finance and the Chief Justice of Administration and Management of the Trial Court in consultation with the state secretary shall not later than October 31, 2004 issue a request for purchase through the competitive bidding process for the provision of public records storage, except those records that receive federal reimbursement, for all state agencies within the jurisdiction of the governor and the trial court, respectively, in order to achieve cost savings, including, but not limited to those associated with greater efficiencies in the use and payment of records storage, reduction in private office lease costs for administrative personnel, and for more efficient and accessible use of public office space by displacing records with administrative personnel. Said secretary and chief justice in consultation with the state secretary shall individually report not later than March 31, 2005 with a plan to improve public records storage and office space efficiencies to the joint committee on State Administration and to the House and Senate Committees on Ways and Means."

After remarks, the amendment was **adopted**.

Mr. Joyce moved that the bill be amended in section 2, in item 2800-9004, by striking out the figure "219,750" and inserting in place thereof the following figure:- "\$375,000."

After remarks, the amendment was **adopted**.

Mr. Baddour moved that the bill be amended in section 2, by inserting in line item 2810-0100, after the words "Ernestina Commission" the following:- "; and provided further that not less than \$50,000, shall be expended for the construction of a public

boardwalk along the waterfront of the Plum Island section of the City of Newburyport."
After remarks, the amendment was **adopted**.

Mr. Joyce moved that the bill be amended by inserting, after Section ____, the following new Section: -
"SECTION __. Notwithstanding any general or special law to the contrary, the department of conservation and recreation may enter into a lease agreement or agreements with the North Randolph Little League for property currently under the care and control of the department the land adjacent to the existing North Randolph Little League field off High Street near the Nike Missile Site in the town of Randolph. The term of any such lease agreement shall be for 10 years, with an option to renew for up to 10 additional years. Any such lease agreement shall require that all costs, fees and expenses relating to the care and maintenance of such property shall be paid in full by the lessee and other such terms and conditions as the department may require."
The amendment was **adopted**.

Ms. Resor moved that the bill be amended by inserting at the end thereof the following new section:-
"SECTION . There shall be a special legislative task force to determine the need and feasibility to license pump installers for the purpose to protect public health and safety and the safety of public water supply in Massachusetts. This task force shall consist of 11 members and shall be chaired by the house and senate chair of the joint committee on natural resources and agriculture. The other 9 members shall include the chairman of the water resources commission, or his designee, the commissioner of department of environmental protection, or his designee, the commissioner of department of public health or his designee, the director of the division of professional licensure or his designee; and 5 members appointed by the Governor; one of whom shall be a qualified member of the statewide boards of public health officials association who has been recommended to the Governor's office by the association executive committee; and one qualified and experienced certified well driller, who is current members of the state-wide well drillers association who has been recommended to the Governor's office by the association's executive committee; one qualified and experienced certified well pump installer who is a current member of the state-wide well drillers association who has been recommended to the Governor's office by the association's executive committee; one member who is a licensed plumber; and one member who is a licensed electrician. Said task force shall report to the general court the results of its investigation and study, and its recommendations, together with drafts, of legislation necessary to carry said recommendations into effect, by filing the same with the clerks of the house of representatives and the senate on or before the November 11, 2004."
The amendment was **adopted**.

Mr. Panagiotakos moved that the bill be amended in section 2, in item 7030-1003, by inserting after the words "cumulative grade 3 MCAS Scores" the following wording:-
"provided further, that not more than \$50,000 shall be made available to Edvocacy, Inc. to fund a school based pilot designed to enhance the detection, evaluation and tracking of Dyslexia in students grades K through 3; and provided further, that the results of said pilot shall be reported to the Commissioner of Education by no later than December 31, 2005."
The amendment was **adopted**.

Mr. Antonioni moved that the bill be amended in section 2, in item 7061-9404, by adding after the words "targeted intervention services provided to or by schools and districts.chapter 69 of the General laws;" the following words:-
" provided further that not less than \$1,000,000 be expended for English language acquisition professional development as part of an initiative designed to improve the academic performance of English language learners and effectively implement sheltered English immersion as outlined under chapter 386 of the Acts of 2002".
After remarks, the amendment was **adopted**.

At twenty-eight minutes after eight 'clock P.M., the Chair (Mr. Havern) declared subject to the call of the Chair; and, at nine 'clock P.M. the Senate reassembled, the President in the Chair.

Orders of the Day.

The House Bill making appropriations for the fiscal year 2005 for the maintenance of the departments, boards, commissions, institutions and certain activities of the Commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements (House, No. 4601),- was further considered, the main question being on ordering it to a third reading.

Messrs. Hart, Joyce, Morrissey, and Tolman moved that the bill be amended in section 2, in item 2820-0100, by striking out the figures "\$18,833,715" and inserting in place thereof the following figure "\$19,596,478."
The amendment was **adopted**.

Mr. Pacheco moved that the bill be amended in Section 328 by deleting the section in its entirety and replacing it with the following section:

SECTION 328.

Section 1. There is hereby established a Pilot Program of implementing registered nurse-to-patient ratios in acute care hospitals. The Commissioner of the department of public health shall designate 10 acute care hospitals to participate in the Pilot Program of

implementing minimum registered nurse-to-patient ratios in acute care hospitals as defined below. The commissioner shall utilize the following criteria to comprise and designate the 10 acute care hospitals:

- a) Distribution of the type of acute care hospital (i.e. teaching, community and rural)
- b) Geographic distribution utilizing the five department of public health services areas with 2 hospitals designated in each of the 5 areas
- c) Current registered nurse-to-patient ratios that are comparable to the ratios in section 2
- d) Two-thirds of the acute care hospitals in the Pilot Program shall be chosen from acute care hospitals where registered nurses have collective bargaining union representation
- e) Acute care hospitals not otherwise designated by the attorney general as a financially distressed hospital

Said Program shall be effective January 1, 2005.

Section 2.

Definitions.

(a) As used in this section, the following words, shall, unless the context clearly require otherwise, have the following meanings:-
"Acuity-based patient classification system", a standardized set of criteria based on scientific data that acts as a measurement instrument which predicts registered nursing care requirements for individual patients based on severity of patient illness, need for specialized equipment and technology, intensity of nursing interventions required and the complexity of clinical nursing judgment needed to design, implement and evaluate the patient's nursing care plan consistent with professional standards of care, details the amount of registered nursing care needed, both in number of direct-care registered nurses and skill mix of nursing personnel required on a daily basis for each patient in a nursing department or unit and is stated in terms that readily can be used and understood by direct-care registered nurses. The acuity system criteria shall take into consideration the patient care services provided not only by registered nurses but also by licensed practical nurses and other health care personnel.

"Assessment tool", a measurement system which compares the registered nurse staffing level in each nursing department or unit against actual patient nursing care requirements in order to review the accuracy of an acuity system.

"Board", the board of registration in nursing.

"Department", the department of public health.

"Direct-care registered nurse", a registered nurse who has accepted direct responsibility and accountability to carry out medical regimens, nursing or other bedside care for patients.

"Facility", a hospital licensed pursuant to section 51 of chapter 111 of the general laws, the teaching hospital of the university of Massachusetts medical school, any licensed private or state-owned and operated general acute care hospital, an acute psychiatric hospital, a specialty hospital, or any acute care unit within a state operated facility.

"Nursing care", care which falls within the scope of practice as prescribed by state law or otherwise encompassed within recognized professional standards of nursing practice, including assessment, nursing diagnosis, planning, intervention, evaluation and patient advocacy.

"Ratio", the actual number of patients to be assigned to each direct care registered nurse.

(b) The department of public health shall have the power and its duty shall be:

- (1) to promulgate the rules and regulations necessary to carry out the purposes and provisions of this chapter, including regulations defining terms, and prescribing the process for implementing the standardized acuity-based patient classification system developed by the Commission defined in Section 3.
- (2) to assure that the provisions of this chapter and all rules and regulations promulgated under this chapter are enforced; and to promulgate, within one year of the effective date of this chapter, regulations providing for an accessible and confidential system to report any failure to comply with requirements of this chapter and public access to information regarding reports of inspections, results, deficiencies and corrections under this chapter.
- (3) to implement the standardized acuity-based patient classification system as defined in section (a) to be utilized by all facilities to increase the number of direct care registered nurses to meet patient needs.

(c)

The Pilot Program.

Each facility, as defined in paragraph (a) shall incorporate and maintain the following minimum direct-care registered nurse-to-patient ratios:-

Intensive Care Unit: 1:2
Critical Care Unit 1:2
Neo-natal Intensive Care 1:2
Burn Unit 1:2
Step-down/Intermediate Care 1:3
Operating Room
Under anesthesia 1:1
Operating Room, RN as Circulator 1:1
Post Anesthesia 1:2
Post Anesthesia Care Unit
Under anesthesia 1:1
Post Anesthesia 1:2
Emergency Department 1:3*
Emergency Critical care 1:2*
Emergency Trauma 1:1*

* The triage, radio, or other specialty registered nurse shall not be counted as part of this number.

Labor and Delivery

Active Labor 1:1
Immediate Postpartum 1:2 (one couplet)
Postpartum 1:6 (three couplets)
Intermediate Care Nursery 1:4
Well-Baby Nursery 1:6
Pediatrics 1:4
Psychiatric 1:4
Medical and Surgical 1:4
Telemetry 1:4
Observational/Out patient treatment 1:4
Transitional Care 1:5
Rehabilitation Unit 1:5
Specialty Care Unit, any unit not otherwise listed above shall be considered a specialty care unit
1:4

These ratios shall constitute the minimum number of direct-care registered nurses. Additional direct-care registered nurses shall be added and the ratio adjusted to ensure direct-care registered nurse staffing in accordance with an approved acuity-based patient classification system. Nothing herein shall be deemed to preclude any facility from increasing the number of direct-care registered nurses, nor shall the requirements set forth be deemed to supersede or replace any requirements otherwise mandated by law, regulation or collective bargaining contract so long as the facility meets the minimum requirements outlined.

(d) As a condition of licensing, each facility in the Pilot Program annually shall submit to the department a prospective staffing plan together with a written certification that the staffing plan is sufficient to provide adequate and appropriate delivery of health care services to patients for the ensuing year and does all of the following:

- 1) meets the minimum direct care registered nurse-to-patient ratio requirements of paragraph (c);
- 2) employs the acuity-based patient classification system for addressing fluctuations in patient acuity levels requiring increased registered nurse staffing levels above the minimums set forth in said paragraph (c);
- 3) provides for orientation of registered nursing staff to assigned clinical practice areas, including temporary assignments;
- 4) includes other unit or department activity such as discharges, transfers and admissions, administrative and support tasks that are expected to be done by direct-care registered nurses in addition to direct nursing care;
- 5) submits the assessment tool used to validate the acuity system relied upon in the plan.

As a condition of licensing, each facility participating in the Pilot Program shall submit to the department an audit of the preceding year's staffing plan as dictated in clauses (1) to (5), inclusive. The audit shall compare the staffing plan with measurements of actual staffing as well as measurements of actual acuity for all units within the facility.

(e) As a condition of licensing, a facility required to have a staffing plan under this chapter shall:

(1) prominently post on each unit the daily written nurse staffing plan to reflect the registered nurse-to-patient ratio means of consumer information and protection.

(2) provide each patient and/or family member with a toll-free hotline number for the Division of Health Care Quality at the department, which may be used to report inadequate registered nurse staffing. Such complaint shall cause investigation by the department within 24 hours to determine whether any violation of law or regulation by the facility has occurred.

(f) No facility may directly assign any unlicensed personnel to perform non-delegatable licensed nurse functions in-lieu of care delivered by a licensed registered nurse. Additionally, unlicensed personnel are prohibited from performing tasks, which require the clinical assessment, judgment and skill of a licensed registered nurse. Such functions shall include, but are not limited:

(1) Nursing activities which require nursing assessment and judgment during implementation;

(2) Physical, psychological, and social assessment which requires nursing judgment, intervention, referral or follow-up;

(3) Formulation of the plan of nursing care and evaluation of the patient's/client's response to the care provided; and

(4) Administration of medications.

(5) Health teaching and health counseling

(g) Such rules and regulations shall require that a full time registered nurse executive leader be employed by each facility to be responsible for the overall execution of resources to ensure sufficient registered nurse staffing is provided by said facility.

(h) Such rules and regulations shall require that a full time registered nurse be designated by the facility to be responsible for the overall quality assurance of nursing care as provided by the facility.

(i) Such rules and regulations shall require that a full time registered nurse be designated by each facility to ensure the overall occupational health and safety of nursing staff employed by said facility.

(j) Appropriate Orientation. For purposes of compliance with the minimum registered nurse staffing requirements set forth in this act, no registered nurse shall be assigned, or be included in the count of assigned registered nursing staff in a nursing department or unit or a clinical area within the health facility unless that registered nurse has an appropriate orientation in that clinical area sufficient to provide competent nursing care to the patients in that area, and has demonstrated current competence in providing care in that area.

(k) For purposes of compliance with the minimum staffing requirements set forth under this chapter, except in cases of national or state declared emergencies, no facility may employ mandatory overtime or mandatory on-call policies. Mandatory overtime shall mean any employer request with respect to overtime, which if refused or declined by the employee, may result in an adverse employment consequence to the employee. The term overtime with respect to an employee, means any hours that exceeds the predetermined number of hours that the employer and employee have agreed that the employee would work during the shift or week involved.

(l) The setting of staffing standards for registered nurses is not to be interpreted as justifying the understaffing of other critical health care workers, including licensed practical nurses and unlicensed assistive personnel. The availability of these other health care workers enables registered nurses to focus on the nursing care functions that only registered nurses, by law, are permitted to perform and thereby helps to ensure adequate staffing levels.

(m) Any facility that fails to anticipate, design, maintain or adhere to a daily written nurse staffing plan in accordance with the provisions of this section, or any rule or regulation promulgated hereunder, (1) shall be subject to revocation of said facility's license or registration, or by a fine of not more than twenty-five thousand dollars, or both, (2) shall be subject to a civil penalty of not more than twenty-five thousand dollars, for each such violation. Each day each such violation occurs or continues shall be deemed a separate offense. These penalties shall be in addition to any other penalties that may be prescribed by law. The department shall have jurisdiction to coordinate enforcement related activities. The civil penalty may be assessed in any action brought on behalf of the Commonwealth or on behalf of any patient or resident aggrieved hereunder in any court of competent jurisdiction.

Fines relative to said violations shall be collected and distributed to the Betsy Lehman center for patient safety and medical error reduction, created by section 7 of chapter 177 of the acts of 2001.

Each facility found in violation of said plan must prominently post its violation notice within each unit in violation. Copies of the notice shall be posted by the facility immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the facility to ensure that the notices are not altered, defaced, or covered by any other material. The department will post said violation notices on its website immediately after a finding of a violation. The notice shall remain on the department's website for 60 consecutive days or

until such violation is rectified, whichever is greater.

(n) The department and/or the attorney general of the Commonwealth shall petition the superior court of the county in which the facility is located, and/or in Suffolk County, as necessary to enforce any orders or to collect any civil penalties issued by the department under this Section. Any other aggrieved person or persons may also bring a petition in the superior court in which the facility is located, and/or in Suffolk County, to enjoin the continuing violation by a facility of this Section. In any action brought under this section, the court may:

- (1) issue a temporary restraining order or preliminary or permanent injunction to restrain continued violation of this section and/or to enforce an order or collect a civil penalty;
- (2) order payment by the facility of reasonable litigation costs, reasonable expert witness fees and reasonable attorney's fees;
- (3) issue such other relief as may be appropriate to effectuate the purposes of this section.

Section 3. There is hereby established a special commission to be known as the Patient Care and Nursing Staff Commission to evaluate the Pilot Program. The commission shall consist of the following 17 members: the house and senate chairs of the committee on ways and means, who shall serve as co-chairs of the commission, 3 members selected by the speaker of the house of representatives, 3 members selected by the president of the state senate, the president of the Massachusetts Nurses Association or his designee, the president of the Massachusetts Hospital Association or his designee, the president of the Massachusetts Association of Health Plans or his designee, the commissioner of the department of public health or his designee, the president of the Associated Industries of Massachusetts or his designee, the commissioner of the group insurance commission or his designee, the executive director of Health Care For All or his designee, the president of the Massachusetts Senior Action Council or his designee, and the president of the Massachusetts AFL-CIO or his designee.

The Commission shall be responsible for evaluating the Pilot Program, including 1) evaluating the cost of implementing the ratios in the Pilot Program facilities, 2) developing a standardized acuity-based system as defined in section 2, 3) Review, if any, registered nurse staffing best practice models in existence in the commonwealth 4) Identify those hospitals in which the cost of implementation is greater than 2% of their net patient services revenues and provide further recommendations to enable their compliance with said recommendations by not later than January 1, 2008.

The Commission shall identify and contract with an independent third-party to verify the implementation cost of minimum registered nurse-to-patient ratios in acute care hospitals participating in the Pilot Program.

Section 4. Contingent upon the recommendation of the Commission, effective January 1, 2006 the Pilot Program implementation shall include an additional 15 acute care hospitals.

Section 5. Contingent upon the recommendation of the Commission, effective January 1, 2007 the Pilot Program implementation shall include the remaining acute care hospitals.

Section 6. A facility may request a waiver delaying implementation of the provisions of a phase this act if the cost of implementation of such phase of the act is greater than 2% of patient service revenue. The facility may request the waiver via the department of public health, provided that the division of health care finance and policy verifies that the request for waiver is supported by documented evidence showing that the cost of implementation of a phase exceeds 2% of patient service revenue, the department may grant the waiver to delay the implementation under such terms and conditions as the department may set. No phase of this act may be delayed through wavier for any period in excess of one-year.

After remarks, the amendment was **adopted**.

Messrs. Panagiotakos, Havern, Barrios, McGee and Shannon moved that the bill be amended by inserting after Section 316 the following section:-

"SECTION 316A. This section shall apply to Hampden, Middlesex, Plymouth and Suffolk counties. Notwithstanding any general or special law to the contrary, the exclusive authority to select and appoint assistant clerks, assistant registers, and deputy assistant registers in the district court, juvenile court, housing court, Boston Municipal Court and the probate and family shall be vested with the clerks and registers of those courts and the authority shall not be subject to the review or approval of any other person, except the chief justice for administration and management shall, within 21 days, review such appointments according to the procedures in section 10B of chapter 211B of the General Laws. An appointment not disapproved by the chief justice for administration and management within 21 days of receipt of the appointing authority's notice of appointment and accompanying certifications shall be considered approved."

The amendment was **adopted**.

Mr. Hart moved that the bill be amended by inserting, after Section __, the following new Section:-

"SECTION _____. There shall be a Military Service Scholarship Program pursuant to section 16 of chapter 15A of the General

Laws to provide full scholarships to the children or widowed spouses of Massachusetts servicemen and servicewomen, who are killed or die from injuries received while in the performance of duties including authorized training duty; to children or widowed spouses of prisoners of war or military or service persons missing in action in any foreign land, including but not limited to, Iraq and Afghanistan whose wartime service is credited to the commonwealth and whose service was between September eleven, two thousand and one, and the termination of both the Afghanistan and Iraq war; to the children and widowed spouses of veterans whose service was credited to the commonwealth and who were killed in action or otherwise died as a result of such service. Such scholarships shall be awarded by the council pursuant to its guidelines established to govern this program and shall go to those persons referenced above who are admitted to an institution of higher education in the commonwealth to pursue undergraduate studies. The guidelines shall include, but not be limited to, a waiver of mandatory fees, tuition, room and board, or other school mandated related expenses."

The amendment was *rejected*.

Mr. Hart moved that the bill be amended in section 2 in item 0810-0000 in line 5 by inserting after the word "laws" the following:

-

"provided further, that not less than \$100,000 shall be expended for the Ella J. Baker house and the Tieng Xanh-Voice Program;"

The amendment was *rejected*.

Messrs. Creedon, McGee and Ms. Creem moved that the bill be amended by inserting at the end of the bill the following new section:

SECTION __. Chapter 222 of the General Laws is hereby amended by adding the following section:

Section 12. Notwithstanding any general, rule regulation or order to the contrary, attorneys-at-law and counselors-at-law as well as paralegals, legal secretaries and other legal staff, whom by virtue of their employment perform notary duties shall be exempt from maintaining a journal of their notary transactions.

The amendment was **adopted**.

Messrs. Lees, Tisei, Tarr, Hedlund, Knapik and Brown and Mrs. Sprague moved that the bill be amended by inserting, after Section __, the following new Sections:-

"SECTION __. Clause Forty-first of section 5 of chapter 59 of the General Laws, as appearing in the 1998 Official Edition, is hereby amended by striking out subclause (B), beginning in line 763, and inserting in place thereof the following subclause:-

(B) that such person's income does not exceed that required to qualify under section 5 subsection (a) of chapter 62.

"SECTION __. Said clause Forty-first is hereby further amended by striking out the words "five hundred dollars", in line 747, and inserting in place thereof the following figure:- \$1,000."

The amendment was **adopted**.

Messrs. Magnani and Knapik moved that the bill be amended in section 2, in item 1110-1000 by striking, at the end thereof, the following wording:-

"and provided further, that administrative appeals of department of environmental protection decisions shall be filed directly with the division of administrative law appeals".

The amendment was *rejected*.

Mr. Morrissey moved that the bill be amended in section 2, by inserting after item 7000-9501 the following item:-

"7000-6503

For a handicap accessibility project in Holbrook to enhance educational opportunities for disabled citizens ..\$150,000"

The amendment was *rejected*.

Mr. Shannon moved that the bill be amended in section 2, in line item 8100-0000, by striking out the words "provided further, that not less than \$750,000 shall be expended to curb gang-related activities in the cities of Boston, Brockton, Chelsea, Lawrence, Revere, Springfield and Worcester" and inserting in place thereof the following:-

"provided further, that not less than \$850,000 shall be expended to curb gang-related activities in the cities of Boston, Brockton, Chelsea, Lawrence, Revere, Somerville, Springfield and Worcester", and by striking out the figure "\$196,375,102" and inserting in place thereof the following figure: "\$196,475,102".

The amendment was *rejected*.

Mr. Pacheco moved that the bill be amended by inserting, after Section __ the following new section:-

"SECTION __ Section 1. Section 1 of chapter 90C of the General Laws as appearing in the 1994 Official Edition, is hereby amended by striking out the definition of

"Police chief" and inserting in place thereof the following definition:

"Police Chief," the chief or the head of the organized police department of a city or town, the commissioner of public safety, the

colonel of state police, the state superintendent of buildings, the chairman of the Massachusetts Turnpike Authority, such persons as the trustees of the University of Massachusetts shall appoint as chief of the police officers appointed under section thirty-two A of chapter seventy-five, such person as the board of trustees of Bridgewater State College shall appoint as chief of the police officers appointed under section twenty-two of chapter fifteen A, such persons as the commissioner of mental health may designate at each institution of the department of mental health, or as the commissioner of mental retardation as chief of the special police officers thereat appointed under section fifty-nine of chapter twenty-two C or the chief of the Massachusetts Bay Transportation Authority police department."

Section 2. Said Section 1 of said chapter 90C, as so appearing, is hereby further amended by striking out the definition of "Police officer" and inserting in place thereof the following definition:

"Police Officer," any officer, other than an investigator or examiner of the transportation division of the department of telecommunications and energy, authorized to make arrests or serve criminal process, any person appointed by the registrar under section twenty-nine of chapter ninety, any person appointed by the trustees of the University of Massachusetts under section thirty-two A of chapter seventy-five, any person appointed by the board of trustees of Bridgewater State College as police officers under section twenty-two of chapter fifteen A and any person appointed by the colonel of state police under section fifty-nine of chapter twenty-two C.

Messrs. McGee and Barrios moved that the bill be amended by inserting after section 362 the following section:

"Section ___ To increase further a sense of responsibility on the part of inexperienced drivers and to increase the safety of all legitimate users of the roadway system---motorists, pedestrians, the disabled, bicyclists, and motorcyclists---the Registry of Motor Vehicles is hereby directed to undertake a study of their policies, programs, curricula, testing materials and publications to ensure that education requirements encompass the safety of all roadway users and such efforts to promote safety are integrated across all such policies, programs curricula testing materials and publications.

The Registrar shall convene a study commission by September 1, 2004 whose membership shall include:

1. The Registrar or her designee who shall serve as chair and as a non-voting member;
2. A representative of the Governor's Highway Safety Bureau Appointed by the Sec. of Public Safety;
3. One of three persons recommended by the Mass. Bicycle Coalition and appointed by the Sec. of Public Safety;
4. One of three persons recommended by Walk Boston and appointed by the Sec. of Public Safety;
5. A representative of the insurance industry appointed by the Registrar;
6. One of three persons recommended by the motorcycle interests and appointed by the Sec. of Public Safety;
7. The chairs of the House and Senate Committees on Public Safety or their designees;
8. A representative of the driver education industry appointed by the Registrar.

The Study Commission shall report to the Registrar and the Secretary of Public Safety their recommendations before Jan 31, 2005 and such recommendations shall be incorporated into the practices, procedures and policies of the Registry of Motor Vehicles by June 30, 2005.

The amendment was *rejected*.

Messrs. Morrissey and Joyce moved that the bill be amended by inserting, after Section 353, the following new Section(s):-

"SECTION ___. Section 1. The legislature shall direct the Secretary of Transportation and the Massachusetts Highway Department to conduct a study on the effects of a permanent commercial truck ban on Elm Street, Hayward Street and Howard Street, all in the town of Braintree.

Section 2. The Secretary of Transportation and the Massachusetts Highway Department shall submit its report and recommendations, if any, to the legislature by January 1, 2005.

The amendment was *rejected*.

Mr. McGee moved that the bill be amended in section 2, in item 2820-0100, in line 4, by inserting after "division" the following:-
"provided, further, not less than \$45,000 shall be expended on the maintenance of Red Rock Park on Lynn Shore Drive, in the city of Lynn."

The amendment was **adopted**.

Mr. Magnani moved that the bill be amended in section 2, in item 7061-9604, by adding, after the word "preparations", the following:-

"provided further that not less than \$130,000 shall be expended to the statewide Global and Multicultural Education Program administered by Framingham State College".

The amendment was **adopted**.

Ms. Wilkerson moved that the bill be amended in Section 2, item 7515-0120 by striking the figure "659,199" and inserting in

place thereof the following new figure "700,000"; and

In Section 2 by striking the item 7515-0121 and inserting in place thereof the following new item:

"7515-0121

For the Reggie Lewis Track and Athletic Center at Roxbury Community College; provided, that the college may expend an amount not to exceed \$400,000 received from fees, rentals, and facility expenses associated with the running and operation of national track meets, high school track meets, high school dual meets, Roxbury Community College athletic events, other special athletic events, conferences, meetings, and programs; provided further, that only expenses for contracted services associated with these events shall be funded from this item \$400,000

After remarks, the amendment was **adopted**.

Mr. Moore moved that the bill be amended by adding at the end thereof the following new Section:-

SECTION __. Notwithstanding the provisions of any general or special law to the contrary, the commissioner of revenue shall accept applications for abatement of tax on behalf Old Colony Stationary Inc. of Whitinsville for the tax years 1994, 1995, 1996 and 1997. Such applications shall be considered timely if filed with said commissioner within 90 days from the effective date of this act. Any abatement paid pursuant to these applications shall not include payment of interest or of any costs related to the filing of the applications.

The amendment was **adopted**.

Messrs. Lees, Tisei, Tarr, Hedlund, Knapik and Brown and Mrs. Sprague moved that the bill be amended by inserting, after Section __, the following new Sections:-

"SECTION __. Clause Forty-first of section 5 of chapter 59 of the General Laws, as appearing in the 1998 Official Edition, is hereby amended by striking out subclause (B), beginning in line 763, and inserting in place thereof the following subclause:-

(B) that such person's income does not exceed that required to qualify under section 5 subsection (a) of chapter 62.

"SECTION __. Said clause Forty-first is hereby further amended by striking out the words "five hundred dollars", in line 747, and inserting in place thereof the following figure:- \$1,000."

The amendment was **adopted**.

Messrs. Magnani and Knapik moved that the bill be amended in section 2, in item 1110-1000 by striking, at the end thereof, the following wording: -

"and provided further, that administrative appeals of department of environmental protection decisions shall be filed directly with the division of administrative law appeals".

The amendment was *rejected*.

Mr. Morrissey moved that the bill be amended in section 2, by inserting after item 7000-9501 the following item:-

"7000-6503

For a handicap accessibility project in Holbrook to enhance educational opportunities for disabled citizens ..\$150,000"

The amendment was **adopted**.

Mr. Morrissey moved that the bill be amended by inserting after Section 353, the following new section:-

Section __. Section 19 of Chapter 32A of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking the words "The commission is hereby authorized to pay to any active or retired employee of the Commonwealth who is insured by the Commonwealth as of June first, nineteen hundred and ninety-three" in lines one through three, and inserting in place thereof the following:-"Effective July first of each year the commission is hereby authorized to pay to any active or retired employee of the Commonwealth who has been continuously insured by the Commonwealth for the prior six months."

Mr. Creedon moved that the bill be amended in section 2, by striking out item 1599-3384 and inserting in place thereof the following item:

"1599-3384

For a reserve for the payment of certain court judgments, settlements and legal fees, in accordance with regulations promulgated by the comptroller, which were ordered to be paid in fiscal year 2004 or a prior fiscal year; provided, that the comptroller shall report quarterly to the house and senate committees on ways and means on the amounts expended from this item; provided further, that no amount appropriated in this item shall fund attorneys' fees for Boulet, et al v. Cellucci, et al, civil action No. 99-CV-10617-DPW, United States District Court of Massachusetts; provided further, that no funds shall be expended for any settlements pursuant to Superior Court Civil Action NO. 03-1913 BLS Allen's Pharmacy Cape Ann, & others vs. Christine C. Ferguson, Acting Commissioner of the Massachusetts Division of Health Care Finance and Policy; provided further, that \$300,000 shall be expended for Namyl, LLC v. L. Bongiorno, et al and its companion cases to be paid to the town of Wilbraham; and provided further, that funds shall be made available for a settlement for the town of Easton...\$2,574,485"

After remarks, the amendment was *rejected*.

Messrs. Creedon and McGee moved that the bill be amended in section 2, in item 0321-1510, by striking out the item and inserting in place thereof the following:

"0321-1510

For compensation paid to private counsel assigned to criminal and civil cases under subsection (b) of section 6 of chapter 211D of the General laws, pursuant to section 12 of said chapter 211D; provided, that not more than \$1,000,000 of the sum appropriated herein may be expended for services rendered prior to fiscal year 2005; provided further, that the rate of compensation for private counsel services provided for murder cases shall be \$60 per hour; and provided further, that the rate of compensation paid for services for superior court criminal cases, so-called and for all non-criminal cases, so-called, except those stated below, shall be \$45 per hour; and provided further, that the rate of compensation paid for services for all other criminal cases, so-called and, for non-criminal cases under section 12S of chapter 112 of the General Laws and section 39F of chapter 119 of the General Laws, shall be \$40 per hour.....\$86,285,239"

The amendment was *rejected*.

Mr. Moore moved that the bill be amended in section 163 by inserting, in the first sentence of proposed section 65B of chapter 112, after the word "licensure" the words "or within the department of public health, but excluding the board of registration in medicine,";

In said section 163 by inserting, in the fourth sentence of proposed section 65B of chapter 112, after the word "collected" the words "by the division of professional licensure.";

In said section 163 by inserting at the end of proposed section 65B of chapter 112 the following sentence: All penalties collected by the department of public health, excluding penalties collected by the board of registration in medicine, shall be deposited in the Quality in Health Professions Trust Fund established under subsection (a) of section 35X of chapter 10.;

In section 163 by inserting, in the first sentence of proposed section 65C of chapter 112, after the word "registration" the words ", excluding the board of registration in medicine,";

In said section 163 by inserting, in the first sentence of proposed section 65D of chapter 112, after the word "licensure" the words "or department of public health, but excluding the board of registration in medicine,";

In said section 163 by inserting, in the fourth sentence of proposed section 65D of chapter 112, after the word "boards" the words "of registration."; and

In said section 163 by inserting, in the first sentence of proposed section 65E of chapter 112, after the word "registration" the words ", excluding the board of registration in medicine,".

The amendment was *rejected*.

Mr. Moore moved that the bill be amended in section 159 by striking out, in the first sentence of the amendment of section 61 of chapter 112, the words "a board of registration" and inserting in place thereof the words "a board of registration or examination in the department of public health in the executive office of health and human services, and each board of registration, but excluding the board of registration in medicine."

The amendment was *rejected*.

Messrs. Lees and Knapik and Mrs. Sprague moved that the bill be amended in section 2, in item 7007-0300, by striking the figures "\$1,338,574" and inserting in place thereof the figures "2,246,277".

The amendment was *rejected*.

Mr. Nuciforo moved that the bill be amended in section 2, by striking item 7007-0515, and inserting in place thereof the following:-

"7007-0515

For economic development grants to be administered by the department of business and technology; provided, that not less than \$150,000 be expended on the Cape Cod Regional Incubator Project to be operated by the Cape Cod Chamber of Commerce; provided further, that not less than \$200,000 shall be expended on the operation of the Massachusetts Fisheries Recovery Commission; provided, that not less than \$100,000 shall be expended by the Buzzards Bay Village Association for the Buzzards Bay Main Street design study; provided, that not less than \$25,000 be expended for the operation of Berkshire Grown the buy local campaign of Berkshire county; and provided further, that not less than \$200,000 shall be expended for a grant to the South Shore Tri-Town Development Corporation established in chapter 301 of the acts of 1998 \$675,000"

The amendment was *rejected*.

Mr. Nuciforo moved that the bill be amended in section 2, in line item 6010-0001, by inserting after the words "December 31, 2004;", the following:-

"provided further, that funds shall be expended to Berkshire Hills Regional School District for the construction of a traffic signal and necessary road improvements at the intersection of Monument Valley Road and Route 7 in the Town of Great Barrington;"
The amendment was **adopted**.

Mr. Tarr moved that the bill be amended by adding, in Section 2, item 7007-0950 at the end thereof the following:-

"Provided further, that not less than \$103,000 shall be expended for an historic redevelopment project at the West School in the Town of Wilmington."

The amendment was *rejected*.

Mr. Antonioni moved that the bill be amended in section 2, in item 7007-0950, by striking out the figure \$3,440,508 and inserting in place thereof the following figure: - "3,490,508" and in said item by inserting at the end thereof the following:-

"provided further that not less than \$50,000 be expended for the Johnny Appleseed Visitor Center".

Ms. Fargo and Mr. Brown moved that the bill be amended in section 2, in line item 5930-1000, by striking out the figure "\$160,220,259" and inserting in place thereof the following figure :- "\$164,494,003".

The amendment was *rejected*.

Ms. Fargo and Mr. Brown moved that the bill be amended in section 2, by striking out item 5930-1000, and inserting in place thereof the following item : -

"5930-1000

For the operation of facilities for the mentally retarded, including the maintenance and operation of the Glavin Regional Center; provided, that in order to comply with the provisions of the Olmstead decision and to enhance care within available resources to clients served by the department, the department shall take steps to consolidate or close intermittent care facilities for the mentally retarded, called ICF/MRs, managed by the department and shall endeavor within available resources to discharge clients residing in the ICF/MRs to residential services in the community when the following criteria are met: (1) the client is clinically suited for a more integrated setting; (2) community residential service capacity and resources available are sufficient to provide each client with an equal or improved level of service; (3) the cost to the commonwealth of serving the client in the community is less than or equal to the cost of serving the client in ICF/MRs, so-called; (4) that no resident of an intermittent care facility for the mentally retarded (ICFMR) shall be transferred to another facility out of their current residents until and unless the commissioner of the department of mental retardation certifies that the individual to be transferred will equal or better services to meet their needs and the current location; and (5) that all Individual Support Plan recommended services for the individual's current needs as identified in the Individual Support Plan are available at the new location; provided further, that the department shall report to the joint committee on human services and the house and senate committees on ways and means on the progress of this initiative, including both past actions and proposed future actions; provided further, that the report shall include progress on the plan for the closure of the Fernald developmental center; provided further, that the report shall include: number of clients transferred from facility care into the community, the community supports provided to clients discharged from facility care into the community and the current facility bed capacity relative to the number of clients in ICF/MRs managed by the department; provided further, the report shall also include steps being taken to help minimize increases in travel distances for family members visiting clients at ICF/MRs resulting from the transfer of clients from one ICF/MR to another; provided further, that the department shall submit the report no later than February 15, 2005; provided further, that the Fernald developmental center shall not be closed prior to October 2005 to ensure adequate community, client, and family member input into the closure planning process; provided further, that the department of mental retardation shall submit a plan regarding the closure of the Fernald state school by January 1, 2005 to the house and senate committees on ways and means; provided further, that said plan shall detail the transition of clients from said school to appropriate settings; provided further, that the plan shall include consideration for the transition of employees of said school into community setting with their clients in order to ensure continuity of service wherever possible; provided further, that said plan shall be subject to the approval of the house and senate committees on ways and means; provided further, that the department may allocate funds from this item to items 5920-2000, 5920-2010, and 5920-2025, as necessary, pursuant to allocation plans submitted to the house and senate committees on ways and means 30 days before the transfer, for residential and day services for clients formerly receiving inpatient care at ICF/MRs; and provided further, that the department shall maximize federal reimbursement, whenever possible under federal regulation, for the direct and indirect costs of services provided by the employees funded in this item.....\$160,220,259"

After remarks, the amendment was **adopted**.

Mr. Moore moved to amend the bill, in section 2, item 4590-0250 by striking the words "that not less than \$12,000,000 shall be expended for school nurses and school based health centers" and inserting the in place the following:-

For school health services and school-based health centers in public and non-public schools;

provided further that not less than \$16,5000,000 shall be expended for school nurses and provided further that not less than \$4,5000,000 shall be expended for school-based health centers.....\$21,000,000"

The amendment was *rejected*.

Mr. Moore moved that the bill be amended, in section 2, by inserting the following:-
4590-0301

The department of public health may expend an amount not to exceed an amount generated by federal reimbursements as outlined in Section XXX (see my request to set a minimum contingency fee under MGL, section 72, chapter 44) of this act; provided, that the revenue shall be directed toward additional resources for school nurses and school-based health centers.
The amendment was *rejected*.

Mr. Hart moved that the bill be amended in section 2 in item 4512-0200, in line 8 and inserting after the word "groups" the following item:-

"provided further, that not less \$50,000 shall be expended for the Louis D. Brown Peace Institute for homicide victims' family support services and anti-violence advocacy programs."

The amendment was **adopted**.

Mr. Lees moved that the bill be amended in section 2, in item 4512-0103 by striking out the figures "31,494,099" and inserting in place thereof the figures "34,994,099";and

In section 2 in item 4512-0106 by striking out the figures "1,200,000" and inserting in place thereof the figures "1,900,000".
The amendment was *rejected*.

Mr. Antonioni moved that the bill be amended by inserting after Section __, the following new Section:-

SECTION __. 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 amendment was *rejected*.

Mr. Pacheco moved that the bill be amended in outside Section 308 by striking sub- section (c) and inserting in place thereof a new subsection (c):-

" (c) It shall be a mandatory term of any request for proposals issued by the commissioner and of any contract entered into by the Commonwealth with any party regarding the subject matter of this section that any party which has entered into a contract pursuant to this section with the Commonwealth shall require, in order to maintain stable and productive labor relations and to avoid interruption of the operation of the rinks and to preserve the safety and environmental conditions of those rinks, that all employees currently working on the operation and maintenance of the rinks be offered employment by any party entering into a contract pursuant to this section. Upon the execution of any agreements authorized by this section, the department of conservation and recreation shall reassign or relocate those employees who do not accept employment with the lessor, to comparable positions within the department subject to applicable collective bargaining agreements."

After remarks, the amendment was **adopted**.

Mr. Lees moved that the bill be amended in section 8A, by striking out the words "but shall not have supervisory authority over other cabinet members".

The amendment was *rejected*.

Mr. Pacheco moved that the bill be amended by inserting, after Section ____, the following new Section:-

SECTION _____. This act shall be known and may be cited as the "Community Service Reform, Creation of the Commonwealth Service Corps".

SECTION 2. The general court finds that the commonwealth has a strong history of community service and community service-learning, with a vast array of programs that successfully mobilize volunteers and encourage students to be active members of their communities. Every day thousands of people across the commonwealth generously give their time to educate students, assist the elderly, protect our city streets and address other critical community needs; that the increasing demand for services, and limited financial resources of the commonwealth, have contributed to the need to call up the energy, compassion, inventiveness, and the entrepreneurial spirit of all citizens to help solve many of the problems facing their communities; that research shows community service-learning helps meet the goal of education reform by improving student learning, enhancing student performance, and promoting the ethic of service; that the entire state benefits from building upon the experience, expertise and successes of the higher education service community to create the system-wide Commonwealth Service Corps; and that it is in the commonwealth's best interest to promote new reforms that will better coordinate volunteers, engage students in their communities, utilize funds, foster communication among organizations, identify the needs of the state and replicate successful

models.

The purpose of these reforms is to make the commonwealth a national leader for community service, community service-learning, and volunteerism.

SECTION 3. Chapter 6 of the General Laws is hereby amended by striking out sections 209 to 213, inclusive, as appearing in the 2002 Official Edition.

SECTION XX.

ESTABLISHING A NEW CHAPTER, Ch 6B.

Section 1. A Massachusetts National and Community Service Commission, known as the Massachusetts Service Alliance and referred to in this chapter as the Alliance, is hereby established to advise and assist in the development and implementation of a comprehensive, state-wide plan for promoting volunteer involvement and citizen participation, as well as to serve as the Commonwealth's liaison to national and state organizations which support the Alliance's mission. The Alliance shall establish guidelines and programs to reform, expand, replicate and implement community service and volunteer opportunities in the Commonwealth. The programs and activities shall be coordinated among state departments and agencies to optimize the allocation of resources. The Alliance shall promulgate regulations necessary to implement this section.

Section 1 (a) The Alliance Board of Commissioners shall consist of between fifteen (15) and twenty-five (25) voting members, three (3) ex-officio, non-voting members, and other ex-officio, non-voting members as the governor shall deem appropriate, all appointed by the governor. The chair shall be elected by the voting members. Members shall serve without compensation but shall be reimbursed for customary and usual expenses directly incurred in the performance of their duties.

Section 1 (b). The voting members of the Alliance shall include the following:

- 1) A representative of a community based organization or agency in the state.
- 2) The Commissioner of Education or designee
- 3) The Secretary of Environmental Affairs or designee
- 4) The Secretary of Elder Affairs or designee
- 5) The Commissioner of Employment and Training or designee
- 6) A representative of local government in the Commonwealth
- 7) A representative of local labor organization's in the Commonwealth
- 8) A representative of business
- 9) At least one individual between the ages of 16 and 25 who is a participant or supervisor of a service program for youth, or of a campus based or national service program.
- 10) A representative of a national service program
- 11) An individual with expertise in the educational, training, and development needs of youth, particularly disadvantaged youth.
- 12) An individual with expertise in promoting the involvement of adults (as defined in the domestic volunteer service act of 1973, as amended, 42 U.S.C. 4950 et seq.) in service and volunteerism

Section 1(c) Other voting members may include the following: educators, including representatives from institutions of higher education and local education agencies; experts in the delivery of human, educational, environmental, or public safety service to communities and persons; representatives of native American tribes; out of school or at risk youth; representatives of programs that are administered or receive assistance under the Domestic Volunteer Service Act, such as VISTA, Senior Companions, Retired Senior Volunteer or Foster Grandparent Programs.

Section 1 (d). Ex-officio, non-voting members shall include: a representative of the governor's office; a representative of the Corporation on National and Community Service.

Section 1 (e). Members shall be appointed to staggered renewable three-year terms.

Section 1(f). No more than 50% plus one of the voting members shall be of the same political party and no more than 25% of the voting members shall be employees of the commonwealth of Massachusetts.

Section. 1 (g). To the maximum extent possible the Alliance shall be diverse with respect to race, ethnicity, age, gender, and disability characteristics.

Section 1 (h). Vacancies among the members shall be filled by the governor to serve for the remainder of any un-expired term.

Section 1(i) All votes of the Alliance will be decided by a majority of those present.

Section 2. The Alliance's duties and responsibilities shall include but not be limited to, the following:

- 1) Fulfilling the requirements of a state commission as defined and outlined by the National and Community Service Trust Act of 1993;
- 2) coordinating the advice of and providing counsel to other state agencies and organizations using community service and volunteerism as a strategy to assist in the solution of local, regional, and statewide problems;
- 3) initiating and carrying out studies and analyses of proposed and implemented service and volunteer programs, which will aid in the solving of local, regional, and statewide issues.
- 4) serving as an advocate for the needs of volunteers;
- 5) adopting regulations to expand corps opportunities to address all community needs, such as education, environment, public safety, public health, and employment and training;
- 6) acting as a clearinghouse for information, data, and other materials relative to community service and volunteer opportunities;
- 7) ensuring the coordination of community service and volunteer corps operating in the commonwealth;
- 8) encouraging the corporate community of the commonwealth to become an active partner in the support, advocacy and promotion of community service and volunteer opportunities in the commonwealth;
- 9) requiring the assistance and participation of any department, division, bureau, commission or agency of the commonwealth in order to carry out its duties;
- 10) advising and informing the general court and governor on the affairs and problems of community service and volunteer opportunities in the commonwealth; and
- 11) developing outcome guidelines for accreditation of State Employees Responding as Volunteers program, higher education service sites and other programs as deemed necessary.

Section 3. All agencies are hereby authorized and directed to cooperate with the Alliance in carrying out its functions.

Section 4.

Community Service-Learning Advisory Council.

The Massachusetts Service Alliance shall appoint a community service-learning advisory council consisting of not less than ten nor more than thirty members. These persons shall represent a wide range of professions and institutions involved in education and community service, which will include, but not be limited to teachers, superintendents, counselors, students, school board members, independent agencies, business community, a Massachusetts Service Alliance member, a Massachusetts Campus Compact member, union representative and program coordinators. The alliance or designee shall chair the advisory council.

Section 4 (a). The advisory council shall assist the alliance, commissioner of education and the board of higher education in the development of a statewide initiative to integrate the philosophy and practice of community service-learning into the public schools, colleges and universities. These guidelines shall be directly linked to the Education Reform Act pursuant to chapter 71 of the acts of 1993. The council shall develop guidelines and criteria for disseminating grants to districts through a competitive process and the establishment of professional development opportunities for teachers, students, and community partners. The council shall develop a plan to require all districts to integrate community service-learning into curricula and teaching practices over a five-year period, beginning September, first, two thousand and five.

Section 5. The Alliance shall report annually to the clerk of the senate and house of representatives on or before January first, pursuant to SECTION 12 of this chapter.

SECTION 4. Said chapter 6 is hereby further amended by striking out section 121, as so appearing.

SECTION 6. Said chapter 29 is hereby further amended by inserting after section 31E, as so appearing, the following section:-
Section 31F. Expand the State Employees Responding as Volunteers program pursuant to section 31E of chapter 29 to address additional community needs, such as environmental, educational, health and public safety issues throughout Massachusetts, through volunteer opportunities at accredited non-profit organizations.

Such programs shall be part of an aggressive advertising campaign targeting, but not limited to, public employees and public institutions.

SECTION 7. Chapter 69 of the General Laws is hereby amended by inserting after section 10A, as so appearing, the following 9 sections:

Section 10B. Notwithstanding the provisions of any general or special law or regulation to the contrary, the commissioner is authorized and directed, in coordination with the Massachusetts Service Alliance, to establish a curriculum based community service-learning initiative in all public schools.

Section 10D. The following words in this chapter shall, unless the context requires otherwise, have the following meaning:-

"Community" can be a family, classroom, school, neighborhood, town or world as basis for community service-learning.

"Community Service-Learning" is a pedagogical approach to learning and a methodology for teaching. It incorporates the study of local community problems and larger social issues into the classroom curriculum, using real world scenarios as the basis for learning curricular content and developing skills including, but not limited to critical and creative thinking skills, problem solving, reasoning, communication and collaboration skills hereinafter referred to as the Common Core of Learning. Community service-learning enables students to be active, contributing members of society;

"Commissioner" the commissioner of education; "Department", the department of education; and "Board", the board of education.

Section 10E. The purpose of this program shall be to ensure each school in the commonwealth provides opportunities for each student enrolled in the Massachusetts public schools to participate in community service-learning as a part of their regular academic courses including but not limited to mathematics, science, English language arts, history and social studies, art, health and world languages and other courses designed to address the student learning goals and standards outlined in the Education Reform Act pursuant to chapter 71 of the acts of 1993 and to increase the number of teachers using community service-learning. This program shall provide schools with targeted professional development, resources and grant awards to systematically integrate community service-learning into academic courses of study and to encourage schools and school districts to incorporate community service-learning into school-wide goals and school improvement plans pursuant to section 59-C of chapter 71. The program will require that schools use community service-learning as a strategy for implementing education reform and to make important structural and organizational changes that support improved student learning and teacher professionalism.

Section 10H. The commissioner, with the advisory council, shall have the responsibility and authority to:

- (1) Ensure each school in the commonwealth provides opportunities for students to participate in community service-learning as a part of their regular academic courses including but not limited to mathematics, science, English language arts, history and social studies, art, health and world languages and other courses designed to address the student learning goals and standards outlined in the Education Reform Act pursuant to chapter 71 of the acts of 1993;
- (2) Ensure that each student enrolled in the Massachusetts public school system participates in community service-learning at least once at each grade level;
- (3) Each community service-learning experience will consist of the following standards: 1) Ensure that students understand how the needs of the community are identified or, when appropriate, will identify the needs of the community; 2) Ensure that students develop, acquire and demonstrate curricular knowledge and skills through participation in an integrated community service-learning experience; 3) Ensure that students acquire a developmentally appropriate understanding of the relationship between school, community and the importance of school-community partnerships; 4) Ensure that students and teachers will work in collaboration with individuals and organizations in the community when appropriate in order to develop and implement meaningful community service-learning experiences that reflect their understanding of school and community relationships; (4) Ensure that integration of community service-learning into academic curricula and teaching practices will be aligned with the K-12 curriculum frameworks and learning standards for the commonwealth and will be developed as per guidelines developed by the advisory council and adopted by the department;
- (5) Ensure that each school incorporates the process it will use to include community service-learning into its curricula and teaching practices school-wide into its school improvement development plan pursuant to section fifty-nine C of chapter seventy-one and its school professional development plan, developed pursuant to section thirty-eight Q of chapter seventy-one;
- (6) Ensure that each school annually submits data, as determined by the advisory council, to the department verifying that community service-learning is being integrated into academic curricula and that each student is participating in community service-learning at least once at each grade level; and
- (7) Ensure each school develops community service-learning curricula that incorporate both the developmental needs of the students and the unmet needs of communities.

Section 10I. The department shall, with the advisory council:

- (1) Determine criteria for the successful integration of community service-learning into academic curricula and teaching practices, provide technical assistance and training as needed, and assess the progress of participating schools annually;
- (2) Include one open-ended question on each state assessment test which will assess the learning outcomes of community service-learning;
- (3) Develop a statewide community service-learning initiative and plan for integrating community service-learning into school curricula and teaching practices over a five year period and ensure that this plan is integrated into the Massachusetts Service Alliance's Massachusetts plan for service. All school schools shall begin to implement their individual five-year plans by September, first two thousand and five;

- (4) Develop a staffing structure and appoint staff at the department's office of curriculum and instruction to coordinate all aspects of this statewide initiative;
- (5) Deliver reports on the initiative to the Massachusetts Service Alliance as appropriate, as well as publicize the exceptional examples of community service in various schools.

Section 10J. School Committees may include participation in a community service program among requirements for high school graduation, or may grant academic credit for the participation in such a program.

SECTION 8. Section 2 of chapter 71 of the general laws, as appearing in the 2000 Official Edition, is hereby further amended by inserting at the end the following new language:-The commissioner shall establish guidelines for promoting community service-learning as a means of fulfilling the state's civic education requirements. For the purpose of this section, the curriculum for civic education shall include, but not be limited to, such forms of community service-learning that promotes an identification of community needs, investigation, analysis, and research into those needs, and development and defense of a solution, as may be directed by the department of education.

The department of education shall file annually with the alliance January first a report regarding civic education requirements. The council shall develop guidelines to determine what pertinent data shall be included in the report.

SECTION 9. Section 2A of chapter 73 of the General Laws, as so appearing, is hereby amended by adding the following paragraph:-

The board shall establish guidelines for promoting community service-learning as a means of fulfilling the state's civic education requirement. For the purpose of this section, the curriculum for civic education shall include, but not be limited to, such forms of community service-learning that promotes an identification of community needs, investigation, analysis, and research into those needs, and development and defense of a solution, as may be directed by the board.

The board shall file annually with the alliance on or before January first a report regarding civic education requirements. The council shall develop guidelines to determine what pertinent data shall be included in the report.

SECTION 10. The General Laws are hereby amended by striking out chapter 78A.

SECTION XX. Chapter 73 of the General Laws is hereby amended by inserting after section 2A, as so appearing, the following new sections:-

Section 1. As used in this chapter the following words, unless the context requires otherwise, shall have the following meanings:-

"Massachusetts Campus Compact", The Massachusetts Campus Compact is a membership organization of college and university presidents leading Massachusetts institutions of higher education in building a statewide collaboration to promote service as a critical component of higher education.

"Massachusetts Service Alliance", the organization created in NEW CHAPTER 6B, referred to in this chapter as the Alliance.

"Council", the Community Service-Learning Advisory Council.

"Board", the board of higher education.

"Commonwealth Student Corps", a statewide program to coordinate the activity of students and others in activities, services and resources relative to the environment, education, public health and public safety that support or provide primary service to underserved populations and geographical areas in the Commonwealth. The Commonwealth Student Corps shall consist of, but not be limited to, the Student Education Corps, the Student Conservation Corps, the Student Health Corps and the Student Public Safety Corps.

"Commissioner", the commissioner of the department of education.

"Unmet community needs", underserved populations and geographical areas in the Commonwealth.

Section 2. (a) The board, with the advisory council, shall establish the Commonwealth Student Corps to expand opportunities for students of environmental professions, student of educational professions, students of public health professions, students of public safety professions, educators, practitioners, and active and retired certified professionals to participate in public service programs that help meet critical community needs. The board and the advisory council shall develop a program to expand and coordinate public and private resources that promote community service by linking supervised students with professional (in student's respective area of study) with existing programs opportunities.

(b) The board shall conduct, with the advisory council, a landscape survey that documents the current status and successes of community-service learning opportunities and programs at all Massachusetts public higher education institutions.

(c) The board shall establish, as part of the Commonwealth Student Corps, a curriculum based community service requirement

for all students enrolled in approved Massachusetts public colleges and universities. The board shall adopt guidelines and deadlines governing the implementation such a program, including the selection of criteria, requirements and hours necessary for students to meet said requirement.

(d) The board shall work in cooperation with the Alliance to ensure students are matched with accredited service sites. The Alliance shall develop criteria for the accreditation of said service sites.

(e) The purpose and goals of the curriculum based community service-learning requirement for students is to:

- (1) increase the number of students participating in curriculum based community service opportunities throughout the Commonwealth;
- (2) help address the state's unmet needs;
- (3) strengthen communities through service; and
- (4) enhance the ethic of service.

(f) The board, with the advisory council, shall have the responsibility and authority to:

- (1) conduct studies and accredited projects;
- (2) apply to private sources and federal government for grants to implement studies and accredited service projects; deposit funds and received from those sources in a separate account at the department of each state college or university; and expend such funds for the purpose set forth in this section;
- (3) enter into agreements with each other and other entities as allowed by law for the purposes of implementing this act;
- (4) study of the feasibility of utilizing the services of retired professionals and other licensed and certified professionals;
- (5) deliver reports of the program to the governor and the general court as appropriate;
- (6) implement statewide Commonwealth Student Corps programs designed to achieve the comprehensive and coordinated delivery of services to underserved populations and geographical areas; and
- (7) appoint a program director to implement and administer the studies and accredited service projects initiated by this chapter.

(g) The following shall be the deadlines for the implementation of said program:

Phase I-The board, with the advisory council, shall develop and implement a curriculum based community service requirement for all students majoring in the academic areas of education, the environment, public health, and public safety on or before August 1, 2005;

Phase II- The board of higher education, with the advisory council, shall develop and implement a curriculum based community service requirement for all students majoring in all academic areas on or before August 1, 2008.

SECTION 10. Chapter 73 of the General Laws is hereby amended by inserting after section xx, the following 7 sections:-

Section ?? The board of higher education shall establish a community service and volunteer requirement for all public higher education students, staff, and institutions. The board shall adopt regulations governing the implementation of said program. The board of higher education is hereby authorized and directed to establish:-

Section ?? A student loan repayment program, to be known as the Massachusetts community service and volunteer loan repayment program, for the purposes of encouraging outstanding students to participate and foster community service and volunteer opportunities within the commonwealth by providing financial assistance for the repayment of qualified education loans, as defined herein.

Section ?? A scholarship program, to be known as Massachusetts community service and volunteer scholarship program, to provide students in approved Massachusetts colleges and universities with scholarships for tuition and fees for the purpose of encouraging outstanding Massachusetts' students to participate and foster community service and volunteer opportunities within the commonwealth.

Section ?? A housing voucher program for scholarship recipients, to be known as the Massachusetts community service and volunteer housing voucher program, to provide students in approved Massachusetts colleges and universities with housing vouchers for the purpose of encouraging outstanding Massachusetts' students to participate and foster community service and volunteer opportunities within the commonwealth. The housing voucher, in such form and manner as the board may determine, may be utilized by the recipient to assist in paying housing costs, including rent or mortgage payments, while such recipient is enrolled in good standing in the college or university.

Section ?? A student community service and volunteer award, to be known as the Massachusetts student community service and volunteer award, to provide students in approved Massachusetts colleges and universities with the honor of receiving this award

for the purpose of encouraging outstanding Massachusetts' students to participate and foster community service and volunteer opportunities within the commonwealth.

Section ?? A criteria to increase the percentage of professors, staff and administration employed in Massachusetts' colleges and universities participating and fostering community service and volunteer opportunities within the commonwealth.

Section ?? Notwithstanding the provisions of any general or special law or regulation to the contrary, the board of higher education shall establish guidelines to increase the percentage of federal work-study funds designated at approved Massachusetts colleges and universities to student participating community service and volunteer opportunities within the commonwealth. All public institution of higher education shall report to the Alliance that the institution meets the state and federal minimum requirements under this section.

SECTION 11. No corps member shall be deemed to be an employee of the commonwealth entitled to the benefits, such as worker's compensation or unemployment benefits, nor shall any member be deemed to be an employee of the commonwealth. No municipality shall be held liable. Service opportunities shall not replace existing state employees.

SECTION 12. The commissioner and board shall both file annually with the advisory council on or before January first, a report of schools participating in community service-learning activities, the Commonwealth corps activities, and other the progress of other community service and volunteer programs, as well as other pertinent service data as determined by the advisory council. The Alliance is hereby directed to compile the above reports and additional service data and report annually to the clerk of the senate and house of representatives on or before September first in order to foster communication among local, state and federally funded programs engaged in community service and volunteer opportunities. Said report shall include, but not be limited to:

- (1) A financial statement summarizing its expenditures and available funds;
- (2) The number of projects and proposed corps placements submitted to it;
- (3) The number of volunteers generated;
- (4) A description of approved projects and a summary of the work completed.

SECTION 13. This act shall take effect July 1, 2005.
The amendment was *rejected*.

Mr. Moore moved that the bill be amended by adding at the end thereof the following new Section:-

SECTION __. Chapter 111 of the Massachusetts General Laws, as most recently appearing in the 2002 Official Edition is hereby amended by inserting after section 24J the following section: -

Section 24K. There is hereby established the pediatric palliative care program. Said program shall be administered by the department, subject to appropriation, pursuant to this section and regulations promulgated hereunder. The program shall assist eligible children with a life-limiting illness and their families or guardians with services designed to achieve an improved quality of life and to meet the physical, emotional and spiritual needs experienced during the course of illness, death and bereavement. Children less than 19 years of age shall be eligible for said program if they meet the requirements established by the department, which shall include

(a) a diagnosis of a life-limiting illness, including but not limited to, cancer, AIDS, congenital anomalies and other advanced illnesses; provided however, no requirement regarding life expectancy shall be imposed; and (b) a requirement that the eligible child's family not be covered by a third-party payer for the services provided by said program.

Services provided by the program shall be determined by the department and shall include, but not be limited to, consultations for pain and symptom management, case management and assessment, social services, counseling, bereavement services, volunteer support services, and respite services, provided by professional or volunteer staff under professional supervision. Services shall be provided by hospice programs licensed under section 57D who meet such other criteria as the department may establish by regulation, including demonstrated expertise in pediatric palliative care. The department may by regulation establish limits on services provided by said program.

The program established by this section shall not give rise to enforceable legal rights in any party or an enforceable entitlement to the services described herein and nothing stated herein shall be construed as giving rise to such enforceable legal rights or such enforceable entitlement.

The amendment was *rejected*.

Ms. Fargo moved that the bill be amended by inserting, after Section __, the following new section: -

"SECTION __. (a) The town of Weston adopted the so-called Community Preservation Act (the "Act"), chapter 44B of the General Laws, sections 3 through 7, inclusive, prior to November 25, 2002, and could have authorized creation of community housing at the Brook School Apartments pursuant to the Act; however, the town approved the creation of community housing under Article 11 at the November 25, 2002, special town meeting to be funded utilizing federal subsidies which the town of Weston will not receive as expected due to unanticipated, unusual circumstances resulting from federal budget matters entirely

outside the control of the town of Weston.

(b) Notwithstanding the provisions of section six of chapter forty-four B of the general laws, or of any other general or special law to the contrary, the town of Weston is hereby authorized, upon recommendation by the Weston Community Preservation Committee, and pursuant to a two-thirds vote of the Weston town meeting thereon, to amend the vote under Article 11 of the November 25, 2002, special town meeting authorizing the construction of affordable housing at the Brook School Apartments to approve the creation of community housing in accordance with the Act, and to provide that the portion of the appropriation and borrowing authorization attributable to the creation of community housing at the Brook School Apartments be funded through the town's community preservation fund, established pursuant to section seven of chapter forty-four B of the general laws, including the affordable housing reserve, and that the Weston town meeting be further authorized, upon recommendation by the Weston Community Preservation Committee, to appropriate funds for the purpose of paying the debt service on the portion of the bonds issued pursuant to this vote and the vote of the Weston town meeting authorized under this act, for the purpose of creating community housing at the Brook School Apartments; provided, however, that such funds may be so appropriated and expended only if the town votes to place a permanent deed restriction for affordable housing purposes on 13 units at the Brook School Apartments created for community housing under this act and the vote of the Weston town meeting authorized hereby, which restriction complies with the requirements of chapter one hundred and eighty-four of the general laws, and provided further that the deed restriction must run to the benefit of a nonprofit, charitable corporation or foundation selected by the town with the right to enforce the restriction.

(c) If the Weston town meeting votes as authorized herein to approve under the Act the creation of community housing at the Brook School Apartments, that portion of the unexpended proceeds of any borrowing incurred pursuant to the vote under Article 11 of the November 25, 2002, Weston special town meeting attributable to the creation of community housing at the Brook School Apartment shall be transferred without further appropriation to the Weston community preservation fund, and that portion of any interest earned on the amounts borrowed under Article 11 of the November 25, 2002, special town meeting, net of FY04 interest expense, attributable to the creation of community housing at the Brook School Apartments shall be similarly transferred without further appropriation.

(d). Except as otherwise provided herein, if the Town votes to approve the creation of community housing at the Brook School Apartments under the Act as so authorized herein, the community housing created at the Brook School Apartments shall be deemed to be community preservation property, subject to all requirements of the Act; further, any future expenditures from the community preservation fund for the purposes set forth herein shall be subject to the provisions of the Act.

(e) If this act is not in effect on May 10, 2004, any vote taken under Article 19 of the Weston 2004 Annual Town Meeting warrant to authorize the creation of community housing at the Brook School Apartments, as authorized by section 2 of this act, shall be ratified, validated and confirmed as if this act had been in effect on the date of the vote.

(f) This act shall take effect upon passage.
The amendment was *rejected*.

Ms. Fargo moved that the bill be amended by inserting, after Section __, the following new Section: -
SECTION __. (a) The town of Bedford, acting by and through its board of selectmen, may lease a certain parcel of land located in said town for a term not to exceed 99 years for the purpose of providing affordable family housing upon such terms and conditions as the board of selectmen deem advisable. Said parcel is shown on Assessors' Map 74, Parcel 01.

(b) This act shall take effect upon its passage.
The amendment was *rejected*.

Ms. Creem moved that the bill be amended by inserting at the end thereof the following new Section:-
SECTION _____. Chapter 6 of the General Laws is hereby amended by inserting after section 116C the following section:--
SECTION 116D. (a) The municipal police training committee shall establish within the recruit basic training curriculum a course for regional and municipal police training schools on or before January first, two-thousand and five for the training of law enforcement officers in the commonwealth in the handling of complaints involving mental health emergencies and victims, witnesses or suspects with mental illness or mental retardation and also shall develop guidelines for law enforcement responses to incidents involving such persons. The course of instruction and the guidelines shall emphasize:

- (1) The enforcement of criminal laws for the benefit of victims and witnesses with mental illness or mental retardation, the availability of civil remedies and community resources for persons experiencing mental health emergencies, and the protection of persons with mental illness or mental retardation and for law enforcement officers engaging such persons;
- (2) The laws regarding the defenses of responsibility and competency to stand trial, and the diversion of persons with mental illness or mental retardation for treatment instead of criminal prosecution;
- (3) The provision of information to law enforcement officers about individuals suffering from mental illness or mental retardation, including common behaviors and actions exhibited by such individuals; strategies law

enforcement officers can use for reducing or preventing the risk of harm arising from persons experiencing mental health emergencies, or from victims, witnesses or suspects with mental illness or mental retardation with the aim of seeking the least intrusive, restrictive and violent means of addressing such incidences and individuals while protecting the safety of the law enforcement officer and other persons present at the complaint scene. Training presenters shall include certified mental health practitioners with expertise in the delivery of direct services to individuals experiencing mental health emergencies and victims, witnesses and suspects with mental illness and mental retardation and consumer-survivors i.e. individuals with mental illness and mental retardation. Training presentations may utilize the staff of community-based mental health or retardation treatment facilities

As used in this section, "law enforcement officer" shall mean any officer of a municipal police department, the department of the state police or the Massachusetts Bay Transportation Authority police department. "Consumer-survivor" shall mean any individual suffering from mental health disability or mental retardation.

(b) All law enforcement recruits shall receive the course of basic training for law enforcement officers, established in paragraph (a) of this section, as part of their required certification process.

(c) The course of instruction, the learning and performance objectives, the standards for training, and the guidelines shall be developed by the municipal police training committee in consultation with groups and individuals having an interest and expertise in the field of mental health and community-based treatment.

(d) The municipal police training committee periodically shall include within its in-service training curriculum a course of instruction on handling complaints from or against persons with mental illness and mental retardation, consistent with the provisions of sub-paragraphs one through three of paragraph (a) of this act.

The amendment was *rejected*.

Mr. Hart moved that the bill be amended by inserting, after Section __, the following new Section: -
"SECTION __. Notwithstanding any general or special law to the contrary, Parcel Exchange Lot 1 as hereinafter described, together with all trees and structures thereon, if any, is hereby transferred by virtue of this act in fee simple to the Massachusetts Bay Transportation Authority; provided further that notwithstanding any general or special law to the contrary, Parcel Exchange Lot 2 as hereinafter described, together with all trees and structures thereon, if any, is hereby transferred by virtue of this act in fee simple to the Commonwealth and placed under the control of the Metropolitan District Commission subject to an easement reserved to the Massachusetts Bay Transportation Authority as hereinabove stated.

Parcel Exchange Lot 1, as hereinafter described, shall be held for mass transportation purposes, as further defined and consistent with Chapter 161A of the General Laws of the Commonwealth of Massachusetts. Parcel Exchange Lot 2, as hereinafter described, shall be dedicated to public uses authorized by Article Amendment XCVII of the Constitution of the Commonwealth.

The transfers herein authorized of Parcel Exchange Lot 1 by the Commonwealth of Massachusetts and Parcel Exchange Lot 2 by the Massachusetts Bay Transportation Authority shall be effective notwithstanding any inconsistent public use and no compensation shall be paid. This act shall effectuate the transfers of the property interests and rights as provided herein and this act shall be accepted for filing in the appropriate registry of deeds or land court by the Massachusetts Bay Transportation Authority in behalf of the Massachusetts Bay Transportation Authority for Parcel Exchange Lot 1 that will be under the ownership and control of the Massachusetts Bay Transportation Authority and also by the Massachusetts Bay Transportation Authority in behalf of the Commonwealth of Massachusetts for Parcel Exchange Lot 2 that will be under the ownership of the Commonwealth of Massachusetts and under the control of the Metropolitan District Commission.

The authorization herein of the transfer of Parcel Exchange Lot 1 recognizes that prior to this act said parcel is under the ownership of the Commonwealth and under the control of the Metropolitan District Commission and therefore is subject to the provisions of Article Amendment XCVII of the Constitution of the Commonwealth and as such requires a two-thirds vote of approval of each branch of the general court of the Commonwealth of Massachusetts.

The following are the legal descriptions for Parcel Exchange Lot 1 and Parcel Exchange Lot 2.

Parcel Exchange Lot 1:

A certain parcel of land located on East First Street, identified as Parcel Exchange Lot 1, in the city of Boston, County of Suffolk, Commonwealth of Massachusetts, as shown on a plan entitled "Parcel Exchange Plan, MBTA South Boston Power Plant, 680 East First Street, South Boston, Massachusetts", Sheet P-1 of 1, dated March 13, 2003, and prepared by Judith Nitsch Engineering, Inc., is hereby bounded and described as follows:

Parcel Exchange Lot 1, Fee Conveyance:

Commencing from a point at the intersection of the easterly sideline of Summer Street and the northerly sideline of East First Street;

-thence N 88° 23'25" E a distance of eight hundred nine and forty-five hundredths feet (809.45') coincident with said northerly sideline of East First Street to the point of beginning of said parcel; thence N 01° 36'35" W a distance of six hundred and zero hundredths feet (600.00') along the easterly line of land now or formerly of Boston Edison Company to a point;
 -thence N 88°23'25" E a distance of five hundred two and eighty-two hundredths feet (502.82') to a point;
 -thence S 01°36'35" E a distance of thirty and zero hundredths feet (30.00') to a point;
 -thence S 37°45'33" W a distance of fifty one and seventy-four hundredths feet (51.74') to a point;
 -thence S 88°23'25" W a distance of two hundred ninety and zero hundredths feet (290.00') to a point;
 -thence S 01°36'35" E a distance of two hundred fifty and zero hundredths feet (250.00') to a point;
 -thence S 88°23'25" W a distance of one hundred and zero hundredths feet (100.00') to a point;
 -thence S 01°36'35" E a distance of two hundred eighty and zero hundredths feet (280.00') to a point coincident with the northerly sideline of East First Street;
 the previous six (6) courses are coincident with land of the MBTA;
 -thence S 88°23'25" W a distance of eighty and zero hundredths feet (80.00') coincident with the northerly sideline of East First Street to the point of beginning; containing an area of one hundred one thousand nine hundred forty-one plus or minus square feet (101,941± sq. ft.) or two and thirty-four hundredths plus or minus acres (2.34 ± acres).

For title reference to Parcel Exchange Lot 1, see Section 2H, Item 6005-9575 of Chapter 273 of the Acts of 1994 and Section 106 of Chapter 273 of the Acts of 1994.

Parcel Exchange Lot 2:

A certain parcel of land identified as Parcel Exchange Lot 2, in the city of Boston, County of Suffolk, Commonwealth of Massachusetts, as shown on a plan entitled "Parcel Exchange Plan, MBTA South Boston Power Plant, 680 East First Street, South Boston, Massachusetts", Sheet P-1 of 1, dated March 13, 2003, and prepared by Judith Nitsch Engineering, Inc., is hereby bounded and described as follows:

Parcel Exchange Lot 2, Fee Conveyance:

Commencing from a point at the intersection of the westerly sideline of former O Street and the northerly sideline of East First Street; thence S 88°23'25" W a distance of forty and zero hundredths feet (40.00') coincident with said northerly sideline of East First Street to the point of beginning of said parcel;
 -thence S 88°23'25" W a distance of one hundred twenty and fifty-four hundredths feet (120.54') along said northerly sideline of East First Street to a point;
 -thence N 00°34'15" E a distance of one hundred nine and ninety-five hundredths feet (109.95') to a point;
 -thence N 19°49'01"W a distance of one hundred thirty and twenty-two hundredths feet (130.22') to a point;
 -thence N 21°19'38" W a distance of three hundred five and fifteen hundredths feet (305.15') to a point;
 -thence N 01°36'35" W a distance of one hundred sixty-nine and eighteen hundredths feet (169.18') partially along the easterly line of land of Metropolitan District Commission to a point; thence N 88°23'25" E a distance of three hundred and zero hundredths feet (300.00') along the southerly line of land of Metropolitan District Commission to a point coincident with the westerly sideline of former O Street;
 -thence S 01°36'35" E a distance of six hundred fifty and zero hundredths feet (650.00') along the westerly sideline of former O Street to a point;
 -thence S 43°23'25" W a distance of fifty-six and fifty-seven hundredths feet (56.57') to the point of beginning;
 containing an area of one hundred sixty thousand six hundred ten plus or minus square feet (160,610± sq. ft.) or three and sixty-nine hundredths plus or minus acres (3.69± acres). For title reference to Parcel Exchange Lot 2, see Certificate of Title No. 97947.

Parcel Exchange Lot 1 and Parcel Exchange Lot 2 are located at or in the immediate vicinity of the South Boston Power Station complex on East First Street in South Boston, County of Suffolk, Commonwealth of Massachusetts. For title reference to the Massachusetts Bay Transportation Authority's South Boston Power Plant property, see Certificate of Title No. 97947 and Section 2H, Item 6005-9575 of Chapter 273 of the Acts of 1994 and Section 106 of Chapter 273 of the Acts of 1994.

This act shall take effect upon its passage."

After remarks, the amendment was **adopted**.

Mr. Pacheco of Taunton moves to amend the bill by inserting after Section __, the following new section:-

"Section 1. The commissioner of the division of capital asset management and maintenance is hereby directed and authorized to transfer care and custody to the department of mental retardation of a certain parcel of Commonwealth land which is a portion of a parcel previously transferred to the department of environmental management, now known as the department of conservation and recreation, under section eleven of chapter 395 of the Acts and Resolves of 2002. The parcel to be transferred hereunder contains department of mental retardation house number 42, a program house of the former dever state school center, and certain immediate surrounding land that shall be used to create an appropriate buffer to the home from the surrounding department of conservation and recreation land. The exact boundaries of the parcel to be transferred shall be determined by the division of capital asset management and maintenance in consultation with the department of conservation and recreation and the department

of mental retardation. Transfer of said parcel shall be without consideration and shall not be subject to the provisions of chapter seven of the General Laws. The conditions enumerated in section eleven of chapter 395 of the Acts and Resolves of 2002 remain in effect as applicable.

Section 2. If at any time the parcel to be transferred hereunder ceases to be used as a department of mental retardation program house as described in section 1, care and custody of the parcel shall revert to the department of conservation and recreation.

The amendment was **adopted**.

Mr. Morrissey moved that the bill be amended by inserting, after Section 353, the following new Section: -

Section __. The Governor shall establish a special commission to study, evaluate and explore funding sources and expenditures of existing Municipal Waterways Improvement and Maintenance Funds, established under Section 5G of Chapter 40 of the General Laws. Said commission shall be composed of 7 members; provided that, the Governor shall appoint one member from the Harbormaster Association, one member from the Massachusetts Division of Waterways, one member from the Boston Harbor Alliance, two members from the Massachusetts Municipal Association and two members from the Massachusetts Bay Yacht Club Association. Said study shall include, but is not limited to: compiling an itemized list of said funds, including when the funds were established and by what authority; a list of each city and town that offers a mooring fee and the amount of said fee; provided further, that said commission may hold public hearings if it deems necessary and said commission shall file a report and any recommendations on the proper collection and usage of said existing and future funds to the House and Senate Ways and Means Committee, the Joint Committee on Natural Resources and the Joint Committee on Taxation no later than December 13, 2004.

The amendment was *rejected*.

Ms. Creem, Messrs. Barrios, O'Leary, Ms. Wilkerson, Mr. Magnani moved that the bill be amended by inserting after Section 151, the following new sections:

SECTION 151A. Section 32H of chapter 94C, as appearing in the 2000 Official Edition, is hereby amended by striking out, in line 13, the word "parole," and is hereby further amended by inserting at the end of said section the following paragraph:-

Notwithstanding any general or special law to the contrary, a person convicted of violating any provisions of sections 32, 32A, 32B, 32E, 32F, and 32J of chapter 94C of the General Laws shall be eligible for parole after serving two-thirds of the maximum term of imprisonment to a state prison imposed or after serving one-half of the maximum term of imprisonment to a house of correction imposed.

SECTION 151B. Notwithstanding the provisions of sections 32, 32A, 32B, 32E, 32F, and 32J of chapter 94C of the General Laws, or any other general or special law to the contrary, persons serving mandatory minimum sentences in a house of correction for violations of the above referenced sections as of July 1, 2004 shall be eligible for parole after serving one half of their maximum sentence.

The amendment was **adopted**.

Mr. Hedlund moved that the bill be amended by inserting, after Section ____, the following new Sections:-

"SECTION __. The second paragraph of section 25C of chapter 111 of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by adding the following sentence:- However, a person may use an extremity magnetic resonance imager (MRI) with the capability of scanning all extremities; foot, ankle, knee, hand, wrist, elbow and shoulder, but not to include head or spine capability, of the permanent magnetic type with a field strength of less than .3 tesla and with a fair market value of less than \$450,000 in a location other than a health care facility without a determination of need issued by the department.

SECTION __. The department of public health shall require those locations other than health care facilities under the second sentence of the second paragraph of section 25C of chapter 111 of the General Laws to demonstrate that they have applied for and received American College of Radiology, or comparable (ICAMRL), accreditation within 18 months of commencement of operation of the above defined magnetic resonance imager."

After remarks, the amendment was *rejected*.

Messrs. Lees, Tisei, Tarr, Hedlund, Knapik and Brown and Mrs. Sprague moved that the bill be amended by inserting at the end thereof the following section:-

"SECTION ____ . Section 7 of Chapter 4 of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by striking the following sentence:- "Legal holiday" shall also include, with respect to Suffolk county only, March seventeenth and June seventeenth, or the day following when said days occur on Sunday; provided, however, that the words "legal holiday" as used in section forty-five of chapter one hundred and forty-nine shall not include March seventeenth, or the day following when said day occurs on a Sunday."

After debate, the question on adoption of the amendment was determined by a call of the yeas and nays, at twenty-seven minutes past ten 'clock PM, on motion of Mr. Lees, as follows, to wit (yeas 15 - nays 21) [Yeas and Nays No. 554]:

YEAS.

Antonioni, Robert A.	Montigny, Mark C.
Baddour, Steven A.	Nuciforo, Andrea F., Jr.
Brown, Scott P.	O’Leary, Robert A.
Hedlund, Robert L.	Sprague, Jo Ann
Joyce, Brian A.	Tarr, Bruce E.
Knapik, Michael R.	Tisei, Richard R.
Lees, Brian P.	Tucker, Susan C. — 15.
Melconian, Linda J.	

NAYS.

Barrios, Jarrett T.	Menard, Joan M.
Brewer, Stephen M.	Moore, Richard T.
Chandler, Harriette L.	Morrissey, Michael W.
Credon, 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.	Tolman, Steven A.
Havern, Robert A.	Walsh, Marian
Magnani, David P.	Wilkerson, Dianne — 21.
McGee, Thomas M.	

PAIRED.

YEA.	NAY.
Therese Murray	Frederick E. Berry (present) — 2.

ABSENT OR NOT VOTING.

Shannon, Charles E. — **1.**

The yeas and nays having been completed at twenty-eight minutes before eleven 'clock PM, the amendment was *rejected*.
Mr. Lees moved that the bill be amended by striking section 271.
The amendment was *rejected*.

Mr. Tarr moved that the bill be amended by adding, at the end thereof, the following new section: -
"Notwithstanding the provisions of any general or special law or regulation to the contrary, the division of health care finance and policy, in consultation with the division of insurance and the office of the attorney general, shall promulgate regulations requiring surcharge payers to set aside a percentage, not to exceed 5%, of their net revenues to be used as a dedicated reserve for the purpose of reducing shortfalls in the uncompensated care trust fund, said percentage to be determined annually by said division."
The amendment was *rejected*.

Mr. Nuciforo moved that the bill be amended in section 2, in item 7030-1004, by striking out the figure "\$900,000", and inserting in place thereof the following figure:- "\$1,000,000"
The amendment was *rejected*.

Messrs. Lees, Tisei, Tarr, Hedlund, Knapik and Brown and Mrs. Sprague moved that the bill be amended in Section 309 by inserting after the words "committees on ways and means" the following words:-
"; the senate and house minority leaders or their designees";
In said section by striking the figure "11" and inserting in place thereof the figure "13".
The amendment was **adopted**.

Ms. Fargo moved that the bill be amended by inserting, after Section __, the following new Section: -
"SECTION __. 57C of chapter 59 of the General Laws, as most recently amended by section 46 of chapter 46 of the Acts of 2003, is hereby amended by inserting in the first paragraph, after the second sentence, the following new sentences:- The preliminary tax shall in no event exceed fifty percent of one hundred and two and one-half percent of the tax payable during the preceding fiscal year and of the amount by which such tax would have increased if any referendum question submitted to the voters under the provisions of paragraph (g), (i1/2), (j) or (k) of section twenty-one C and approved for the fiscal year had been approved for the preceding fiscal year. In the case of cities and towns with semi-annual tax payments, the preliminary tax shall be due and payable in 1 installments, due on October 1, after which dates, if unpaid, they shall become delinquent and subject to interest as provided herein."
The amendment was **adopted**.

Ms. Tucker moved that the bill be amended in section 2, in item 4130-3050, by adding the following wording:-
" provided further that not less than \$2,000,000 shall be expended for the trial court child care program".
The amendment was *rejected*.

Mr. Moore moved that the bill be amended in section 2, in line item 4000-0500, by adding at the end thereof:-
"provided further, that said division shall work in collaboration with the MassHealth behavioral health contractor to modify its claims payment system to routinely process for payment valid claims for medically necessary covered medical services to eligible recipients with psychiatric and substance abuse diagnoses on a timely basis in an effort to avoid delay and expenses incurred by lengthy appeals processes; provided further, that said secretary shall report to the house and senate committees on ways and means not later than October 1, 2004 on the proposed modifications to said payment system and shall implement said changes by the beginning of hospital fiscal year 2005".
The amendment was *rejected*.

Messrs. Morrissey and Joyce moved that the bill be amended by inserting, after Section 353, the following new Section(s):-
"SECTION __. Section 1. The legislature shall direct the Secretary of Transportation and the Massachusetts Highway Department to conduct a study on the effects of a permanent commercial truck ban on Elm Street, Hayward Street and Howard Street, all in the town of Braintree.
Section 2. The Secretary of Transportation and the Massachusetts Highway Department shall submit its report and recommendations, if any, to the legislature by January 1, 2005.
The amendment was **adopted**.

Mr. Lees moved that the bill be amended by striking out section 222 and inserting in place thereof the following section: -
SECTION 222. Subsection (j) of section 110 of chapter 5 of the acts of 1995, as most recently amended by section 528 of chapter 26 of the acts of 2003, is hereby further amended by striking the first paragraph and inserting in place thereof the following paragraph: - The department shall administer a program, to be known as the work program, for families that are not exempt under subsection (e). Under the work program, the head of household in each family, or each parent in a two-parent family, shall work 34 hours, except that the work requirement shall be 24 hours when the youngest child of record is under the age at which full-time school attendance is mandatory in the city or town where the child resides. Said work requirement may be met by working in a job for which compensation is paid; by working full time in the full employment program established in subsection (I); or by participating in community service. Notwithstanding any general or specific law to the contrary, the department is authorized to promulgate regulations concerning the work requirement, including additional activities that may meet said requirements, provided that any such regulations enhance the ability of the department to satisfy requirements of federal law, including those pertaining to participation rates. At the discretion of the commissioner, recipients subject to said work requirement who fail to meet said requirement shall not receive assistance.
The amendment was *rejected*.

Ms. Creem and Mr. Creedon moved that the bill be amended by inserting after Section 210 the following new section:-
"SECTION 210A. The fifteenth paragraph of section 10 of chapter 218 of the General Laws, as amended by sections 464 and 465 of chapter 26 of the acts of 2003, is hereby further amended by inserting after the words "the third district court of eastern Middlesex," the following words:- the district court of Newton;"
The amendment was **adopted**.

Mr. Moore moved that the bill be amended by striking out section 290 and inserting in place thereof the following section:

"SECTION 290. Notwithstanding the provisions of any general or special law to the contrary, the division of medical assistance may expend an amount not to exceed \$16,000,000 from the medical assistance intergovernmental transfer account within the Uncompensated Care Trust Fund for Title XIX payments to certain publicly owned or publicly operated providers. The payments shall be established in accordance with Title XIX of the federal Social Security Act, or any successor federal statute, any regulations promulgated thereunder, the Commonwealth's Title XIX state plan and the terms and conditions of agreements reached with the division for such payments. No funds shall be expended unless a public entity is legally obligated to make an intergovernmental funds transfer in an amount specified in an agreement with such entity, which amount shall not be less than 50 per cent of the Title XIX payment. All revenues generated pursuant to the provisions of this section shall be credited to the medical assistance intergovernmental transfer account and administered in accordance with the provisions of subsection (o) of section 18 of chapter 118G of the General Laws."

The amendment was **adopted**.

Mr. Joyce moved that the bill be amended in Section 308 by adding the following words:-

"(f) Notwithstanding the provisions of any general or special law to the contrary, the Department of Conservation and Recreation shall offer to the town of Milton a lease agreement for land currently the jurisdiction and control of the DCR known as Max Ulin Rink and the existing adjacent parking area located on Unquity road in the town of Milton and the playing fields consisting of four tennis courts and three baseball/softball diamonds and including the existing adjacent parking area at Houghton's Pond located at Blue Hill River road in the town of Milton to said town park and recreation department to be used for recreational purposes. The term of said lease agreement shall be for twenty years, and the town of Milton shall pay a nominal consideration for said lease. All costs, fees and expenses relating to the care and maintenance for such property shall be paid in full by the lessee."

The amendment was *rejected*.

Mr. Antonioni moved that the bill be amended by inserting, after Section 362, the following new Section: -

"SECTION 363. Section 59C of the General Laws as most recently amended by section 82 of Chapter 46 of the Acts of 2003, is hereby amended by deleting the fifth paragraph and inserting in place thereof the following: "The principal of each school, in consultation with the school council established pursuant to this section, shall on an annual basis, in conformity with the provisions of section 11 of chapter 69, develop and submit for approval by the district superintendent and school committee a plan for improving student performance. Said plan shall be prepared in a manner and form prescribed by the department of education and shall conform to any policies and practices of the district consistent therewith. If said school improvement plan is not reviewed by the school committee within thirty days of said school committee receiving said school improvement plan, the plan shall be deemed to have been approved by said school committee."

The amendment was **adopted**.

Ms. Tucker moved that the bill be amended in section 2, in line item 4800-1400, by inserting after "violence hotline;" the following words:-

"provided further, that procurement of services for immigrant and refugee victims shall be coordinated with the department of public health;" and in said item striking out the figures "\$19,254,292" and inserting in place thereof the figures "19,654,292."

The amendment was **adopted**.

Ms. Resor moved that the bill be amended by inserting after section 13, the following new section:-

"SECTION 13A. Chapter 81A of the General Laws is hereby amended by striking out Section 26, and inserting in place thereof the following section:-

SECTION 26. The Executive Office of Transportation shall oversee the transfer of the turnpike to the highway department and it shall be operated and maintained by the highway department free of tolls on or before January 1, 2005. The transfer of the turnpike under this section shall be effectuated by 1 or more agreements between the authority, the executive office of transportation and construction and the highway department. The agreement shall provide, but not be limited to, that all funds held in reserve by the authority shall be applied for payment of all notes and bonds and interest thereon, to the maturity thereof, issued by the authority relating to the turnpike and payable from turnpike revenues and for the sale of turnpike assets for the payments of such bonds or notes in excess of turnpike reserves. The authority on or before July 21, 2004, shall analyze, study and value the costs and actuarial liabilities attributable to the offering of an early retirement incentive program to employees of the authority and shall make a recommendation to the chairmen of the senate and house committees on ways and means. In addition, EOTC shall be required to develop a plan to dispose of Turnpike assets that includes the current market values of such assets and takes into account the need to promote economic development, preservation of open space, increased access to health care and housing for residents of the commonwealth.

The amendment was *rejected*.

Messrs. Moore, Montigny, O'Leary, Ms Wilkerson, Messrs. Tisei and Barrios moved that the bill be amended in Section 2, in item 4512-0103, by striking out the figures "\$31,494,099" and inserting in place thereof the following:- "\$35,494,099".

After remarks, the amendment was *rejected*.

There being no objection, the following amendments were considered as one and adopted, to wit:

Mr. Havern moved that the bill be amended in section 2, in line item 6010-0001, by adding the following at the end thereof:-

"Provided further that the Massachusetts Highway Department is directed to close route 60 between state highway route 2 in the town of Arlington and Winthrop Circle, so-called, in the city of Medford to commercial traffic between the hours of 12 P.M. and 6 A.M. effective September 1, 2004, unless the Massachusetts Highway Department declares it a public necessity that said roadway should be open to commercial traffic."

The amendment was **adopted**.

Ms. Walsh, Resor, Creem, and Mr. Tisei moved that the bill be amended by striking out Section 262 and inserting, after Section 261, the following new Section: -

SECTION 262. Notwithstanding any general or special law to the contrary, the department of highways, and the department of conservation and recreation shall enter into an agreement concerning the construction, maintenance, repair, and operation of the roadways and boulevards under the control of the department of conservation and recreation; provided, however, that such roadways and boulevards shall remain under the control of the department of conservation and recreation; provided further, that such construction, maintenance, repair, operation, and incidental matters shall be limited curb to curb and shall not extend into adjacent parklands, and shall not extend into median strips or traffic islands without the approval of the commissioner of the department of conservation and recreation; provided further, that no project, other than normal maintenance or emergency repair necessary for the protection of public health and safety, may be undertaken without the approval of the commissioner of the department of conservation and recreation; and, provided further, the commissioner of the department of conservation and recreation shall have the authority to terminate said agreement at any time for failure to preserve and protect the scenic and historic integrity of such bridges, parkways, and boulevards. The executive office of transportation shall also examine and pursue appropriate actions for increasing federal aid for projects related to roadways and boulevards under the control of the department of conservation and recreation, in consultation with the department of conservation and recreation. The secretary of the executive office of transportation and the director of the department of conservation and recreation shall report to the house and senate committees on ways and means, the joint committee on natural resources and the joint committee on transportation no later than March 1, 2005, which shall include a 5 year plan related to the maintenance, repair, and operation of the roadways and boulevards under the control of the department of conservation and recreation and shall detail measures undertaken to preserve and protect the scenic and historic integrity of such roadways and boulevards.

The amendment was **adopted**.

Mr. Moore moved that the bill be amended in Section 13, in the third paragraph, by striking the word:- "authorities";

In section 127, in section 2 as inserted thereby, by striking the second sentence of the first paragraph and inserting in place thereof the following new sentence:- "As of December 31, 2006, one of the members shall be the secretary of transportation, who shall serve as the chairperson of the board."

The amendment was **adopted**.

Mr. Shannon moved that the bill be amended in section 308 in the first paragraph of subsection (a) by deleting the words "Flynn Memorial Rink, Medford; LoConte Memorial Rink, Medford;" and inserting in place thereof the following words:- Veterans Memorial Rink, Somerville;

By adding to the second paragraph of subsection (b) the following words:- No proposal to lease the Simoni Memorial Rink in Cambridge shall be deemed responsive without a proposal by the same offer to lease the Veterans Memorial Rink in Somerville.; and

By adding at the end of subsection (b) the following new paragraph:-

This subsection shall not apply to the Veterans Memorial Skating Rink in Arlington.

The amendment was **adopted**.

Messrs. Morrissey and Tolman and Ms. Creem moved that the bill be amended in section 308, at the end of the first paragraph, by inserting after the word "Arlington," the following words:- Daly Memorial Rink, Newton; and

By inserting after section 308 the following new section:-

SECTION 308A. Notwithstanding sections 40E to 401, inclusive, of chapter 7 of the General Laws, or any other general or special law to the contrary, within 30 days of this act the division of capital asset management and maintenance, in consultation with the department of conservation and recreation, shall enter into a 3 1/2 year lease agreement with Community Rowing, Inc. on the same terms and conditions as the lease dated April 14, 1992 between Community Rowing, Inc. and the former metropolitan district commission. The new lease shall provide Community Rowing, Inc. access to the same facilities for the same period of time each year and shall require the same lease payment as under the previous lease. The new lease shall also include

other land, not included in the 1992 lease, that was licensed to Community Rowing, Inc. under a license dated April 9, 2002 between Community Rowing, Inc. and the former metropolitan district commission. The new lease shall be effective on July 1, 2004.

During the 3 1/2 year lease, no improvements, demolition or other work on the Daly Memorial Rink shall be conducted by the department of conservation and recreation or another entity which has entered into a lease for the use of the Daly Memorial Rink, which would interfere with the full operations of Community Rowing, Inc. between March 15 and November 7, 2004, 2005, 2006 and 2007.

Notwithstanding sections 40E to 40I, inclusive, of chapter 7 of the General Laws, or any other general or special law to the contrary, the division of capital asset management, in consultation with the department of conservation and recreation, shall enter into a second lease with Community Rowing, Inc., which lease shall be for a term of 30 years. The second lease may, but shall not be required to, run concurrently with the first lease. If the second lease does not run concurrently with the first, the second lease shall run consecutive to the first lease. This lease shall include: the property west of the Daly Memorial Rink and east of the Newton Yacht Club under the custody and control of the department, such area also known as the Community Rowing, Inc. "Locus"; the waterfront area between the Daly Memorial Rink and the Charles River, and in front of the Community Rowing, Inc. Locus; equal access to the Daly Memorial Rink parking lot; the right to maintain sufficient docks for rowing program use along the Charles River in front of the Daly Memorial Rink and the Community Rowing, Inc. "Locus"; and a right of way from the Daly Memorial Rink parking lot to the waterfront area between the Daly Memorial Rink and the Charles River and the Community Rowing, Inc. "Locus".

The consideration for the 30 year lease shall be determined by the department of conservation and recreation under the "2004 Boat Club Permit Renewal" established by the executive office of environmental affairs, office of public private partnership, or as the division of capital asset management, in consultation with the department of conservation and recreation, determines, consistent with the rent determinations made for other boat clubs that lease from the commonwealth and are located on the Charles River and taking into account the public services provided by each boat club and the level of public benefit provided by each boat club.

Community Rowing Inc. shall assume the costs of any appraisals, surveys and other expenses required by the division of capital asset management in consultations with the department of conservation and recreation, for the granting of the 30-year lease.

If Community Rowing, Inc. ceases at any time during the term of the 30-year lease to use the property for the storage and program operation described in this section, the lease shall be terminated immediately under such terms and conditions as the division of capital asset management and maintenance, in consultation with the department of conservation and recreation, may prescribe.

Any lease or proposed lease or extension of said lease shall be reviewed by the Inspector General for comment and recommendation before any lease is signed or extended and shall be null and void without said approval or recommendation. The amendment was **adopted**.

Mr. Brewer moved that the bill be amended in section 2, in item 7061-0011, by inserting after clause (7) the following:-
"(8) for transitional assistance to regional school districts which, prior to fiscal year 2005, have assessed member towns using the provisions of their regional agreement, and which, in fiscal year 2005, will assess member towns using the required contributions calculated pursuant to chapter 70 of the general laws and section three of this act;"
The amendment was **adopted**.

Mr. Antonioni moved that the bill be amended by striking section 27 and inserting in place thereof the following language: -
"SECTION _____. Section 1E of chapter 15 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out the first to third sentence and inserting in place thereof the following sentence: There shall be in the department a board of education, in this section and in sections one F and one G called the board, which shall consist of the chairman of the student advisory council established under this section, the chancellor of higher education, the Commissioner of the Board of Early Education and Care, one representative of a labor organization selected by the governor from a list of three nominees provided by the Massachusetts State Labor Council, AFL-CIO; one representative of business or industry selected by the governor with a demonstrated commitment to education; one representative of parents of school children selected by the governor from a list of three nominees provided by the Massachusetts Parent Teachers Association and three additional members selected by the governor. In making such additional selections, the governor shall seek to appoint persons who are from geographically diverse regions of the commonwealth and who are familiar with the differing interests, perspectives and needs of urban, rural and suburban school districts. No appointive member of said board shall be employed by or receive regular compensation from the department of education, or from any school system, public or independent, in the commonwealth."
The amendment was **adopted**.

Ms. Murray, Messrs. Lees, Tisei, Tarr, Knapik, Brown and Joyce, Mrs. Sprague and Ms. Melconian moved that the bill be amended by inserting after Section 25 the following sections:-

SECTION 25A. Chapter 12 of the General Laws is hereby amended by inserting after section 32, as appearing in the 2002 Official Edition, the following section:-

Section 33. The district attorney in each district may establish, subject to appropriation, a community based juvenile/youthful justice program for the purposes of insuring the safety and security of the public and private schools of the commonwealth, addressing the problems of juvenile and youthful violence, improving the services available to school-aged youth, insuring the effective use of resources by state and local law enforcement and social service agencies, and promoting collaboration among schools, local and state law enforcement agencies, private industry, municipalities, the probation department, and the departments of social services, youth services, mental health and public health. The program shall assist in the development of school and community based programs that are designed to prevent violence and delinquency, develop techniques for the early identification of at-risk youth, divert non-violent youthful offenders from the juvenile or criminal justice system, and insure the availability of and access to community based rehabilitative services including, but not limited to, substance abuse services for youthful offenders when appropriate.

Notwithstanding any general or special law to the contrary, for the purpose of establishing, implementing, or carrying out the purposes of said community based juvenile/youthful justice program or assisting in the development and implementation of said school and community based programs, employees and representatives of the following agencies and departments may discuss and exchange information concerning court records, investigations, court proceedings, and care, custody, education and treatment plans of juveniles and school-age persons under the age of 21 who attend elementary, junior high, or high schools in the commonwealth, public or private school systems designated by the superintendent of schools including but not limited to registered nurses employed by the schools, the probation department, the office of the district attorney, state or local police departments, the office of the sheriff, the department of youth services, the department of social services, the department of mental health, the department of public health, and other social service providers. In no instance shall any aspect of an individual's confidential communications with a sexual assault counselor, as defined in section 20J of chapter 233 or otherwise, be shared among the aforementioned parties. Employees and representatives of the department of social services, the department of mental health, and the department of public health may share information regarding the existence of services, treatment plans, and the identity of providers; but may share privileged information only when authorized by order of the juvenile court in requests involving a child under the age of 17 and the district court for requests concerning adults. The appropriate court shall notify the parent or guardian of a person whose privileged information is requested of his or her right to appear at the hearing regarding the request for access to said privileged information. Finally, any privileged communication made to a psychotherapist, as defined in section 20B of chapter 233, or the results of a court-ordered psychiatric examination shall not be shared unless authorized by a court order.

Any agency or employee or representative thereof who, without authority, discloses or disseminates such information or uses such information for purposes not described in this section shall be guilty of a crime and, upon conviction, may for each offense pay a fine of not more than \$2000.

SECTION 25B. Chapter 276 of the General Laws is hereby amended by inserting after section 85B, as appearing in the 2002 Official Edition, the following section:-

Section 85C. (a) Notwithstanding any general or special law to the contrary, the district attorney may notify the superintendent of a school district where a juvenile or a school-age person under the age of 21 resides or where a juvenile or a school-age person under the age of 21 enrolls or attempts to enroll, re-enroll or transfer to an elementary, junior high or high school, and the principal or headmaster of such school, of the arraignment or disposition of any criminal or delinquency proceeding involving such juvenile or school-age person under the age of 21. In order for the probation department to implement any court-ordered disposition, the commissioner of probation or his designee, and said principal or headmaster or his designee, may discuss and share any and all aspects of school records or school-related information, and any and all aspects of pending or disposed of criminal or delinquency proceedings.

SECTION 25C. The attorney general shall prepare a report of the activities, procedures, performance, operation and implementation of each community based juvenile/youthful justice program established in each country pursuant to this act on or before January 1, 2005. The attorney general in preparing said report shall consult with the office of the chief justice of the juvenile court, office of the commissioner of probation, department of social services, office of the district attorney, and said report shall be filed with the chairs of senate and house committees on ways and means and the chairs of the joint committee on the judiciary.

The amendment was **adopted**.

Messrs. Antonioni, Joyce, McGee, and Ms. Resor moved that the bill be amended by striking Section 35, Section 1, subsection (b) (2) and inserting the following words:- "(2) To encourage family choice by ensuring a mixed system of high-quality public and private programs, with local points of entry, staffed by well-qualified professionals."

The amendment was **adopted**.

Messrs. Antonioni, Joyce, McGee, and Ms. Resor moved that the bill be amended by striking Section 35, Section 1, subsection (b) (6) and inserting the following words:-

"(6) To develop a seamless service delivery system with early childhood programs administered by local, state and federal agencies with local points of entry.";

In Section 255 in paragraph (a) by inserting after the words "access to a high-quality early education and care program that meets professionally accepted standards" the following words: - "including, but not limited to, the Early Childhood Program Standards and Guidelines for Preschool Learning Experiences established by the Board of Education,";

In paragraph (b) by striking the third sentence and inserting in place thereof the following sentence:-

"The plan shall make recommendations for consolidating the functions of the office of child care services, the office of school readiness of the department of education, and the department of early education and care and take into consideration the program requirements under section 54 of chapter 15 of the general laws. The plan shall make recommendations regarding certification and take into consideration the teacher qualification requirements within the department of education's program standards."

The amendment was **adopted**.

Mr. O'Leary and Ms. Murray moved that the bill be amended in section 2, by striking out item 7504-0100 and inserting in place thereof the following item: -

"7504-0100

For Cape Cod Community College; provided that not less than \$35,000 be expended for a feasibility study on student housing on campus to address both lack of affordable housing and workforce shortages in the region....\$9,133,600".

The amendment was **adopted**.

Mr. McGee moved that the bill be amended in section 2, by inserting after item 7511-0100: by adding the following words:-

"In provided, funds shall be expended for the establishment and administration of a public policy institute and resource center."

The amendment was **adopted**.

Mr. Antonioni moved that the bill be amended by inserting at the end thereof the following section:

"The sixth paragraph of section 12 of Chapter 138 of the General Laws is hereby amended by striking out the last sentence and inserting in place thereof the following sentence: -

The licensing authority shall not decrease the hours during which sales of such alcohol beverages may be made by a licensee until after a public hearing concerning the public need for such decrease; provided, however, that a licensee affected by any such change shall be given 2 weeks' notice of the public hearing; provided further, that a local licensing authority, subject to the approval of the commission, may grant a license notwithstanding section 17 to sell wine for consumption on the winery premises to a winegrower authorized to operate a farmer-winery under section 19B, to sell malt beverages for consumption on the brewery premises to a farmer-brewer authorized to operate a farmer-brewer under Section 19C and to sell spirits for consumption on the distillery premises to a farmer-distiller authorized to operate a farmer-distillery under Section 19E; and provided further, that such licensees may sell for on premises consumption wine, malt beverages and spirits produced by the winery, brewery or distillery or produced for the winery, brewery or distillery and sold under the winery, brewery or distillery brand name."

The amendment was **adopted**.

Messrs. McGee and Tolman, moved that the bill be amended in Section 101, by inserting after the word "section 5", in line 2 the following word :-

or section 10

Mr. Havern moved that the bill be amended by inserting at the end thereof the following new section: -

"SECTION _____. Notwithstanding the provisions of paragraph (g ½) of subdivision (1) of section 4 of chapter 32 of the General Laws or any other general or special law to the contrary, in order to avoid extreme hardship to Sonia Zapolin, the teacher's retirement system is hereby authorized and directed to allow Sonia Zapolin, upon the payment of the appropriate retirement contribution, four years of creditable service for maternity leave commencing in 1964 under the provisions of said paragraph (g ½) of said subdivision (1) of said section 4 of chapter 32."

Ms. Menard moved that the pending amendment be amended by inserting immediately following the words "Sonia Zapolin" in line 3: -

"and Mary Kilroy";

By inserting immediately following the words "Sonia Zapolin" in line 4 the words:-"and Mary Kilroy"; and

By inserting immediately following "1964" in line 6: - "or 1965"

The amendment was **adopted**.

Mr. Barrios and Ms. Chandler moved that the bill be amended by inserting after section 100 the following section:-

"SECTION 100A. Chapter 32 of the General Laws, as appearing in the 2002 Official Edition, is amended in subsection (4)(i) of

section 5 by adding after the fifth sentence in line 248 the following sentence:-

Any member who, prior to July 1, 2001, filed an election form with the payroll, business, or other appropriate officer of the city, town, or school district, authorizing deductions of 11% pursuant to the alternative superannuation retirement benefit program, shall be deemed to have made an election for the purpose of this section."

The amendment was **adopted**.

Ms. Walsh moved that the bill be amended in section 2, in item 0710-0000, by striking out the figure "\$14,380,300" and inserting in place thereof the following figure: - "\$14,437,500".

The amendment was **adopted**.

Mr. Morrissey moved that the bill be amended by inserting, after section 353, the following new sections:-

SECTION 3A. Section 39 of Chapter 3 of the General Laws, as appearing in the 2002 Official Edition, by inserting the following new definitions: -

"Client" for the purpose of this chapter, shall mean any individual or business entity that contracts with another individual or business entity to receive "lobbyist" services.

"Lobbyist Entity" shall mean any entity providing lobbyist services, consisting of one or more legislative or executive agents, including any foreign or domestic corporation, association, sole proprietor, partnership, limited liability partnership or company, joint stock company, joint venture or any other similar business formation.

SECTION 3B. Chapter 3 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking section 40 in its entirety.

SECTION 3C. Chapter 3 of the General Laws, as appearing in the 2002 Official Edition, is hereby amend striking out section 41 in its entirety and inserting in place the following new section:-

Section 41. Docket; annual registration; filing fee; identification card; custody; public inspection

The state secretary shall keep a docket, which may be in the form of an electronic database. All information required to be filed under the provisions of this section shall be organized into said docket and shall be open and accessible for public inspection during normal business hours.

Each legislative agent, executive agent and lobbyist entity shall file an annual registration statement with the office of the state secretary on forms proscribed and provided by the state secretary. Said annual registration must be completed on or before December 15th of the year preceding the registration year.

Any client retaining the services of a legislative, executive or lobbyist entity shall also file an annual registration statement with the office of the state secretary on forms proscribed and provided by the state secretary. Said annual registration must be completed on or before December 15th of the year preceding the registration year.

Any client or lobbyist entity hiring, employing or agreeing to employ a lobbyist entity, legislative agent or executive agent after January 1st of the registration year shall within 10 days after such employment or agreement, cause the name of such lobbyist entity, legislative agent or executive agent to be registered with the office of the state secretary as provided herein. Notice of termination of such employment shall also be filed promptly with the state secretary by said client or lobbyist entity.

The state secretary shall assess each lobbyist entity an annual filing fee of \$1,000.00 to register the entity on the docket.

The state secretary shall assess each legislative agent and executive agent an annual filing fee of \$100.00 upon entering said agent's name on the docket.

The state secretary shall assess each client as defined herein, an annual filing fee of \$100.00 for each lobbyist entity (as defined herein) hired by them upon entering said name upon the docket.

The state secretary may, in his discretion and upon written request, waive all said filing fees for a lobbyist entity which registers to exclusively represent "not for profit" clients.

Upon registration, the state secretary shall issue to each legislative agent and executive agent, a non-transferable identification card that shall include the person's name and photograph. Out of state legislative agents and executive agents must submit three, passport-sized photographs to the state secretary upon registration.

The amendment was **adopted**.

Ms. Murray moved that the bill be amended in section 2, in item 0337-0002 by inserting after the word "Suffolk", in line 2, the following words:-
", Bristol, Barnstable";

In said section 2, in item 1150-5104, by striking out, in lines 6 and 7, the words "the commission may also expend revenues generated through the collection of fees and costs so associated" and inserting in place thereof the following words:-
"notwithstanding any general or special law to the contrary, the commission may also expend revenues generated through the collection of fees and costs so authorized";

In section 2 in item 2320-0100 by inserting at the end thereof the following: "and provided further \$75,000 shall be expended for a floating dock system at the Plymouth State Boat Ramp";

In said section 2 in item 2330-0100 by inserting at the end thereof the following: "; provided further, that funds shall be expended for the Center for Marine Science and Technology for research to minimize the economic impact of new fisheries management regulations shall not be reduced from fiscal year 2004 except in proportion to adjustments consistent with the department's budget adjustment; and provided further, that \$50,000 shall be expended for marine wildlife rehabilitation in the town of Bourne";

In section 2 in item 2810-0100 by inserting at the end thereof the following: "and provided further, that \$99,000 shall be expended for repairs to the portico at Pilgrim State Park";

In section 2 in item 4000-0300 by striking the figure "\$120,212,069" and inserting in place thereof the figure: "\$116,400,941";

In section 2 by inserting after item 4000-0300 the following item:

"4000-0365

For the lease costs of the executive office of health and human services; provided, that said secretary shall file with the house and senate committees on ways and means no later than July 31, 2004 a schedule of lease payments to be made from this item delineated by agency, location, lease costs per square foot, and the total square feet leased; provided further, the secretary shall study the co-location of offices of different health and human services agencies within the same building; provided further, that said study shall include, but not be limited to, the cost-savings and cost efficiencies expected to be achieved through office co-location, the impact of office co-location on integrated service provision to clients receiving services from multiple health and human service agencies, the interaction between co-location of offices and the development of standardized health and human service agencies services areas, and the impact of co-locating office on services accessibility, particularly for those clients in areas from which an agency office will be moved; provided further, that said study shall also include a list of all office consolidations and closures planned by the executive office to take place before the end of fiscal year 2006; provided further, that the report shall be submitted not later than February 15, 2005.....\$41,612,505";

In section 2 in item 4100-0060 by striking the figure "\$10,971,871" and inserting in place thereof the figure: "\$10,129,486";

In section 2 in item 4110-0001 by striking the figure "\$939,292" and inserting in place thereof the figure: "\$542,107";

In section 2 in item 4110-3010 by striking the figure "\$2,588,341" and inserting in place thereof the figure: "\$2,150,922";

In section 2 in item 4110-4000 by striking the figure "\$1,885,073" and inserting in place thereof the figure: "\$1,390,985";

In section 2 in item 4120-1000 by striking the figure "\$409,264" and inserting in place thereof the figure: "\$318,464";

In section 2 in item 4120-2000 by striking the figure "\$7,459,207" and inserting in place thereof the figure: "\$5,366,123";

In section 2 in item 4120-3000 by striking the figure "\$7,789,586" and inserting in place thereof the figure: "\$7,767,486";

In section 2 in item 4120-4000 by striking the figure "\$7,493,119" and inserting in place thereof the figure: "\$7,484,369";

In section 2 in item 4120-5000 by striking the figure "\$4,342,484" and inserting in place thereof the figure: "\$4,317,384";

In section 2 in item 4120-6000 by striking the figure "\$6,000,568" and inserting in place thereof the figure: "\$5,975,468";

In section 2 in item 4125-0100 by striking the figure "\$5,264,267" and inserting in place thereof the figure: "\$4,804,201";

In section 2 in item 4130-0002 by striking the figure "\$870,198" and inserting in place thereof the figure: "\$708,415";

In section 2 in item 4130-0005 by striking the figure "\$7,106,933" and inserting in place thereof the figure: "\$6,836,531";

In section 2 in item 4130-1000 by striking the figure "\$12,238,533" and inserting in place thereof the figure: "\$12,184,606";

In section 2 in item 4200-0010 by striking the figure "\$4,526,404" and inserting in place thereof the figure: "\$3,960,171";

In section 2 in item 4400-1000 by striking the figure "\$117,806,865" and inserting in place thereof the figure: "\$106,797,876";

In section 2 in item 4510-0100 by striking the figure "\$18,302,427" and inserting in place thereof the figure: "\$12,402,523";

In said section 2, in item 4513-1115, by inserting after the word "no", in line 2, the following word:- "state".

In section 2 in item 4800-0015 by striking the figure "\$64,488,643" and inserting in place thereof the figure: "\$54,137,881";

In section 2 in item 5011-0100 by striking the figure "\$35,376,100" and inserting in place thereof the figure: "\$35,313,203";

In section 2 in item 5046-0000 by striking the figure "\$274,355,702" and inserting in place thereof the figure: "\$273,747,453";

In section 2 in item 5911-1000 by striking the figure "\$12,536,658" and inserting in place thereof the figure: "\$10,961,150";

In section 2 in item 5920-1000 by striking the figure "\$52,228,078" and inserting in place thereof the figure: "\$49,735,974";

In section 2, in item 7100-0200, by striking out, in line 24, the word "more" and inserting in place thereof the following word:-
"less";

In section 2, in item 7100-0200, inserting at the end thereof the following:--

"provided further, that funding for the William Joiner Center for the Study of War and Social Consequences shall be funded at an amount not less than was allocated in the previous fiscal year; and provided further, that not less than an additional \$30,000 shall be appropriated for the Hispanic Writers in the Schools program; provided further, that the Mauricio Gaston Institute for Latino Community and Public Policy shall be funded at fiscal year 2003 levels";

In section 2, in item 7509-0100, by striking out the figure "\$9,191,583" and inserting in place thereof the following figure:-
"\$9,291,583";

In item 8000-0010 at the end thereof by adding the following: Provided further, that not less than \$20,000 shall be appropriated for a community policing program in the city of Revere;

In section 3, in the third paragraph, by striking out, in line 9, the words ", less any excess debt service amount as defined in section 2 of chapter 70 of the General Laws";

In section 3, in said third paragraph, by striking out the fifth sentence;

By inserting, after section 14, the following section:-

"SECTION 14A. Section 4A of chapter 7 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by adding the following 4 paragraphs:-

In the event a new governmental mandate effective on or after July 1, 2004 is imposed upon a contractor providing a social service program, as defined in section 274 of chapter 110 of the acts of 1993, to a governmental unit, as defined in said section 274 of said chapter 110, and compliance with such governmental mandate has or will have a material adverse financial impact on the contractor, the governmental unit shall negotiate a contract amendment with the contractor to increase the maximum obligation amount or unit price to offset the material adverse financial impact of the new governmental mandate, provided that the contractor furnishes substantial evidence to the governmental unit of such material adverse financial impact along with a request to renegotiate based on a new governmental mandate.

For the purposes of this section, a "new governmental mandate" shall mean a statutory requirement, administrative rule, regulation, assessment, executive order, judicial order or other governmental requirement that was not in effect when the contract was originally entered into and directly or indirectly imposes an obligation upon the contractor to take any action or to refrain from taking any action.

For the purposes of this section, a "material adverse financial impact" shall mean: (a) an increase in the reasonable costs to the contractor in performing the contract of the lesser of: (i) 3 per cent of the maximum obligation amount or unit price of the contract; or (ii) \$5,000, in the aggregate as a result of all such mandates in effect during the contract year; or (b) an action that affects the core purpose and primary intent of the contract.

Any contractor aggrieved by a decision of a governmental unit denying or failing to negotiate a contract amendment to remedy a material adverse impact of a new governmental mandate pursuant to this section may appeal such adverse decision to the division of administrative law appeals in accordance with the section 4H for a hearing and decision de novo on all issues. A contractor's request for contract amendment shall, for purposes of appeal, be deemed to have been denied if a determination is not received within 30 days of the governmental unit's receipt of the request. A contractor or governmental unit may appeal an adverse decision of the division of administrative law appeals to the superior court, Suffolk division, pursuant to chapter 30A.";

By striking out section 26 and inserting in place thereof the following section:-

"SECTION 26. Chapter 13 of the General Laws is hereby amended by inserting after section 9B the following section:-

Section 9C. The members of the boards of registration shall be public employees for the purposes of chapter 258 for all acts or omissions within the scope of their duties as board members.";

By inserting after section 44 the following section:-

"SECTION 44A. Section 4 of chapter 19D of the General Laws, as so appearing, is hereby amended by inserting after the second paragraph the following paragraph:-

Notwithstanding the previous paragraph, no fees, including minimum fees, for initial certification or certification renewal shall be due from a provider for assisted living units created under the HUD Assisted Living Conversion Program.";

By inserting after Section 83 the following section:-

"SECTION 83A. Section 3 of chapter 32 of the General Laws, as so appearing, is hereby amended by striking out, in line 236, the words 'public safety' and inserting in place thereof the following words:- inspection and regulation";

By inserting after Section 97 the following section:-

"SECTION 97A. Section 23 of said chapter 32, as so appearing, is hereby amended by adding following subdivision:- Confidentiality of certain records. No documentary material or data made or received by a member of the PRIM board, which consists of trade secrets or commercial or financial information that relates to the investment of public trust or retirement funds, shall be disclosed to the public if disclosure is likely to impair the government's ability to obtain such information in the future or is likely to cause substantial harm to the competitive position of the person or entity from whom the information was obtained. The provisions of the open meeting law shall not apply to the PRIM board when it is discussing the information described in this subdivision. This subdivision shall apply to any request for information covered by this subdivision for which no disclosure has been made by the effective date of this subdivision.

And by inserting after section 113 the following section:-

"SECTION 113A. Section 13 of chapter 58 of the General Laws is hereby amended by striking out, in lines 14 and 15, as so appearing, the words "environmental management" and inserting in place thereof the following words:- conservation and recreation."

And by striking out section 122 and inserting in place thereof the following section:-

SECTION 122. Subsection (d) of section 10 of chapter 66 of the General Laws, as so appearing, is hereby amended by striking out the third paragraph and inserting in place thereof the following paragraph:-

The home address and home telephone number of law enforcement, judicial, prosecutorial, department of youth services, department of social services and department of correction personnel shall not be public records in the custody of the employers of those personnel or the public employee retirement administration commission or any retirement board established under chapter 32 and shall not be disclosed. The information may be disclosed to an employee organization under chapter 150E, a nonprofit organization for retired public employees under chapter 180 or to a criminal justice agency as defined in section 167 of chapter 6. The name and home address and telephone number of a family member of any such personnel shall not be public records in the custody of the employers of the foregoing persons or the public employee retirement administration commission or any retirement board established under chapter 32 and shall not be disclosed. The home address and telephone number or place of employment or education of victims of adjudicated crimes, victims of domestic violence and of persons providing or training in family planning services and the name and home address and telephone number or place of employment or education of a family member of any of the foregoing shall not be public records in the custody of a government agency which maintains records identifying the persons as falling within the categories and shall not be disclosed.;

In Section 141 by striking out, in lines 2 and 3, the words "Fallen Firefighter Memorial Fund to be coordinated by the Professional Firefighters" and inserting in place thereof the following words:- "Professional Firefighters of Massachusetts to benefit the Fallen Firefighters Memorial Fund.";

By inserting after section 148 the following section:-

"Section 148A. The last sentence of section 4 of chapter 92A1/2 of the General Laws, as appearing in section 290 of said chapter 26, is hereby amended by striking out the words 'general fund' and inserting in place thereof the following words: - Water Supply Protection Trust, established in section 73 of chapter 10.";

By striking out section 159 and inserting in place thereof the following section:-

"SECTION 159. Section 61 of chapter 112 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out the first paragraph and inserting in place thereof the following 3 paragraphs: --

Except as otherwise provided by law, each board of registration may, by a majority vote and upon determination made, after opportunity for a hearing, that the holder of a license, certificate, registration or authority issued by the respective board is subject to sanctions on a ground enumerated in this section, impose sanctions including, but not limited to, the following:

- (1) suspend, revoke, cancel or refuse to renew a license, certificate, registration or authority, or place its holder on probation;
- (2) reprimand or censure a holder;
- (3) assess upon a holder a civil administrative penalty not to exceed \$5,000 for each violation;
- (4) require a holder to perform, for each violation, up to 100 hours of public service at a time and in a manner to be determined by the board;
- (5) require a holder to complete additional education and training as a condition of retention or future consideration for reinstatement of the license, certificate, registration or authority;
- (6) require a holder to practice under appropriate supervision for a period of time to be determined by the board as a condition of retention or for future consideration of reinstatement of the license certificate, registration or authority
- (7) require a holder to participate in an alcohol or drug rehabilitation program or undergo drug testing, or both, as a condition of retention or for future consideration of reinstatement of the license, certificate, registration or authority; and
- (8) require restitution of not more than \$10,000 per injured party where appropriate.

A board of registration may sanction the holder of a license, certificate, registration or authority in accordance with this section if the holder:

- (1) has engaged in conduct which places into question the holder's competence to practice his profession including, but not limited to, gross misconduct or misconduct in the practice of the profession, or practicing the profession fraudulently or beyond its authorized scope, or with gross incompetence, or with negligence on more than 1 occasion;
- (2) is incapacitated by, or has practiced his profession while the ability to practice is impaired by, alcohol, drugs, physical disability or mental instability;
- (3) has violated any law or rule or regulation of the board of registration, governing the practice of his profession;
- (4) has been convicted of a criminal offense that reasonably calls into question the holder's ability to practice his profession;
- (5) has engaged in dishonesty, fraud or deceit that bears on the holder's fitness to practice his profession;
- (6) has knowingly permitted, aided or abetted an unlicensed person to perform activities requiring a license, certificate, registration or authority; or
- (7) has had a license, certificate, registration or authority issued by another state or territory of the United States, the District of Columbia, or a foreign state or nation with authority to issue such a license, certificate, registration or authority revoked, canceled or suspended, not renewed, or otherwise acted against, or the holder has been disciplined, if the basis for the action is substantially the same as a basis for disciplinary action in the commonwealth.

Nothing in this section shall limit a board's authority to impose such reasonable sanctions as deemed appropriate by the board after hearing or by consent agreement. A person sanctioned under this section shall also be liable to such other punishment as may be provided by law. The boards may make such rules and regulations as they deem proper for the filing of charges and the conduct of hearings.";

By striking out section 163 and inserting in place thereof the following section:-

"SECTION 163. Said chapter 112 is hereby further amended by inserting after section 65 the following 5 sections:-

Section 65A. Each board of registration within the division of professional licensure may, after opportunity for a hearing, assess and collect a civil administrative penalty of up to \$5,000 for each violation upon a person who practices a trade or profession at a time when his license, certificate, registration or authority to do so from that board is not valid because it has been suspended, revoked or canceled under this chapter or because it has expired. The penalty shall be in addition to all other penalties and remedies that may be provided by law. A board may apply to the appropriate court for a restraining order enjoining such unlicensed practice or for an order for payment of an assessed penalty, or both, and may obtain such other orders as may be appropriate. All penalties collected shall be deposited in the Division of Professional Licensure Trust Fund established under subsection (a) of section 35V of chapter 10.

Section 65B. Each board of registration within the division of professional licensure may, after opportunity for a hearing, assess and collect a civil administrative penalty of up to \$5,000 for each violation upon a person who, without holding the required license, certificate, registration or authority from that board, engages in the practice of a trade or profession for which a license, certificate, registration or authority is required. The penalty shall be in addition to all other penalties and remedies that may be provided by law. A board may apply to the appropriate court for a restraining order enjoining such unlicensed practice or for an order for payment of an assessed penalty, or both, and may obtain such other orders as may be appropriate. All penalties collected shall be deposited in the Division of Professional Licensure Trust Fund, established under subsection (a) of section 35V of

chapter 10.

Section 65C. Each board of registration that has jurisdiction over a licensee whose continued practice poses an immediate and serious threat to the public health, safety or welfare may suspend or refuse to renew the holder's license, certificate, registration or authority pending a hearing on the merits. The board shall hold a hearing on the necessity for any such emergency action within 7 business days of the action. The board shall issue to the licensee a written order of emergency action which shall specify the findings of the board and the reasons for the action and which shall also include notice of the date, time and place of the hearing. At the request of a licensee, the board may reschedule the hearing to a date and time mutually agreeable to the board and the licensee. Any rescheduling of the hearing that is granted at the licensee's request shall not operate to lift or stay the emergency action order. If the hearing is not held within 7 business days of the board's emergency action, or at such rescheduled time as may have been agreed to, the license, certificate, registration or authority against which an action was taken shall be reinstated. At the hearing, the board shall receive evidence limited to determining whether the emergency action order shall continue in effect pending the final disposition of the complaint.

Following the hearing, any continuing suspension or nonrenewal imposed by a board shall remain in effect until the conclusion of a formal proceeding on the merits of the allegations against the holder, including judicial review, or until withdrawn by the board. The division of professional licensure and the department of public health, as appropriate, after proper notice and hearing, shall adopt rules and regulations governing the emergency action procedure authorized by this section.

Section 65D. Any complaint, report, record or other information received or kept by a board of registration in connection with an investigation shall be a public record only following the issuance of an order to show cause or final action by the board. Before issuing an order to show cause or final action, each board may keep confidential any complaint, report, record or other information received or made in connection with an investigation conducted by the board. The identity of a person filing a complaint shall be exempt from disclosure as a public record at all times, except to the extent that a licensee may be entitled to such information for purposes of preparing a defense in a formal adjudicatory hearing. The requirement that investigative records or information be kept confidential shall not apply to requests from other state or federal agencies, boards or institutions as the division of professional licensure or the department of public health, as appropriate, shall determine by regulation. Meetings of the boards held for the purpose of conducting investigative conferences related to a complaint shall not be considered open meetings within the meaning of section 11A½ of chapter 30A.

Section 65E. After a complaint has been filed with a board of registration alleging that a holder of a license, certificate, registration or authority issued by a board may be incompetent or unable to practice his profession or trade with reasonable skill and safety because the holder's ability to practice is impaired due to mental or physical illness, the board may order the holder to be examined by physicians or psychotherapists approved by the board at the board's expense. If the individual fails or refuses to comply with an order by the board for an examination and upon reasonable notice to the holder, the board may apply to the superior court for an order compelling the holder to submit to an examination. If the board's application is granted, the court may, after opportunity for a hearing, require the individual to pay to the board its reasonable expenses incurred in obtaining the order, including attorneys' fees, unless the court finds an award of expenses unjust. A holder's failure to comply with a court order issued under this section shall constitute grounds for disciplinary action by the board including, but not limited to, the sanctions listed in section 61. The report of the examiners shall be made available to the holder and may be received as direct evidence in formal adjudicatory proceedings. The report shall remain confidential except to the extent it is disclosed in such proceedings.";

In section 255, in subsection (b), by inserting, after fourth sentence, the following new sentence:-

The plan shall identify how the state can best prioritize the needs of low income families.;

In section 259, in subsection (b), by striking the figure "2.5" and inserting in place thereof the following figure:-

1.5; In Section 291, by striking the section in its entirety and inserting in place thereof the following new section:

SECTION 291. Notwithstanding any general or special law to the contrary, during fiscal year 2005 and including the accounts payable period for that fiscal year, the division of medical assistance may expend from the medical assistance intergovernmental transfer account within the Uncompensated Care Trust Fund, not less than \$700,000,000 for a program of MassHealth supplemental payments to certain publicly operated entities providing Title XIX reimbursable services, directly or through contracts with hospitals under an agreement with the division relating to such payments and transfers as established in accordance with Title XIX of the Social Security Act or federal waivers thereof, federal regulations promulgated thereunder, the terms of the waiver under section 1115 of the Social Security Act, state law, and the Medicaid state plan. The growth in membership of said publicly operated entities' managed care organizations shall increase by not less than 48% in fiscal year 2005. The funds may be expended only for payment obligations arising during fiscal year 2005. Such expenditures shall reduce payments from the Uncompensated Care Trust Fund to such entities by an amount comparable to the net revenues received by such entities under this section. The division of medical assistance shall notify the house and senate committees on ways and means if such expenditures are rendered ineligible for federal reimbursement. Amounts so authorized for said expenditure shall be funded in part through intergovernmental transfers to the commonwealth of municipal or other non-federal public funds. The Boston public

health commission and the Cambridge public health commission shall transfer to said medical assistance intergovernmental transfer account an amount equal to 55 per cent of the gross amounts of supplemental payments made by the division of medical assistance under managed care contracts with the commissions. An amount equal to 8.6 percent of the total amount that the Boston and Cambridge public health commissions transfer to the medical assistance intergovernmental transfer account pursuant to this section shall be transferred from said medical assistance intergovernmental transfer account to revenues available for the administration of the uncompensated care pool, as established under subsection (d) of section 18 of chapter 118G of the general laws. An amount equal to 5 percent of the total amount that the Boston and Cambridge public health commissions transfer to the medical assistance intergovernmental transfer account pursuant to this section shall be transferred from said medical assistance intergovernmental transfer account and credited to the Essential Community Provider Expendable Trust Fund, as established by section 133 of chapter 140 of the acts of 2003 and as amended by chapter 40 of the acts of 2004.;

In Section 296, in paragraph 7, by striking subsection (a) and replacing it with the following:

(a) (1) calculate each hospitals actual free care cost for the twelve month period from May 2003 to April 2004 by using each hospitals actual submitted free care charges to DHCFP on UC-03 and UC-04 times their ratio of cost to charge (RCC) for PY03 and PY04; (2) project each hospitals free care costs above for period May 2003 to September 2003 (PY03) to May 2004 to September 2004 (PY04) using a 14% cost and volume growth inflation factor; (3) project each hospitals total PY04 free care costs by adding actual hospitals free care cost for October 2003 to April 2004 from subsection (a) (1) to the projected hospitals' free care costs for May 2004 to September 2004 from subsection (a) (2); and (4) project each hospitals total free care costs for PY05 by multiplying hospitals' PY04 projected free care costs from subsection (a) (3) by a cost and volume inflation factor of 8%;

In Section 297, by striking said section and replacing it with the following:

SECTION 297. The state auditor shall examine the practices in emergency rooms of all Massachusetts hospitals relative to uninsured patients and the billing practices from the uncompensated care trust. The auditor shall implement a comprehensive audit which shall include, but not be limited to: (1) assuring that hospitals are properly assisting enrollment of uninsured patients into MassHealth or other available programs; (2) assuring that free care charges hospitals are making to the free care pool are compliant with regulations and accurately represent costs incurred by uninsured patients; (3) assuring against cost diversion or shifting to the Uncompensated Care Pool that might be occurring in hospital emergency rooms; and (4) reporting on whether current assessments are fairly and evenly distributed per individual covered between all types of health plans, whether such plans are Massachusetts regulated, ERISA-exempted, or self-insured plans. The auditor shall submit a report to the house and senate committees on ways and means on the results of the audits no later than January 20, 2005. For the purposes of said audits, allowable free care services shall be defined pursuant to chapter 118G of the General Laws.;

By striking out section 299 and inserting in place thereof the following:

SECTION 299. Notwithstanding the provisions of any general or special law to the contrary, the executive office of health and human services pursuant to section 15 of chapter 26 of the acts of 2003, acting in its capacity as the single state agency under Title XIX of the Social Security Act and other federally assisted programs administered by said secretariat, and as the principal agency for all of the agencies within the secretariat, is authorized to enter into interdepartmental service agreements with the university of Massachusetts medical school to perform such activities as the secretary determines are appropriate and within the scope of the proper administration of said Title XIX and other federal funding provisions to otherwise support the programs and activities of the executive office. Such activities shall include, but not be limited to, (1) provision of administrative services, including, but not limited to, activities such as providing the medical expertise to support or administer utilization management activities, determining eligibility based on disability, supporting case management activities and similar initiatives; (2) consulting services related to quality assurance, program evaluation and development, integrity and soundness, and project management; (3) activities and services for the purpose of pursuing federal reimbursement or avoiding costs, third party liability and recouping payments to third parties; and (4) programs to maximize federal financial participation to municipalities which make certified public expenditures to hospitals pursuant to said Title XIX regulations. Federal reimbursement for any expenditures made by the university of Massachusetts medical school relative to federally-reimbursable services said school provides under said interdepartmental service agreements or other contracts with the executive office of health and human services shall be distributed to said university. The secretary may negotiate contingency fees for activities and services related to the purpose of pursuing such federal reimbursement or avoiding costs, and the comptroller shall be directed to pay upon the receipt of such revenue, reimbursement or demonstration of costs avoided; provided however that the secretary shall not pay contingency fees in excess of \$30,000,000 for state fiscal year 2005. The secretary of health and human services shall submit to the secretary of administration and finance and the house and senate committees on ways and means a quarterly report detailing (1) the amount of federal reimbursement and recoupment payments the said university was able to collect for the commonwealth in generating such fees; and (2) the amounts spent by said university on personnel and other costs in that effort.;

In Section 305, by inserting after the word "expend," the following words:- "or reimburse".

In section 308, in subsection (a), in the first paragraph, in the first sentence, by striking out the words "subject to the provisions of sections 40E to 40K" and inserting in place thereof the following words:- "notwithstanding sections 40E to 40I";

In said section 308, in said subsection (a), in the third paragraph, in the fifth sentence, by striking out the words "division of capital asset management and maintenance" and inserting in place thereof the following words:- "department of conservation and recreation";

In said section 308, in subsection (b), in the first sentence, by inserting after the word "maintenance" the following words:- , in consultation with and on behalf of the department of conservation and recreation,";

By inserting after section 319 the following section:-

SECTION 319A. The department of conservation and recreation shall ensure that all aspects of all pools, parks and recreational facilities under the jurisdiction of the department shall remain open for the full summer season and that the beaches have their full amount of required maintenance and upkeep.;

By striking out section 330.;

By adding at the end thereof the following new section:-

SECTION XXX. Adding the following subdivision, as amended by section 12 of chapter 68 of the acts of 1999, hereby further amends section 5 of said Chapter 32:-

(5)(i) Notwithstanding the provisions of this chapter or any other general or special law to the contrary, there is hereby established an alternative superannuation retirement benefit program for members of the Massachusetts Port Authority Employees Retirement System. Participation in said program shall be an alternative retirement option at time of hiring for all employees hired on or after July 1, 2004. Such members shall make contributions to the Massachusetts Port Authority Employees Retirement System at the rate of 10 per cent on all regular compensation. Any member of the Massachusetts Port Authority Retirement System before July 1, 2004 may elect to participate in the alternative superannuation retirement benefit program. Said election shall be made on or after July 1, 2004 and before December 31, 2004. Any member of a contributory retirement system who transfers into the Massachusetts Port Authority Employees Retirement System before July 1, 2004 may elect to participate in the alternative superannuation retirement benefit program; provided, that said election shall occur within 180 days of establishing membership in the Massachusetts Port Authority Employees Retirement System.

(5)(ii) Any member who elects to so participate shall be required to make a minimum of five years of contributions at 10 per cent from of regular compensation pursuant to section 22; provided, however, that if said member elects to retire before he has made said five years of contributions at 10 per cent, said member shall pay, in one sum or in installments as the board may prescribe, an amount equal to that which would have been withheld as regular deductions at the rate of 10 per cent from his regular compensation for such five year period based on his last 12 months of regular compensation less contributions made during said member's last five years of creditable service; provided, further, that any inactive member who elects to retire before he has made said five years of contributions at 10 per cent, said member shall pay, in one sum or in installments as the board may prescribe, an amount equal to that which would have been withheld as regular deductions at the rate of 10 per cent from his regular compensation for such five-year period based on the last 12 months of regular compensation which would have been paid to said inactive member has said member continued in the position from which he is currently inactive less contributions made during said member's last five years of creditable service. Any schedule permitting an acceleration of contributions shall be consistent with the plan qualification requirements of the Internal Revenue Code and shall, where necessary to meet the requirements of the Internal Revenue Code, provide for an actuarial reduction of benefits by the actuary appointed by the commission in accordance with the provisions of section 21. Any member who elects to participate in the alternative superannuation retirement benefit program and pays additional contributions pursuant to this section and does not complete 30 years of creditable service shall upon termination from membership in or retirement from the system be reimbursed such additional contributions, plus regular interest, as determined by the Massachusetts Port Authority Employees Retirement System.

(5)(iii) The normal yearly amount of retirement allowance for an eligible employee who has completed 30 years of creditable service and has paid the full amount of regular deductions on the total amount of regular compensation as determined under paragraph (a) of subsection (2), shall be based on the average annual rate of regular compensation as determined under said paragraph (a) and shall be computed according to the table contained in said paragraph (a) titled group 2, based on the age of such member and his number of years and full months of creditable service at the time of his retirement with the percentage of salary average in such computation to be increased by 2 per cent per year for each full year of service in excess of 24 years of creditable service; provided, however, that such member shall have served for not less that 25 years as an employee of the Massachusetts Port Authority in order to be eligible to receive the benefit provided under this subsection. For any member who retires prior to age 55, his age factor shall be determined in accordance with subdivision (1) of section 10. For any member who retires before completing 30 years of service, such member shall receive a retirement allowance equal to the retirement allowance that the member would have been eligible for had he not participated in the alternative superannuation retirement benefit program.

(5)(iv) The total normal yearly amount of the retirement allowance, as determined in accordance with the provisions of this subdivision, of any employee who retires and receives an additional benefit under the alternative superannuation retirement

benefit program shall not exceed four-fifths of the average annual rate of his regular compensation received during any period of three consecutive years of creditable service for which the rate of compensation was the highest or of the average annual rate of his regular compensation received during the period or periods, whether or not consecutive, constituting his last three years of creditable service preceding retirement, whichever is greater.;

By adding at the end thereof the following new section:-

SECTION XXX. Notwithstanding the provisions of any general or special law to the contrary, the Retirement Board of the Massachusetts Port Authority is hereby directed to establish a retirement benefit fund for retired employees, and the eligible surviving spouse or dependents of deceased employees. Such funds shall be credited to a special fund to be known as the Retiree Benefit Trust Fund. The funding for such fund shall be initiated by appropriating and transferring all funds presently in the Massachusetts Port Authority Retirement System which exceed one hundred and twenty (120%) percent of the required funding for that system as established by the annual report of said system. Any interest or other income shall be added to and become part of such fund. Any funds in said Retiree Benefit Fund shall be trust funds within the meaning of section 54 of chapter 44 of the General Laws. The Massachusetts Port Authority Employees' Retirement Board, or their designee, by a majority vote of such Board, shall be the custodian of such fund, and may deposit the proceeds in national banks or invest the proceeds by deposit in savings banks, cooperative banks, or trust companies organized under the laws of the commonwealth or in federal savings and loan associations situated in the Commonwealth or invest the same in such securities as are legal for the investment of funds of savings banks under the laws of the Commonwealth. The Board may employ any qualified bank, trust company, corporation, firm or person to advise them on the investment of the fund and may pay for such advice. Amounts shall be added to such fund upon the publishing of the Retirement system's annual report and the establishment that the Retirement Fund exceeds twenty per cent of the fully required funding. All amounts which exceed one hundred and twenty (120%) per cent shall be transferred to The Retirees' Benefit Fund Accounts. The Retirement may expend such fund for the benefit of the retirees following a majority vote of said Board. Funds may be utilized for the purposes of this trust fund by appropriation at any meeting of The Massachusetts Port Authority Retirement Board. Monies which exceed the One Hundred and Twenty (120%) Per Cent shall be transferred to the Retirees Benefit Account on an annual basis on the anniversary of the initial transfer of such funds.; and

By amending section 296, in paragraph seven, by inserting after the words "a teaching hospital located in Hampden County with high Medicaid utilization" the following words:- "and the Sisters of Providence Health System Behavioral Health Network"
The amendment was **adopted**.

Ms. Creem and Mr. O'Leary moved that the bill be amended in Section 2, in item 1201-0130, by striking out the figure "\$4,640,000" wherever it appears and inserting in place thereof the following figure:- "\$9,640,000".
The amendment was **adopted**.

Mr. Joyce moved that the bill be amended by inserting, after Section ____, the following new Section:-
"SECTION _____. Section 13 of Chapter 58 of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by inserting after the words "(g) of section twenty-three of chapter one hundred and eleven H" the following:

"Blue Hills Reservation communities shall also be eligible for Payments in Lieu of Taxes which shall be calculated in the same manner as land owned by the commonwealth and previously under the care and control of the former department of environmental management and used for recreational or conservation purposes."
The amendment was **adopted**.

Messrs. Tolman and Havern moved that the bill be amended by inserting, after Section 362, the following new Section:-
"SECTION 363. Section 4 of Chapter 113 of the acts of 1829 is hereby amended by striking the number twelve in the first sentence and inserting in its place the phrase "not more than twenty-four;" and by deleting the word "eight" in the last clause of the first sentence."
The amendment was **adopted**.

Ms. Resor that moved that the bill be amended in section 2, in line item 1102-3206 by inserting at the end thereof the following:-
"and, provided further, that the division of capital asset management and maintenance and the Massachusetts highway department shall close and secure the rest stop area on Route 2 west in the town of Harvard".
The amendment was **adopted**.

Ms. Wilkerson moved that the bill be amended by inserting after Section 74 the following new section:--
"SECTION _____ Chapter 29 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after section 2CCC the following new section:--

Section 2DDD. There is hereby established and set up on the books of the commonwealth a separate fund to be known as the Division of Capital Asset Maintenance and Management Operations Fund. Said fund shall consist of all monies charged and collected pursuant to applications for certification pursuant to section 44D of chapter 149. The monies in the fund shall be

expended subject to appropriation to meet the operation costs, including staffing, of the certification process of said section."
The amendment was **adopted**.

Ms. Wilkerson further moved that the bill be amended in Section 2 by inserting after item 1102-3231 the following new items:-
"1102-3232

For the division of capital asset maintenance and management; provided, that the division may expend an amount not to exceed \$300,000 received from application fees charged in conjunction with the certification of contractors and subcontractors pursuant to section 44D of chapter 149 of the General Laws; and provided further, that only expenses, including staffing, incurred to implement and operate said certification program shall be funded from this item.....\$300,000"

The amendment was **adopted**.

Messrs. Tisei, Barrios, Lees, Knapik, Tarr, and Hedlund, Mrs. Sprague, and Mr. Brown move that the bill be amended in section 2, in itme 1108-5100, in line 5, by inserting after "General Laws" the following:-", provided that the commission shall develop a report setting forth plan designs for plan established pursuant to chapter 32A, section 10F and appropriate administrative mechanisms for said plans, with the costs associated with both the benefits provided under said plans and administration, and shall file the report with the house and senate committees on ways and means no later than January 1, 2005.;

By adding at the end thereof the following new section(s):

"Section 101A. M.G.L. c. 32A, Section 2c, is amended by inserting after "Massachusetts" in line 1 the following: "and a person who is an employee of a vendor which provides human services and which is under contract with any agency with in the executive office of health and human services"

Section 101B. M.G.L. c. 32A, Section 2c, is amended by inserting after "Massachusetts" in line 1 the following; "or employer of any employee, as defined in Subsection (b)."

Section 101C. M.G.L. Chapter 32A is amended by inserting, "Section 10F Insurance for employees of human service vendor employers

Section 10F. Subject to appropriation, the commission shall negotiate with and purchase on such terms as it deems to be in the best interest of the commonwealth, the vendor employers covered under this section chapter, and the affected employees and their dependents, from one or more insurance companies or non-profit hospital, medical or other service corporations, a policy or policies of group general or blanket insurance providing hospital, surgical, medical, and other health insurance benefits for said agency employees and their dependents. Such policy or policies shall consist of a schedule of hospital, surgical, medical, dental and other health insurance benefits for agency employees and their dependents which shall be unrelated to the schedule of hospital, surgical, medical, dental and other health insurance benefits purchased by the commonwealth under the provisions of section four, or the schedule of hospital, surgical, medical, dental and other health insurance benefits purchased by counties, cities, towns and districts under the provisions of section three of chapter thirty-two B.

(a) With respect to any period of insurance which is in effect for the vendor employees and their dependents, the full cost of the insurance shall be borne by the vendor employer and the participating employee. The commonwealth will not be responsible for contributing to the cost of this insurance.

(b) The employee's per cent share of the premium shall be withheld by the appropriate employer form the employee's salary on a periodic basis, and shall be forwarded by the responsible official al each vendor employer to the commission in accordance with its rules and regulations..

(c) The commission shall determine at least annually, or sooner, the amount of premiums for each health plan which shall be reimbursed to the commonwealth be each contracting agency having employees insured under this section. The commission shall also determine, at least annually, the portion of the commission's expense of administering this hospital, surgical, medical, and other health insurance coverage for the employees of vendor employer for this coverage. After such determinations, the commission shall assess each agency an administrative charge equal to their pro rata share of the cost of administering this program.

(d) Any dividend or refund accepted by the commission from any insurance carrier as a result of the contract negotiated under this section shall be deposited by the commission with the state treasurer as provided in section nine. The commission shall determine the amount of dividend or refund apportionable to the various vendor employers having employees insured hereunder, and shall reduce the administrative expenses in section (c) attributable to each such vendor employer by the amount of refund attributable thereto.

(e) Each employee of a vendor employer to whom this chapter applies shall furnish the commission, in such form as it shall prescribe, such information as is necessary to insure himself or himself and his dependents under the hospital, surgical, medical, and other health insurance herein provided, and shall authorize the withholding of the appropriate premium from his salary by the

appropriate vendor employer.

(f) Participation in the health insurance program described in this section is voluntary for vendors which contract to provide human service with the following departments of the Commonwealth: the Commission for the Deaf and Hard of Hearing, the Department of Mental Health, the Department of Mental Retardation, the Department of Social Services, the Department of Transitional Assistance, the Department of Youth Services, the Disabled Persons Protection Commission, the Division of Employment & Training, the Division of Medical Assistance, the Executive Office for Elder Affairs, the Executive Office of Health and Human Services, the Massachusetts Commission for the Blind, the Massachusetts Rehabilitation Commission and the Office of Child Care Services. This section does not apply to individuals or families which contract directly with the Department of Social Services or the Office of Child Care Services to provide foster care or in-home family daycare. This section also does not apply to individuals who enter into contracts with said departments of the Commonwealth as consultants or independent contractors."; and

By adding at the end thereof the following new section:-

Section 363. Sections 101A to 101C, inclusive shall be effective on January 1, 2006 subject to approval by the General Court.

The amendment was **adopted**.

Messrs. Rosenberg, Brewer and Nuciforo moved that the bill be amended by inserting, after Section ____, the following new Section:-

"Section ___. Notwithstanding the provisions of any general or special law to the contrary, retired employees of Franklin county and the surviving spouses of retired Franklin county employees who are eligible for group insurance coverage as provided under Chapter 32B of the General Laws or who are insured under said chapter shall have said eligibility and coverage transferred to the jurisdiction of the group insurance commission effective on the first day of the month following ninety days after the governor's signature and said persons shall cease to be eligible or insured under the provisions of said chapter 32B. The group insurance commission shall provide uninterrupted coverage for group life and accidental death and dismemberment insurance and group general or blanket insurance providing hospital, surgical, medical, dental and other health insurance benefits to the extent authorized under the provisions of chapter 32A of the General Laws. All questions relating to group insurance rights, obligations, costs and payments shall be determined by the group insurance commission, and shall include the manner and method for the payment on all required premiums applicable to all such coverage"

The amendment was **adopted**.

Mr. Tolman moved that the bill be amended by inserting, after Section 362, the following new Section:-

"SECTION 363. Chapter 30 of the Massachusetts General Laws is hereby amended by inserting after section 9I, as appearing in the 2002 Official Edition, the following section:

Section 9J. In the event that the functions performed by employees in one department or agency are transferred to another department or agency, the employees performing such functions shall be transferred to the receiving department or agency without impairment of wages, seniority, collective bargaining, civil service or other rights enjoyed at the time of the transfer. Nothing in this section shall prohibit any reduction in workforce otherwise permitted under collective bargaining agreements or civil service rules or regulations."

The amendment was **adopted**.

Mr. Magnani moved that the bill be amended by adding, at the end thereof, the following new section:

Section ___: "There shall be an information technology advisory board. The advisory board shall consist of seven members including: the executive department's chief information officer, the legislative department's chief information officer, the judicial department's chief information officer, the chair of the senate committee on science and technology, the chair of the house committee on science and technology, and two members appointed by the governor for terms of one year each, one of whom shall have expert knowledge in the area of information technology, one of whom shall represent the interests of business and the other the interests of the consumers.

The board shall annually by July first of every year draft, recommend and present for signature to the Governor, the speaker of the house of representatives, the president of the senate, the chief justice of the supreme judicial court and the constitutional officers, a memorandum of understanding among and acceptable to the executive department, legislature, judiciary and constitutional offices that shall include information technology standards and a strategic plan for the signatories' acquisition and use of information technology. In addition, the advisory board shall advise the executive department's chief information officer on information technology issues, including the development of an enterprise vision, strategy and direction for the use of information technology in the executive department, the development of policy, strategic planning, and project selection criteria, and information technology architecture, infrastructure, information technology investments and security. The advisory shall also file annually on July first of every year, a report with the Governor, the speaker of the house, the president of the senate, the constitutional officers, and the chief justice of the supreme court, including its analysis and recommendations during the previous year.

The information technology advisory board's membership shall meet regularly on a schedule to be determined by its members, but in any case no fewer than four times a calendar year. The members of said board shall serve without compensation but shall be reimbursed for their expenses actually and necessarily incurred in the performance of their duties. The information technology division's staff shall provide such assistance as the board may deem necessary".

The amendment was **adopted**.

Mr. Rosenberg and Ms. Walsh moved that the bill be amended by inserting, after Section __, the following new Section:-
"SECTION __. For the purpose of reimbursing Major General Chester E. Gorski and Colonel William J. Gormley, III of the Massachusetts Army National Guard for legal expenses incurred in defending themselves in civil complaints initiated by the then Adjutant General Raymond A. Vezina, and, after appropriation has been made therefore, there shall be allowed and paid out of the state treasury to Major General Gorski the sum of \$30,136.94 and to Colonel Gormley the sum of \$44,983.12. Said civil complaints having been subsequently withdrawn after evidence demonstrated that Major General Gorski and Colonel Gormley acted properly and in good faith as members of the Massachusetts Militia in submitting complaints regarding activities within the Massachusetts National Guard."

The amendment was **adopted**.

Mr. Baddour moved that the bill be amended in section 2, by inserting in item 0330-0300 after the words "provided further, that not less than \$100,000 shall be expended for the implementation of a changing lives through literature program" the following:-
"; provided further, that notwithstanding any general or special law to the contrary, the chief justice for administration and management shall not transfer any criminal or civil cases from the third district court of Essex at Ipswich prior to June 30, 2005; provided further, that said chief justice shall submit a report to the house and senate chairmen of the joint committee on judiciary not later than October 1, 2004 detailing a plan to provide for the closure of the third district court of Essex at Ipswich; and provided further, that said report shall include, but not be limited to, transfer of personnel, reallocation of resources, the impact on other district courts resulting from the closure of said court, and other factors that may affect implementation of said closure".

The amendment was **adopted**.

Mr. Lees moved that the bill be amended in section 2, in line item 0332-0100, by inserting at the end thereof, the following words:-

"; provided, that funds expended in this line item or any other line item for the construction of a permanent or temporary courthouse in Hampshire county shall be for the construction or rent of said courthouse in the town known as Belchertown and no funds shall be expended from this line item for the construction or rent of a courthouse in Hampshire county unless the site for the courthouse is located in the town known as Belchertown."

Mr. Pacheco moved that the pending amendment be amended by adding the following words:-

";and provided further, that no funds shall be expended from this item or any other item for any permanent or temporary courthouse construction in Hampshire county until the final completion of the restoration and repair projects for the trail court facilities in Plymouth, Taunton and Worcester.

The amendment was **adopted**.

The pending amendment (Lees) was adopted, as amended (Pacheco).

Mr. Hart moved that the bill be amended by inserting, after Section __, the following new Section:-

"SECTION __. Section 1(1) of Chapter 152 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by adding the following paragraph:

Section 1: For the purposes of Section 35C, Section 32, and Section 31, the earnings of the employee shall be determined as of the date of his last full time employment, irrespective of whether that employer is subject to this chapter. Notwithstanding the prior voluntary retirement of the employee, such earnings shall be considered wages upon which the spouse is dependent at the time of the employee's death.

Section 2: For purposes of Section 2A of Chapter 152 of the General Laws, Section 1 of this act, above, shall be deemed to be procedural in character."

The amendment was **adopted**.

Messrs. Tisei, Lees, Knapik, Tarr and Hedlund, Mrs. Sprague, and Mr. Brown, moved that the bill be amended by inserting, after Section 206, the following new section:-

"SECTION 206A. Section 1 of Chapter 176J of the General Laws, as appearing in the 2002 official addition, is hereby amended by inserting at the end of the definition of "eligible small business" the following words:-

Associations with a minimum of 100 members, each of which would qualify as "eligible small business" under this definition and that have been organized and maintained in good faith for purposes other than that of obtaining insurance, as determined by the commissioner, have a constitution and by-laws or other analogous government documents that and that have been in active

existence for at least 5 years, may procure insurance subject to terms and conditions set forth in this chapter. Additionally, membership in said association cannot be denied based on an individual's health condition and health coverage cannot be denied due to health condition of any individual member in order to maintain an exemption.

Mr. Moore moved that the pending amendment be further amended by adding, after the words, "in this chapter" the following words:-- provided, however, that no eligible small business who is a member of the association may be charged a premium rate different than what the carrier would charge to a similarly situated eligible small business who is not a member of the association. The amendment was **adopted**.

The pending amendment (Lees et al) was adopted, as amended (Moore).

Ms. Fargo moved that the bill be amended in Section 319, in line 11, by striking out the words "March 1, 2004" and inserting the place thereof the following words: - "March 1, 2005".

The amendment was **adopted**.

Ms. Melconian moved that the bill be amended in section 2, in item 7003-0702 by striking the words "shall be expended for minority training in Hampden County" and inserting in place thereof the following words "shall be expended by a Farm Workers' Council serving low income people and the Hispanic population in Western Massachusetts".

The amendment was **adopted**.

Mr. Berry moved that the bill be amended in section 2, in item 7003-0702, in lines 32 and 33, by striking out the words "\$75,000 shall be provided to the Workforce Investment Association of MA, Inc." and inserting in place thereof the following words: - "\$100,000 shall be provided to the Workforce Investment Association of MA, Inc."

The amendment was **adopted**.

Ms. Resor and Mr. Magnani moved that the bill be amended in section 2, in line item 7003-0702, by inserting at the end thereof the following:-

";provided, further, that not less than \$75,000 shall be expended to support the Technology Initiative of the Metro South/West Regional Employment Board for the development of the Technology Centers of Excellence serving the region's youth and business, and provided, further, that said grant shall require a 200 percent match from the private sector."

The amendment was **adopted**.

Ms. Chandler and Messrs. Brewer and Moore moved that the bill be amended in section 2, in item 7007-0500, by striking out the figure "\$200,000" and inserting in place thereof the following figure:- "\$500,000".

The amendment was **adopted**.

Ms. Tucker moved that the bill be amended in section 2, in item 7007-0900, by inserting after the words "market share:" the following:-

"provided further, that not less than \$60,000 shall be expended for an economic development project operated by the Arlington Neighborhood Association in the city of Lawrence; provided further, that not less than \$100,000 shall be expended for the U.S. Women's Open; provided further, that not less than \$125,000 shall be expended for a historic development project at the Worcester Center for the Performing Arts; provided further that not less than \$103,000 shall be expended for an historic redevelopment project at the West School in the Town of Wilmington; provided further, that not less than \$100,000 shall be expended for the Business Location Information Portal pilot program to be operated by the Greater Haverhill Chamber of Commerce; provided further, that not less than \$35,000 shall be expended for the Pittsfield Office of Cultural Development; provided further, that not less than \$50,000 shall be expended for the Johnny Appleseed Visitor Center; provided further, that not less than \$100,000 shall be expended for a portico surrounding Plymouth Rock; provided further, that not less than \$50,000 shall be expended for the Central Quabbin Area Tourism Association; provided further, that not less than \$200,000 shall be provided for an economic development project at the Elco Dress Factory in New Bedford; provided further, that not less than \$75,000 shall be expended for an economic development project in North Attelboro; provided further, that \$5,000 shall be expended for the Massachusetts Film Bureau and said agency shall be the primary service provider for film production and development in the Commonwealth; provided further, that not less than \$50,000 shall be expended for a tourism promotion project in Westborough; provided further, that not less than \$100,000 shall be expended for an economic development project for the Town of Braintree; provided further, that not less than \$50,000 shall be expended for a grant to the Caribbean Carnival Association; provided further, that not less than \$50,000 shall be expended for the North End Visitor Center in Boston; and provided further, that funds shall be expended for an economic development project on Rt. 110 Amesbury"; and

In section 2, in item 7007-0900, by striking the figure "\$9,312,274," and inserting in place thereof the figure "\$9,938,774."

The amendment was **adopted**.

Mr. Baddour moved that the bill be amended in section 2, by inserting in line item 7007-0515 after the words "that not less than \$200,000 shall be expended on the operation of the Massachusetts Fisheries Recovery Commission;" the following:-

"; provided further, that not less than \$100,000 shall be expended for the Business Location Information Portal pilot program to be operated by the Greater Haverhill Chamber of Commerce".

The amendment was **adopted**.

Mr. Nuciforo moved that the bill be amended in section 351, by inserting after the words "fiscal year 2005 " the words; provided, that not less than \$150,000 shall be expended to the Berkshire Visitors Bureau for funds to be equally distributed to the Berkshire Museum in Pittsfield, the Mohawk Theatre in Great Barrington, and the Mahaiwe Theatre in North Adams; and provided further, "that not less than \$200,000 shall be expended for the restoration of the Memorial Auditorium in the city of Lynn"

The amendment was **adopted**.

Mr. Magnani and Ms. Resor moved that the bill be amended in section 2, item 7007-0950, in line 26, by striking the word "allocated" and inserting in place thereof the following:- "expended".

Ms. Wilkerson and Mr. Tolman moved that the bill be amended in Section 2, in item 1100-1100 by inserting after the date "December 1, 2004" the following words:-- "; provided further, that not less than \$250,000 shall be expended on the state office of minority and women business assistance to support monitoring and enforcement of minority business enterprise and women business enterprise activity on state assisted building projects;"

The amendment was **adopted**.

Ms. Chandler and Messrs. Glodis and Moore moved that the bill be amended in section 2, in item 5095-0015, in line 14, by inserting after the words "at the closed facility" the following wording:-
"; provided further, that the department, in consultation with Administration and Finance and DCAM, shall submit a report to the joint committee on human services and the house and senate committees on ways and means no later than December 1, 2004 on the proposal to build a new inpatient facility, so-called; provided further, that the report shall include, but not be limited to, projected costs, including the use of state, federal and capital funding sources, project start and completion dates, number of beds by care type, number of clients expected to be transferred to the new facility, from what facility and when, and projected closure dates of Worcester State Hospital and Westborough State Hospital; provided further, that any client transferred to another inpatient facility as the result of a facility closure shall receive a level of care that is equal to or better than the care that had been received at the closed facility; provided further, that no action to reduce the client population of the Worcester or Westborough facilities for the sole purpose of closing the hospitals shall be undertaken, and no steps shall be taken to close either of the institutions through attrition, layoffs or any other means until a study of the hospital building plan is completed and the General Court shall have approved the closure of Worcester State Hospital and Westborough State Hospital".

The amendment was **adopted**.

Mr. Brown, Mrs. Sprague, Messrs. Hedlund and Tarr and Ms. Fargo moved that the bill be amended in section 2, in item 5920-2000, by inserting, after the words "the settlement", in line 7, the following wording:- "provided, that the department shall not fund any group home or dwelling of any kind that houses one or more level two or three sex offenders, if said home or dwelling is located within 800 yards of a residence in which a minor resides; provided further that a commission consisting of the Secretary of Public Safety or his designee, the Commissioner of the Department of Mental Retardation, one member appointed by the Governor, the Senate and House chairs of the Joint Committee on Criminal Justice, the Senate minority leader or his designee and the House minority leader or his designee, Senate and House Chairs of Ways and Means or their designees, for the purpose of studying the cost of relocating existing residents upon compliance with this statute and reporting back to the General Court its findings and recommendations no later than January 10, 2005; provided further, that this statute shall not disrupt funding for or housing of or otherwise displace any person who is not a level two or level three sex offender under the care of the department; provided further that in the event that the department is unable to relocate said level two or level three sex offenders then no funds shall be withheld under this section but the department shall report back to the legislature on or before November 15, 2004, with a plan of relocation and the cost associated thereof;"

The amendment was **adopted**.

Ms. Resor moved that the bill be amended in section 2, in item 5920-2000 by inserting in line 7, after the words "cost of the settlement", the following:-

", provided, that not less than \$100,000 shall be allocated for Special Olympics for the purpose of unified sports."

The amendment was **adopted**.

Mr. Montigny moved that the bill be amended in section 2, in item 5920-2000 by inserting after the word "settlement" the following:-

;"provided further, that not less than \$50,000 shall be expended for the Advocacy Resource Center in New Bedford to provide critical family support services in the area of community-based resident education for special needs children;"

The amendment was **adopted**.

Messrs. Magnani and Brown moved that the bill be amended in section 2, in item 5920-2000, by inserting, at the end thereof, the following:-

"provided further, that not less than \$275,000 of additional funding be provided to Advocates, Inc. for residential services provided under contract #26604660343".

The amendment was **adopted**.

Ms. Fargo moved that the bill be amended by striking out Section 267, and inserting in place thereof the following new Section:-

"SECTION 267. There is hereby established a Fernald Developmental Center Land Reuse Committee. The committee shall include the mayor of the city of Waltham, who shall serve as chair of said committee, the ward councilor from the city of Waltham representing the ward in which the campus is located, who shall serve as vice-chair of said committee, the planning director of the city of Waltham, the commissioner of the Massachusetts department of mental retardation, a mentally retarded consumer who is a resident of Fernald, and who shall be appointed by the commissioner of mental retardation, the commissioner of the department of capital asset management and maintenance, 7 citizens of Waltham to be appointed by the mayor of the city of Waltham, of whom four shall be the citizens appointed to said committee during fiscal year 2004, the state representative from the ninth Middlesex house district, the state representative from the tenth Middlesex house district, and the senator from the third Middlesex senate district. The committee shall be responsible for representing the interests of the town in all negotiations with the division of capital asset maintenance and management and the department of mental retardation about the reuse and future development of the developmental center property. The committee shall, with the assistance of the division, develop a Comprehensive Reuse Consensus Plan for Fernald Developmental Center State Property, which shall provide a detailed description, by parcel, of how the property is to be developed upon closure of the Fernald campus. The plan shall include a description of any potential environmental degradation of the property, along with a proposal for environmental remediation, and a proposed cost for the cleanup, including, but not limited to, any building demolition required on the site. The goals of the plan may include, but shall not be limited to, preservation of open space, creation of affordable housing, development of new business, the creation of recreational opportunities, the development of new community residences for the mentally retarded consumers of Fernald Center, and any other applicable community priorities. The plan may also provide for parcels of land, and specific facilities, to remain under the control of the department of mental retardation. In its deliberations, the re-use committee shall incorporate smart growth policies to the extent possible, and will be mindful of the rights of current Fernald residents, and their need for adequate and appropriate housing, clinical services, and appropriate staffing provided by DMR. The committee will examine and consider models for the provision of these services on a section of the Fernald property. The process the committee shall follow will be determined by a majority vote of its members and shall include a public hearing at the beginning of the process to solicit comments, ideas and re-use proposals. The committee shall develop a framework with guidelines and parameters as to the re-use of the property. The committee may appoint subcommittees to review particular subjects within the framework of the study, and may assign a subcommittee to produce a detailed reuse proposal, provided, that at least two-thirds of the members of said subcommittee shall be Waltham residents or officials. Said subcommittee shall present the re-use proposal to the committee which shall invite the public to comment at a public hearing. The committee may amend and revise said plan in order to reach a consensus on one concept. Upon approval by the reuse committee, the plan shall be presented to the Waltham city council for approval, and, if endorsed by majority vote of the council, filed with the division of capital asset management and maintenance. The plan shall also be submitted to the chairs of the house and senate committees on ways and means, and to the house and senate chairs of the joint committee on state administration, along with copies of authorizing legislation, if any, necessary to effectuate the provisions of the reuse plan. If the reuse plan provides for the conveyance of land from the state to the city of Waltham, the legislation shall provide that the price paid for such parcel be for the full and fair market value of the property determined by independent appraisal, for the uses described in the plan, including, but not limited to, any restrictions or requirements imposed by the plan. Said legislation shall ensure that proceeds from any sale are first applied to repay the commonwealth for the cost of any bonds issued for environmental remediation, consulting services, or other closure costs. Said legislation shall also provide that any remaining proceeds be provided to the department of mental retardation for capital improvements at Fernald, at other intermediate care facilities for the mentally retarded (ICF/MRs), or at community residential settings operated by the state. The reuse committee shall meet as necessary to complete said reuse plan, as determined by a majority vote of the committee.

The amendment was **adopted**.

Ms. Tucker moved that the bill be amended by inserting, after Section ____, the following new Section:-

"Section __. Notwithstanding any general or special law to the contrary, there shall be established a special commission to determine the wage disparity between community direct support workers and comparable employees in the commonwealth's state operated programs for the mentally retarded.

(a) On or before December 31, 2004 the executive office of administration and the department of mental retardation, working with representatives from the Association of Developmental Disabilities Providers, shall report to the Senate Committee on Ways and Means, the House Committee on Ways and Means, the Joint Committee on Human Services and Elderly Affairs, and the Joint Committee on Public Service their determination of:

(i) The monetary calculation of the average difference in wages, compensation, salary, and benefits, including but not limited to health insurance and inclusion in the state retirement system, between community direct service workers and direct support workers or other comparable employees in the commonwealth's state operated programs for mental retardation. This result of this calculation shall be called the disparity amount.

(ii) The amount of annual increase in the rate of reimbursement to community providers necessary to reduce and eliminate the disparity amount.

(b) On or before December 31, 2004, The Commissioner of the Department of Mental Retardation, working with representatives from the Association of Developmental Disabilities Providers, shall report to the Joint Committee on Human Services and Elderly Affairs recommendations to establish workforce training and development standards to be met by community providers in accordance with increases in reimbursement provided in this section."

The amendment was **adopted**.

Ms. Walsh moved that the bill be amended in section 2, in item 4510-0100, by striking out the words "and provided further, that funds may be expended for the Massachusetts Violence Prevention Task Force, formerly funded through an interagency service agreement from the department of education ..\$18,302,427" and inserting in place thereof the following words: - "provided further, that \$150,000 shall be expended for the ALS registry created by section 26 of chapter 140 of the acts of 2003; and provided further, that funds may be expended for the Massachusetts Violence Prevention Task Force, formerly funded through an interagency service agreement from the department of education ..\$18,452,427."

The amendment was **adopted**.

Mr. Hart moved that the bill be amended in section 2 in item 4510-0600 in line 17 by inserting after the word "airport" the following: -

"provided further, that not less than \$81,000 shall be expended for the maintenance of a statewide lupus database;"

Mr. Brewer moves to amend the bill, in section 2, in item 4512-0200, by adding at the end thereof the following:- "provided further, that not less than \$90,000 shall be expended for Franklin Medical Center for programming at the Orange Recovery House"

The amendment was **adopted**.

Ms. Wilkerson and Messrs. Barrios and Joyce moved that the bill be amended in section 2, in item 4512-0200, by striking the words "provided further, that funds shall be expended for Latinas y Ninos; provided further, that no funds appropriated herein shall be expended for Latinas y Ninos until the organization provides evidence that funds shall not be used to support non-Massachusetts residents;" and inserting in place thereof the following:-

"provided further, that not less than \$99,925 be expended for Latinas Y Ninos to provide a full-time child advocate parent educator specialist to attend to the needs of Latino women in recovery with a focus on pregnant women, new parents, and mothers recently reunified with their children;"

The amendment was **adopted**.

Mr. Barrios moved that the bill be amended in line-item 4512-0200, by adding at the end thereof the following:- "Provided further that an additional \$100,000 shall be expended for a contract with Bay Cove Human Services, Inc. for the purpose of establishing an independent licensed halfway house in Charlestown, in collaboration with the Charlestown Recovery House, Inc. for persons in recovery from alcoholism and chemical dependency."

The amendment was **adopted**.

Mr. Pacheco moved that the bill be amended in Section 2, in line item 4512-0500, in line 4 by inserting after the word "disabled;" the following words:-

"provided that not less than \$122,000 shall be expended for the Taunton Oral Health clinic in the City of Taunton,"

Mr. Pacheco moved that the bill be amended in Section 2, in item 4512-0500, in line 4, by adding after the word " disabled" the following:-

"; provided further not less than \$15,000 shall be expended for the Department of Youth Services Mobile Dental program for disadvantaged adolescents without access to dental health services, for basic supplies, equipment and administration of said program."

The amendment was **adopted**.

Ms. Menard moved that the bill be amended in section 2, in line item 4513-1000 by striking out the figure \$6,760,000 and inserting in place thereof the following figure:- "\$7,010,000".

The amendment was **adopted**.

Mr. Nuciforo moved that the bill be amended in section 2, in line item 4530-9000, by inserting after the words "the town of Orange;" the following:-

"provided further, that not less than \$150,000 shall be expended for the Berkshire Coalition to Prevent Teenage Pregnancy; provided further, that not less than \$250,000 shall be expended for the abstinence based teen pregnancy prevention programs located in the cities of Pittsfield and North Adams;"

The amendment was **adopted**.

Ms. Wilkerson moved that the bill be amended in Section 2, in item 4590-0250 by inserting after the words "department of education" the following:-
"provided further, that 99,000 shall be expended to the H.E.L.P. Program so-called for black males health;"
The amendment was **adopted**.

Mr. O'Leary moved that the bill be amended by inserting, after Section 362, the following new Section:-
"SECTION __. Paragraph G of section 5K of chapter 111 of the Massachusetts General Laws, as amended by section 1 of chapter 425 of the Acts of 2002, is hereby amended by striking out the last sentence and inserting in place thereof the following:-
"The Department may make a collection based on this assessment directly from the operators of each existing nuclear power plant in the Commonwealth and the electric companies and deposit the monies directly into the Radiation Control Trust Account."
The amendment was **adopted**.

In paragraph F of section 5K of chapter 111 of the Massachusetts General Laws by striking the last sentence and replacing it with the following:-
"The department may make a collection based on this assessment directly from the operator of each existing nuclear power plant in the Commonwealth and the electric companies and deposit the monies into the Radiation Control Trust account."
The amendment was **adopted**.

Ms. Tucker moved that the bill be amended in section 2, in item 4800-0015, by striking out the figure "64,488,643" and inserting in place thereof the following figure:- "\$66,288,643".
The amendment was **adopted**.

Mr. Barrios moved that the bill be amended in line item 4800-0015, by inserting at the end thereof the following:-
"provided further, that not less than \$900,000 shall be expended for the continuation of auto expense reimbursement programs for DSS Social Workers."
The amendment was **adopted**.

Mr. Nuciforo moved that the bill be amended in section 2, in line item 4800-0038, by inserting after the words "Big Brothers and Sisters of Cape Cod and the Islands;", the following:-
"provided further, that the department shall provide a sum of not more than \$48,000 in region 1 for a community-based family unification counseling program to prevent juvenile delinquency;"
The amendment was **adopted**.

Mr. Montigny moved that the bill be amended in section 2, in line item 4512-0200 by inserting after the word "Cambridge", the following:-
"provided further, that not less that \$90,000 shall be expended for a batterer prevention program in the city of New Bedford;"
The amendment was **adopted**.

Mr. Moore moved that the bill be amended by adding at the end thereof the following new Section:-

SECTION __. There shall be a special commission for the purpose of making an investigation and study relative to the prescribing of psychotropic drugs for children under the protection and care of the department of social services. The commission shall consist of three members of the Senate, five members of the House of Representatives and five persons appointed by the governor. Said commission shall report to the house of representatives and the Senate the results of its investigation and study, and its recommendations, if any, together with drafts of legislation necessary to carry its recommendations into effect by filing the same with the clerk of the house of representatives and Clerk of the senate on or before the last Wednesday in December, 2004."
The amendment was **adopted**.

Ms. Menard moved that the bill be amended in section 2, in item 4000-0112, by striking out the wording and inserting in place thereof the following wording:- "For matching grants to boys' and girls' clubs, YMCA and YWCA organizations and non-profit community centers; provided, that the secretary of health and human services shall award the full amount of each grant to each organization upon commitment of matching funds from the organization; provided further, that the secretary shall report to the house and senate committees on ways and means on the exact amounts distributed in fiscal year 2005 by March 1, 2005; provided further, that not less than \$920,000 shall be expended for the Massachusetts Alliance of Boys and Girls Clubs to provide grants to boys and girls of Massachusetts; provided further, that not less than \$10,000 shall be expended for the Scantic Valley YMCA; provided further, that not less than \$500,000 shall be expended for the YMCA of greater Boston to facilitate capital projects approved by the board of directors of the YMCA; provided further, that not less than \$40,000 shall be expended for the public partnership program between the greater Lynn YMCA and YWCA and the public partnership program between the town of Saugus and the Saugus YMCA and YWCA; provided further, that not less than \$80,000 shall be expended for the young parents program of the Newton Community Service Centers;.....\$1,550,000"
The amendment was **adopted**.

Messrs. Moore and Brewer moved that the bill be amended by adding at the end thereof the following new Section:-
SECTION ____.
Section ____ Chapter 6A of the General Laws is hereby amended by inserting after Section 16B the following section:"-
Section 16B ½

(a) Notwithstanding any general or special law to the contrary, the Secretary of the Executive Office of Health and Human Services, in consultation with the Secretary of Administration and Finance and the Secretary of Public Safety shall develop a coordinated, aggregate prescription drug procurement plan to manage and administer the disbursement, payment and reimbursement of prescription drugs, including claims processing, adjudication and client services for all pharmacy benefit plans funded or subsidized, in whole or in part by the Commonwealth. Said aggregate procurement plan shall separately manage any and all benefits, rules and functions regarding drug utilization and cost for programs subject to Section 1927(a)(1) of the Social Security Act, Title XIX. The plan shall maximize cost savings, efficiencies, enhance affordable access to prescriptions and be designed to improve health outcomes, benefits and coverage in said pharmacy benefit plans.

(b) Notwithstanding the provisions of any general or special law, as part of said aggregate procurement plan, the Secretary shall seek competitive bids from third party pharmacy benefits managers who are interested in providing such procurement services to the Commonwealth. The Secretary shall consider those pharmacy benefits managers with experience in the administration of publicly-funded health benefit plans and who are qualified to assess and manage the clinical efficacy and cost effectiveness of said pharmacy benefit plans on behalf of the Commonwealth. Nothing in this section shall preclude a not-for-profit entity from participating in such competitive bid process; provided, that during such competitive bid process, a not-for-profit pharmacy benefit manager shall demonstrate the capacity to provide the same level of service quality, assessment and ability to manage the clinical efficacy and cost effectiveness of the administration of such aggregate procurement plan as that of a for-profit pharmacy benefit manager, provided further, that the Secretary may establish an inter-governmental service agreement between or among agencies of the Commonwealth for the provision of pharmacy benefit management services if said not-for-profit pharmacy benefit manager is selected for the provision of such services, and provided further, that the Secretary may request such aggregate pharmacy benefit manager plan to disclose information regarding its marketing practices.

(c) A contract currently in existence with any agency or pharmacy benefits management company shall not be renewed or extended in a manner inconsistent with the provisions of this section, provided, that a contract in existence with any agency or pharmacy benefits management company shall not be terminated before its expiration date if such termination would cause substantial financial cost or service interruption to the commonwealth.

(d) The Secretary shall ensure that said aggregate procurement plan employs clinically-based tools to maximize cost savings, efficiencies, affordability, and to improve health outcomes and access to pharmacy benefits and coverage and effectively manage the pharmacy plans of the commonwealth.

(e) The Secretary shall implement said aggregate procurement plan not later than November 5, 2004 and shall submit, on April 15 of each year, a report detailing the coordinated aggregate or bulk purchasing arrangement results for the previous year to the House and Senate Clerks, the Chairs of the House and Senate Committees on Ways and Means and the Chairs of the Joint Committee on Healthcare. The report shall include, but not be limited to, a review of said aggregate procurement plan's achievement relative to:

- (1) cost savings achieved during the previous fiscal year;
- (2) administrative costs relating to the management of the program for the previous fiscal year;
- (3) any recommendations for enhancing the benefits provided by each plan, savings costs, reducing inefficiencies and improving access and quality and,
- (4) a cost-benefit analysis of the inclusion of other governmental entities, including but not limited to county, municipal and quasi-governmental entities within the aggregate pharmaceutical procurement plan.

The amendment was **adopted**.

Mr. Montigny moved that the bill be amended by inserting the following new section:-

SECTION ____ There shall be established a statewide physicians advisory council to annually advise the governor and the general court on the state of physician practice in the commonwealth and its impact on patient care. The council shall consist of the following twelve members: the secretary of the executive office of health and human services, who shall serve as chairman; the commissioner of the division of health care finance and policy; the commissioner of the division of medical assistance; and

nine members to be appointed by the secretary and approved by the governor including the president of the Massachusetts Medical Society or his designee; the governor of the Massachusetts Chapter of the American College of Physicians or his designee; the executive director of Health Care for All or his designee; the executive director of the Massachusetts League of Community Health Centers or his designee; a physician licensed under chapter 112 of the general laws, and serving as the president of a health care system physician's organization or his designee; and four licensed physicians to be appointed by the governor who shall have experience caring for patients of programs administered by the division of medical assistance, one of whom shall be a pediatrician, one of whom shall have substantial experience providing mental health care, and two of whom shall represent a cross-section of licensed physicians in the Commonwealth in terms of academic and community settings, geography and specialty, including primary care physicians. All appointed or elected members shall serve for terms of three years without compensation, except that four of the initial appointees shall be appointed to terms of two years each. The physicians advisory council shall adopt its own rules for conducting business, but shall meet at least quarterly. The secretary may provide staffing and other support as may reasonably be needed by the council, and the council may consult with such public or private persons and organizations as it deems necessary or appropriate, including the commissioner of the department of mental health, the commissioner of the department of mental retardation, the commissioner of the department of public health, the commissioner of the division of insurance, and the executive director of the group insurance commission. The statewide physicians advisory council shall:

- (1) Examine and evaluate the state of physician practice in the Commonwealth and the impact on patient care;
- (2) Gather existing payment, cost and quality data as the council deems reasonable and appropriate in order to evaluate and monitor the cost, quality and effectiveness of health care services provided by physicians in conjunction with programs administered by the division of medical assistance and the group insurance commission. The data shall include, but not be limited to, physician reimbursement rates and fee schedules from the division of medical assistance and the group insurance commission for previous and current fiscal years. The council shall evaluate the adequacy of adjustments, if any, in such rates and fee schedules, as compared with inflation and other factors including prevailing fees and practice costs, and shall make annual recommendations regarding the adequacy of such rates and fee schedules and recommended changes in such rates and fee schedules, including annual inflation adjustments, in its report filed pursuant to paragraph (10);
- (3) Gather and evaluate data on costs of delivering care as compared to payments to physicians providing health care services to patients of programs administered by the division of medical assistance, and conduct a comparative analysis of physician revenues as compared to costs in other states and in the Medicare program, with such analysis adjusted for variations in wages, cost-of-living and other statistically significant factors;
- (4) Survey the free care provided by physicians to uninsured and underinsured patients within the commonwealth;
- (5) Gather and evaluate data and information on factors affecting the recruitment and retention of physicians in the commonwealth and the impact of such factors on patient care;
- (6) Determine the availability of primary care and specialty care physician services statewide to patients enrolled in programs administered by the division of medical assistance;
- (7) Review and evaluate the timeliness of payment to physician practices by public and private payors, and identify potential reforms to the administration of claims payment processes;
- (8) Identify and recommend demonstration or pilot projects that test innovative ways to manage patient care for patients in programs administered by the division of medical assistance and the group insurance commission. Such projects shall be designed to improve the delivery and quality of patient care while lowering overall patient care costs and improving efficiency, and may include, but not be limited to cardiovascular disease management, catastrophic case care coordination, and improved pharmacy management. Recommendation for permanent implementation of such projects shall be included in the council's annual report, required by paragraph (10), and the council shall consult with physicians statewide in identifying such projects;
- (9) Examine such other issues as the council determines necessary in order to evaluate the state of physician practice in the commonwealth and the impact on patient care; and
- (10) Report annually to the governor and the general court on the second Monday of January. The report shall include, but not be limited to, a report of the council's work and activities for the previous year, including any findings and recommendations, which may include proposed administrative, regulatory, legislative or executive action, and shall include an estimate of the aggregate costs of such recommendations, if any. The council may supplement such reports from time to time.

The amendment was **adopted**.

Ms. Creem and Ms. Wilkerson moved that the bill be amended in section 2, in item 9110-1660, by striking out the figures "100,000" and inserting in place thereof the figures "125,000".

The amendment was **adopted**.

Messrs. Rosenberg, Antonioni, Barrios and Brewer, Ms. Chandler, Messrs. Creedon, Glodis and Knapik, Ms. Melconian, Messrs. Montigny and O'Leary, and Ms. Resor moved that the bill be amended in section 2, in line item 1599-0042, by inserting after the

words "child care worker," the following:-

"provided further, that said increases shall be allocated to adjust rates of reimbursement paid to each provider by the same percentage across the commonwealth."

The amendment was **adopted**.

Messrs Barrios and Joyce moved that the bill be amended in line-item 1599-6901, by inserting the following language:-

"Provided further, the raises provided through this line item shall be above and beyond any already agreed to and/or collectively bargained pay increases."

The amendment was **adopted**.

Messrs. Brewer and Lees moved that the bill be amended in section 2, in item 1410-0630, by striking out the figure "\$850,381" and inserting in place thereof the following figure:- "\$859,816"

The amendment was **adopted**.

Mr. McGee moved that the bill be amended in section 2, by inserting in line-item 4403-2120 in line 39 after the word "contrary" the following item:-

"provided further, that the department shall report quarterly to the house and senate committees on ways and means on the number of families who apply for emergency assistance funded family shelter, the number of families approved for shelter, the number of families denied shelter along with reasons for denials, the home community of families receiving shelter, the number of families receiving shelter within each home community, the number of available shelter slots within each home community, the income level of families receiving shelter, the number of families receiving shelter who had previously accessed state-funded programs to reduce homelessness and the programs that had been accessed, the composition of families receiving shelter, the reason that the household is seeking emergency family shelter, the reasons that families exit shelter, including reasons for voluntary departure and termination, exiting families' housing plans, including type of housing arrangement, subsidy status, monthly rent, and gross monthly income, and any other information that the department determines to be necessary in evaluating the operation of the emergency assistance family shelters program; provided further, that the report shall also include information, by type of shelter, on average length of stay, average cost per household served, average number of shelter slots not used either as the result of no placement being made or of a placed family not making use of shelter, and an analysis of this data, including an analysis of causes relating to any significant differences in the data for each type of shelter; provided further, that the report shall also provide a status report on efforts to increase the number of units of scattered site shelter above the number contracted for in fiscal year 2004, any barriers encountered to increasing the number of units"

The amendment was **adopted**.

Ms. Chandler moved that the bill be amended in section 2, in item 4800-1400, by adding at the end the following wording:-

"and provided further, that not less than \$200,000 shall be expended for the women's shelter operated by SMOC of Massachusetts at the People in Peril shelter in the City of Worcester".

The amendment was **adopted**.

Mr. Hart moved that the bill be amended in section 329 by striking the words "1 member from the AFL-CIO, 1 member from the Service Employees International Union" and replacing it with "the President of the Massachusetts AFL-CIO or their designee, the President of the Service Employee International Union State Council or their designee."

The amendment was **adopted**.

Mr. Hart moved that the bill be amended in section 329, by inserting after the words "Commonwealth Corporation;" the following:-

"1 member from the Workforce Investment Association of MA, Inc. 1 representative from a Massachusetts member city of the United States Conference of Mayors Workforce Development Council, 1 member from the Boston Youth Providers Service Network"

The amendment was **adopted**.

Ms. Wilkerson and Mr. Tolman moved that the bill be amended in Section 329, by striking the third paragraph and inserting in place thereof the following new paragraph: --

"The council shall consist of the following members: 2 members to be appointed by the governor, 1 of whom shall be the director of the department of workforce development, or his designee, 2 members to be appointed by the president of senate, 2 members to be appointed by the speaker of the house of representatives, the chancellor of the board of higher education or his designee, 1 member from the Massachusetts Business Roundtable, 1 member from the Associated Industries of Massachusetts, 1 member of the Massachusetts Institute for a New Commonwealth, 1 member from the AFL-CIO, 1 member from the Service Employees International Union, 1 member from the Massachusetts Workforce Investment Board Association, 1 member from the Massachusetts Coalition for Adult Education, 1 member from the Community College Council of Presidents, 1 member from the state Workforce Investment Board, and 2 members representing community based organizations and immigrant populations with 1 selected by the Massachusetts Immigrant and Refugee Advocacy Coalition and 1 selected by the Massachusetts Workforce

Alliance, 1 member from the Commonwealth Corporation, 1 member from Action for Boston Community Development, and a representative from JFY Networks."

The amendment was **adopted**.

Messrs. Lees, Tisei, Tarr, Hedlund, Knapik and Brown and Mrs. Sprague moved that the bill be amended in Section 329 by inserting after the words "president of the senate" the following words:- "the minority leader of the senate or his designee"; and

In said section by inserting after the words "speaker of the house of representatives" the following words:- "the minority leader of the house of representatives or his designee"

The amendment was **adopted**.

Messrs. Lees, Tisei, Tarr, Hedlund, Knapik and Brown and Mrs. Sprague moved that the bill be amended in Section 338 by inserting after the words "president of the senate" the following words:- ", one of whom shall be the senate minority leader"; and

In said section by inserting after the words "speaker of the house of representatives" the following words:- ", one of whom shall be the house minority leader".

The amendment was **adopted**.

Messrs. Glodis and Barrios moved that the bill be amended by inserting, after Section 362, the following new Section:- "Section ____ . Section 17K of Chapter 180 of the Massachusetts General Laws, as appearing in the 2000 edition, is hereby amended by inserting at the end thereof the following:- "Where the recipient specified is a duly licensed insurance agent or insurance broker receiving sums so deducted for any property-casualty insurance offered in conjunction with the employee organization, the agent or broker shall forward the sums deducted and received to the appropriate insurance company within two business days after receipt from the treasurer or common paymaster. No insurance company doing business in the commonwealth of Massachusetts shall refuse to accept payment of property-casualty insurance premiums without interest or charges in equal weekly or biweekly installments via payroll deduction for unionized state, county, municipal or other public employee where the agent or broker is remitting the deducted sums as required under this section."

The amendment was **adopted**.

Mr. Hart moved that the bill be amended by inserting after section 15 the following section:-"SECTION 15A. The first paragraph of section 54 of said chapter 7, as appearing in the 2002 Official Edition, is hereby amended by inserting after paragraph (1) the following paragraph:-

(1A) The agency shall prepare a written statement that the services proposed to be the subject of the privatization contract shall not be provided by labor based or employed outside of the United States. No agency shall make a privatization contract and no such contract shall be valid if the services provided are from labor based or employed outside the United States."

The amendment was **adopted**.

Mr. Nuciforo moved that the bill be amended by inserting at the end thereof the following sections:- SECTION 501- Chapter 112 of the General Laws is amended by inserting after Section ZZ the following:

Section 87ZZ½.

Relationships With Consumers

A. This section shall only apply to brokerage services for the intended purchase or sale of land with a building intended for use as one to four residential dwellings or the purchase or sale of land on which a building is intended to be constructed for use as one or two residential dwellings. Nothing herein shall prohibit the relationships described in this section provided that a real estate broker complies with the applicable provisions of paragraphs (B) through (E).

B. With informed consent from a buyer, a real estate broker may appoint one or more affiliated licensees to act as a "designated agent" on behalf of the buyer and one or more other affiliated licensees to act as a "designated agent" on behalf of a seller in a potential real estate transaction. With informed consent from a seller, a real estate broker may appoint one or more affiliated licensees to act as a "designated agent" on behalf of the seller and one or more other affiliated licensees to act as a "designated agent" on behalf of a buyer in a potential real estate transaction. Appointment of a designated agent shall not be made unless the consumer has consented, at the commencement of the consumer's agency relationship with the real estate broker, that the agency relationship shall not extend to any other licensee affiliated with the broker and shall be limited to one or more designated licensees. Upon appointment of a designated agent the responsibility to satisfy agency duties owed a buyer or seller shall be solely the responsibility of the designated agent. When a designated agent is appointed, information known or acquired by the designated agent shall not be imputed to the appointing broker or to other affiliated licensees. Notwithstanding the foregoing, licensees shall have an obligation to reveal known material defects in a listed property and other matters required by law. When a real estate broker has appointed designated agents for both buyer and seller, the broker shall be presumed to be a "dual agent" who does not exclusively represent either the buyer or seller. The appointing broker is authorized to assist in negotiations, but

shall be neutral with regard to any conflicting interests. Appointment of a designated agent shall not limit the appointing broker's responsibility for breach of duty by the designated agent.

C. There is a conclusive presumption that a buyer or seller has given informed consent to a designated agency relationship, including consent to dual agency of the appointing broker, if the buyer or seller signs a disclosure that substantially contains the descriptions in paragraph A of this section. Such disclosure and consent shall be deemed to satisfy the common law. Consent may be given in advance of identifying a property or transaction, but not later than the date a purchase and sale agreement is signed. Thereafter, other designated agents may be substituted or appointed without further consent.

D. No real estate broker shall offer subagency when marketing a property for sale without informing the seller about vicarious liability and obtaining signed consent.

E. A real estate broker may provide services as a "transactional broker" who does not represent a buyer or seller and who does not owe agency duties.

SECTION 502: On or before July 1, 2005 the Board shall promulgate regulations in accordance with section 501 that prescribe forms for written disclosure, when applicable, by real estate licensees regarding: (1) designated agency; (2) consent to subagency; (3) dual agency; and (4) the relationship of transactional broker.

SECTION 503. Sections 501 shall become effective on July 1, 2005.
The amendment was **adopted**.

Mr. Hart moved that the bill be amended by inserting, after Section __, the following new Section:
"SECTION __. Notwithstanding any general or special law, rule or regulation to the contrary, the development of any of the parcels of land in the area known as Columbia Point in the city of Boston, as described in chapter 898 of Acts of 1969, for dormitory facilities for students by the University of Massachusetts Building Authority shall be subject to and meet the requirements of chapter 665 of the Acts of 1956, as amended, including but not limited to large project review as provided in Article 80 of the Boston Zoning Code. No such development shall occur unless the General court approves it by law."
The amendment was **adopted**.

Messrs. Havern, Barrios, Tisei and Mrs. Sprague moved that the bill be amended by inserting the following section at the end thereof: -
"SECTION __. Notwithstanding any general or special law to the contrary, there shall be a special commission established to study the projected financial impact on state revenues and resources as a result of implementing or complying with the decision by the supreme judicial court in Goodridge et al v. Department of Public Health et al, 440 Mass. 309 (2003). Said study shall include all of the benefits to the state economy including tourism and related industries as well as any anticipated reductions in the need for social services by individuals. The commission shall consist of three legislators appointed by the Speaker of the House, three legislators appointed by the Senate President, as well as the state Treasurer or his designee, one representative chosen by the Massachusetts Municipal Association, one representative of a union chosen by the Massachusetts AFL-CIO and Massachusetts Teachers Association, and one representative chosen by the Massachusetts Association of Older Americans. The commission shall complete its report no later than December 31, 2004."
The amendment was **adopted**.

Mr. Brewer moved that the bill be amended by inserting the following new Section:-
SECTION __. Section 178D of said chapter 6, as most recently amended by section 5 of chapter 140 of the acts of 2003, is hereby further amended by striking out in the second paragraph the words "and (viii) whether the offender is in compliance with the registration obligations of sections 178C to 178P, inclusive." and inserting in place thereof the following:- (viii) whether the offender is in compliance with the registration obligations of sections 178C to 178P, inclusive; and (ix) if the offender works at or attends an institution of higher learning, the name and address of the institution.
The amendment was **adopted**.

Ms. Chandler moved that the bill be amended by inserting after Section __, the following new Section:-
SECTION . Notwithstanding the provisions of any general or special law to the contrary, there is hereby established a special commission on residential care facilities (also known as rest homes) in the commonwealth. Said commission shall study the role that residential care facilities play in the continuum of long-term care, identify the availability of residential care facilities relative to the need for such services, and the adequacy of public reimbursement for residential care facilities. The commission shall also study the roles of state agencies relative to residential care and recommend policies and procedures to coordinate effective communication and oversight among the various agencies with responsibility for residential care. The commission shall make recommendations relative to the funding of and methodology used in determining rates paid to residential care facilities. Said commission shall consist of the following members: three members of the senate, one of whom shall be appointed by the minority leader; three members of the house, one of whom shall be appointed by the minority leader; the commissioner of the department of public health, or her designee; the commissioner of the division of health care finance and policy, or his designee;

the commissioner of the department of transitional assistance, or his designee; the secretary of the executive office of elder affairs, or her designee; the commissioner of the department of mental health, or her designee; and two representatives from each of the following organizations: Massachusetts Aging Services Association and the Massachusetts Association of Residential Care Homes. The commission shall report its findings and recommendations to the House and Senate Committees on Ways and Means by April 1, 2005.

The amendment was **adopted**.

Ms. Wilkerson and Mr. Barrios moved that the bill be amended by inserting after Section 101 the following: --

"Section _____. Section 11 of Chapter 32B of the General Laws as so appearing is hereby amended by inserting after the second paragraph the following paragraphs: -

Notwithstanding any charter or ordinance to the contrary, the appropriate public authority of the cities of Cambridge, Chelsea, Everett, Malden, Medford, Melrose, Quincy, Revere and Somerville may notify the appropriate public authority of the city of Boston of its election to participate in the schedule of benefits made available by said city of Boston for its employees and, subject to the approval of the appropriate public authority of said such city of Boston and under such terms and conditions and rules and regulations as may be prescribed from time to time by the appropriate public authority of the city of Boston, the employees of the city so applying shall become insured at the earliest practicable date as participants in a city of Boston group health or life benefit plan. The withdrawal of each individual cities' employees from each individual cities' group health or life benefit plan and the subsequent inclusion of that cities' employees in the city of Boston's group health or life benefit plan will coincide with annual open enrollment periods. Nothing in this paragraph shall prohibit the appropriate public authority of the city of Boston from prohibiting participation by applying cities in certain benefit programs made available by said city of Boston for its employees. Nothing in this paragraph shall prevent a participating city from withdrawing from participation upon reasonable notice provided by the appropriate public authority of the participating city to the appropriate public authority of the city of Boston. A city granted approval to participate in the city of Boston's schedule of benefits that incurs costs by so joining or exiting including but not yet limited to paying for claims which have been incurred but not yet paid may amortize such costs over a period of not more than 10 years from the date of such approval or exit.

Nothing in this section shall abrogate any provision of chapter 150E or any collective bargaining agreement with respect to health benefits or to impact adversely the rights and benefits of public employees pursuant to any collective bargaining agreement."

The amendment was **adopted**.

Mr. Panagiotakos moved that the bill be amended by inserting at the end thereof the following new section:-

SECTION _____. Section 6A of Chapter 40J of the General Laws, as so appearing, is hereby amended by inserting after the word "appoint" in the second sentence of subsection (a) the following: - "not less than".

The amendment was **adopted**.

Mr. Barrios and Ms. Resor moved that the bill be amended by inserting after section 133 the following section:-

"SECTION 133A. Chapter 82 of the General Laws is hereby amended by striking section 35 and replacing it with the following:-

"The board or officers authorized to lay out highways or town ways may lay out, construct and maintain multi-use paths under the provisions of law relative to the laying out, construction and maintenance of public ways. A multi-use path is defined as a property improved and maintained for bicycle, pedestrian and other non-motorized public transportation, recreation and associated purposes. Multi-use paths may be laid out on property a city, town or Commonwealth has acquired by fee, easement, lease, license or otherwise, and may be subject to a reversion allowing a rail road company or authority to reclaim the property for rail purposes upon written notice. Any property owner who grants a lease, license or easement to a city, town or the Commonwealth allowing a multi-use path to be laid out shall be exempt from liability for any claims associated with use of such multi-use paths including claims for damages that may arise under Chapter 84 Section 15 and Chapter 161A Section 38."

The amendment was **adopted**.

Messrs. Creedon and Joyce moved that the bill be amended by inserting at the end thereof, the following section:-

SECTION _____. Section 150A ½ of Chapter 111 of the General Laws is hereby amended by inserting the following:

(18) to prohibit the siting of a solid waste facility or the granting of a permit for the establishment, construction, expansion, maintenance, or operation of a solid waste facility within the Zone II area of contribution of an existing public water supply well; this prohibition shall apply to any solid waste facility located on any place in any city or town which had not received a site assignment on or before January 1, 2004; provided further that said prohibition may be waived in a town by vote of town meeting or in a city by vote of the city council or board of alderman to allow the siting and permitting of a solid waste handling facility which serves said city or town and which is located on the same parcel of land where a former municipal landfill was located.

The amendment was **adopted**.

Ms. Resor moved that the bill be amended by inserting after section 221, the following new section:-

SECTION 221A. Section 18 of chapter 498 of the Acts of 1993 is hereby amended by striking out the words, "Devens and the town of Ayer" in the second sentence and inserting in place thereof the following words:- "Devens, and the towns of Ayer and

Shirley".

The amendment was **adopted**.

Mr. Berry moved that the bill be amended by inserting, after Section 362, the following new Section:-

"SECTION __. Section 5 of Chapter 32 of the Massachusetts General Laws, as amended by section 12 of chapter 68 of the acts of 1999, is further amended by adding the following:-

(5)(i) Notwithstanding the provisions of this chapter or any other general or special law to the contrary, there is hereby established an alternative superannuation retirement benefit program for members of the Massachusetts Port Authority Employees Retirement System. Participation in said program shall be an alternative retirement option at time of hiring for all employees hired on or after July 1, 2004. Such members shall make contributions to the Massachusetts Port Authority Employees Retirement System at the rate of 10 per cent on all regular compensation. Any member of the Massachusetts Port Authority Retirement System before July 1, 2004 may elect to participate in the alternative superannuation retirement benefit program. Said election shall be made on or after July 1, 2004 and before December 31, 2004. Any member of a contributory retirement system who transfers into the Massachusetts Port Authority Employees Retirement System before July 1, 2004 may elect to participate in the alternative superannuation retirement benefit program; provided, that said election shall occur within 180 days of establishing membership in the Massachusetts Port Authority Employees Retirement System.

(5)(ii) Any member who elects to so participate shall be required to make a minimum of five years of contributions at 10 per cent from of regular compensation pursuant to section 22; provided, however, that if said member elects to retire before he has made said five years of contributions at 10 per cent, said member shall pay, in one sum or in installments as the board may prescribe, an amount equal to that which would have been withheld as regular deductions at the rate of 10 per cent from his regular compensation for such five year period based on his last months of regular compensation less contributions made during said member's last five years of creditable service; provided, further, that any inactive member who elects to retire before he has made said five years of contributions at 10 per cent, said member shall pay, in one sum or in installments as the board may prescribe, an amount equal to that which would have been withheld as regular deductions at the rate of 10 per cent from his regular compensation for such five-year period based on the last 12 months of regular compensation which would have been paid to said inactive member has said member continued in the position from which he is currently inactive less contributions made during said member's last five years of creditable service. Any schedule permitting an acceleration of contributions shall be consistent with the plan qualification requirements of the Internal Revenue Code and shall, where necessary to meet the requirements of the Internal Revenue Code, provide for an actuarial reduction of benefits by the actuary appointed by the commission in accordance with the provisions of section 21. Any member who elects to participate in the alternative superannuation retirement benefit program and pays additional contributions pursuant to this section and does not complete 30 years of creditable service shall upon termination from membership in or retirement from the system be reimbursed such additional contributions, plus regular interest, as determined by the Massachusetts Port Authority Employees Retirement System.

(5)(iii) The normal yearly amount of retirement allowance for an eligible employee who has completed 30 years of creditable service and has paid the full amount of regular deductions on the total amount of regular compensation as determined under paragraph (a) of subsection (2), shall be based on the average annual rate of regular compensation as determined under said paragraph (a) and shall be computed according to the table contained in said paragraph (a) titled group 2, based on the age of such member and his number of years and full months of creditable service at the time of his retirement with the percentage of salary average in such computation to be increased by 2 per cent per year for each full year of service in excess of 24 years of creditable service; provided, however, that such member shall have served for not less than 25 years as an employee of the Massachusetts Port Authority in order to be eligible to receive the benefit provided under this subsection. For any member who retires prior to age 55, his age factor shall be determined in accordance with subdivision (1) of section 10. For any member who retires before completing 30 years of service, such member shall receive a retirement allowance equal to the retirement allowance that the member would have been eligible for had he not participated in the alternative superannuation retirement benefit program.

(5)(iv) The total normal yearly amount of the retirement allowance, as determined in accordance with the provisions of this subdivision, of any employee who retires and receives an additional benefit under the alternative superannuation retirement benefit program shall not exceed four-fifths of the average annual rate of his regular compensation received during any period of three consecutive years of creditable service for which the rate of compensation was the highest or of the average annual rate of his regular compensation received during the period or periods, whether or not consecutive, constituting his last three years of creditable service preceding retirement, whichever is greater."

The amendment was **adopted**.

Messrs. Panagiotakos and Pacheco moved that the bill be amended by adding at the end thereof the following new section:-

SECTION __. There is hereby established a special commission to evaluate the current status, adequacy, and availability of long-term care residential services, facilities, and programs for cognitively intact adults between the ages of 19 and 59 years of age, with progressive and severe, chronic and physically disabling neurologic conditions in Massachusetts. The commission will study the long term care needs of said adults with multiple sclerosis and other similar progressive neurological conditions that manifest

in physical impairments, including Amyotrophic Lateral Sclerosis (Lou Gehrig's disease), spinal cord injuries, muscular dystrophy, arthritis, and Parkinson's disease, to determine what specialized services, staff trainings, and expertise are needed to serve their psycho-social and medical needs. The commission will also evaluate what capacity in existing facilities must be preserved and adjusted to meet the demand for 24 hour custodial care and treatment of this population of cognitively intact, physically disabled young adults between the ages of 19 and 59.

Said commission shall collect and review data from the Massachusetts Office of Disability, the Department of Public Health Office on Health and Disability, the Division of Medical Assistance, as well as any other state or quasi state agency or department with relevant information, to assist in the evaluation of waiting lists, number of severe or progressive neurologically disabled adults in each facility, the population frequency of disability by type and location, the profile of disabled adults in each facility offering specialized services for cognitively intact, physically disabled adults between the ages of 19 and 59 with progressive or severe neurologic conditions. The commission will also examine non-confidential data from private local agencies and non-profit organizations serving said population, to determine the needs - both met, unmet, and statistically anticipated -of cognitively intact, physically disabled adults between the ages of 19 and 59, with severe and progressive neurologic conditions and diseases.

The Special Commission will assess the fiscal impact, if any, of meeting the residential, psychosocial, and physical dependency needs of this target population of cognitively intact adults between the ages of 19 and 59 with progressive and severe neuralgic disabilities, including but not limited to a review of: the current status and accounting of available beds or units within existing facilities, existence of public or private facilities/homes serving this population, determination of whether and how hospital units should be restructured or retrofitted to accommodate this targeted population, review of the appropriateness of the services offered in said units dedicated to serving the targeted population, examination of the state and federal regulations governing long-term care facilities including for respite beds for target population, and evaluation of options for affordability.

Said special commission shall consist of twenty-four members: three members of the House of Representatives, one of whom shall be the House Chair of the Joint Committee On Health Care or designee, one of whom shall be the Chair of the House Committee on Ways and Means or designee, one of whom shall be appointed by the Minority Leader of the House Of Representatives; three members of the senate, one of whom shall be the Senate Chair Of The Senate Committee on Health Care or designee, one of whom shall be the Chair of the Senate Committee on Ways and Means or designee, and one of whom shall be appointed by the Minority Leader of the Senate. The Governor of the Commonwealth of Massachusetts shall appoint the Secretary of Administration And Finance or designee; the Secretary of Health and Human Services, or designee; two adults between the ages of 19 and 59 with progressive or severe neurologic disabilities; Director of the Massachusetts Office on Disability or designee; Commissioner of the Department of Public Health or a designee from the Office on Health and Disability; Commissioner of the Division of Medical Assistance or designee, Commissioner of Health Care and Finance Policy or designee, the legislative and /or administrative staff for this commission shall be provided from existing resources or staff from above identified offices or offices of designees. Other members of the commission shall include: one member of the Olmstead Advisory Group, Director of the Disability Law Center or designee, the President or CEO, or designee, of disease agencies and organizations serving individuals with multiple sclerosis, Amyotrophic Lateral Sclerosis (Lou Gehrig's disease), spinal cord injuries, muscular dystrophy, arthritis, and Parkinson's; and one Administrator and one representative from the nursing staff from the Boston Home.

Said commission shall be co-chaired by one member of the house and one member of the senate to be appointed respectively by the speaker of the house and president of the Senate. Said commission shall hold public hearings to assist in the collection and evaluation of data and testimony from family members, caregivers, facilities, and other state offices, as well as other sources of information. The commission shall conclude said evaluation on or before September 30, 2003 by filing the results thereof with the clerks of the house and senate, the house and senate committees on ways and means and the joint committee on health care. Said report shall include recommendations for securing services facility based custodial care for cognitively intact, physically disabled adults between the ages of 19 and 59, with progressive or severe neurologic disabilities, the cost of maintaining or establishing said facilities, and any legislation necessary to implement or allow for the maintenance, retrofitting, renovation, or construction of facilities for the targeted population.

The amendment was **adopted**.

Mr. Morrissey moved that the bill be amended by inserting after section 353 the following new section:-

SECTION ____ . Notwithstanding the provisions of any general or special law to the contrary, there shall be established a special commission to analyze the regulation of assisted living facilities in the commonwealth. Said commission shall consist of 17 members including: 3 members of the house of representatives, 2 appointed by the Speaker and 1 of whom shall be appointed by the minority leader; 3 members of the senate, 2 appointed by the Senate President and 1 of whom shall be appointed by the minority leader; the secretary of elder affairs or her designee; the commissioner of public health or her designee; one individual nominated by the Massachusetts Assisted Living Facilities Association; one individual nominated by Local 209 of the Service Employees Industrial Union; one individual nominated by MassAging; one individual nominated by the Massachusetts Extended Care Federation; one individual nominated by the Alzheimer's Association of Massachusetts; and one individual nominated by AARP of Massachusetts; 2 residents of a facility licensed under M.G.L. c. 19D; and one family member of a cognitively

impaired resident of a facility licensed under M.G. c. 19D. Said nominations shall be submitted to the office of the Speaker and the Senate President no later than 60 days from the effective date of this act and shall first meet in a location to be chosen by the secretary of elder affairs no later than 60 days thereafter. The commission shall issue a report containing its recommendations, including any proposed legislation or regulations it deems advisable, no later than January 31, 2005 and shall submit said report and draft legislation or regulations to the Joint Committee on Human Services and Elderly Affairs.

The amendment was **adopted**.

Mr. Morrissey moved that the bill be amended after section 353 by inserting at the end thereof the following new sections:-
SECTION ____ . Section 2 of Chapter 128C in the General Laws, as appearing in the 2002 Official Edition, as most recently amended by Chapter 139 of the Acts of 2001, in lines 155 to lines 163 by striking out the words:- "with the exception of the harness horse racing licensee in Norfolk county, in each of those racing seasons is licensed to and actually conducts not less than a total of 150 racing performances taking place on at least 150 racing days; and provided, further, that the harness horse racing licensee in Norfolk county may simulcast live races in any racing season provided that it conducts at least 1,100 live harness horse races over the course of no fewer than 100 calendar days during that racing season with no fewer than 7 races completed on any of those 100 calendar days." and inserting in place thereof the following: - "with the exception of the running horse racing meeting licensee in Suffolk county and the harness horse racing licensee in Norfolk county, in each of those racing seasons is licensed to and actually conducts not less than a total of 150 racing performances taking place on at least 150 racing days; and provided, further, that the running horse racing meeting licensee in Suffolk county and the harness horse racing licensee in Norfolk county may simulcast live races in any racing season provided that each racing meeting licensee conducts at least 1,100 live horse races over the course of no fewer than 100 calendar days during that racing season with no fewer than 7 races completed on any of those 100 calendar days."

The amendment was **adopted**.

Mr. Leary, Ms. Walsh, Messrs. Moore and Barrios, and Ms. Wilkerson moved that the bill be amended by adding the following section: -

SECTION ____ . Section 1. (a). This section applies to any town in Barnstable county that has a Cape Cod Open Space Land Acquisition Program established pursuant to chapter 293 of the acts of 1998, and any such town may adopt this section in accordance with the procedures set forth in subsection (b) or (c). The adoption of this section by a town shall constitute the acceptance by the town of sections 3 to 7, inclusive, of chapter 44B of the General Laws, otherwise known as the Massachusetts Community Preservation Act, and shall result in the town having all powers and rights granted by, and being subject to all duties, obligations and restrictions imposed under, said chapter 44B to the same extent as if the town had adopted said sections 3 to 7, inclusive, of said chapter 44B, except as otherwise provided in this section.

(b). Any such town may adopt this section upon the approval thereof by the town meeting of the town or, in the case of the town of Barnstable, by the town council of the town, and the approval thereof by the voters of a ballot question as set forth in subsection (c).

(c). Upon the approval of this section by the town meeting of a town or, in the case of the town of Barnstable, by the town council of the town in accordance with the provisions of subsection (b) the town clerk or the secretary of state, as applicable, shall place the question of approval of the provisions of this section on the ballot at the next regular municipal election held more than 35 days after such approval or certification, as applicable, or at the next regular state election held more than 60 days after such approval or certification, as applicable, in the form of the following question:

"Shall the Town of _____ adopt section ____ of Chapter ____ of the Acts of 2004, (as approved by the town meeting/council), a summary of which appears below?"

("Acceptance of section ____ of Chapter ____ of the Acts of 2004 means the Community Preservation Act shall effectively replace the Cape Cod Open Space Land Acquisition Program. There shall be no additional excise on real property levied, other than the current 3 per cent levied for the provisions of the Cape Cod Open Space Land Acquisition Program. Acceptance of this section shall allow the community to access state matching funds of up to 100 per cent of the excise on real property currently levied, which was previously unavailable to the town.")

If a majority of the voters voting on said question vote in the affirmative, then the provisions of this section as approved by the town meeting or town council, as applicable, shall take effect in the town, but not otherwise.

(d). Notwithstanding chapter 293 of the acts of 1998 to the contrary, the excise on real property in an amount equal to 3 per cent of the real estate tax levy against said property levied pursuant to section 6 of chapter 293 of the acts of 1998,, in connection with the town's Cape Cod Open Space Land Acquisition Program shall terminate at the end of the fiscal year of the town in which the voters of the town vote to approve the adoption of this section pursuant to subsection (c). In the fiscal year of the town following the fiscal year in which the voters of the town vote to approve the adoption of this section, the town shall impose a surcharge on real property in the amount equal to 3 per cent of the real estate tax levy against said property for the purposes of and in accordance with said chapter 44B. Notwithstanding section 16 of said chapter 44B to the contrary, the town may not amend the

amount of or revoke such surcharge on real property in accordance with section 16 of said chapter 44B until fiscal year 2020.

(e). On the first day of the fiscal year following the fiscal year in which the voters of a town approve the adoption of this section in accordance with subsection (c), the town shall establish a separate account to be known as the Community Preservation Fund in accordance with and pursuant to section 7 of said chapter 44B. Notwithstanding chapter 293 of the acts of 1998 to the contrary, the town shall simultaneously extinguish its separate account known as the Land Bank Fund established pursuant to section 5 of Chapter 293 of the Acts of 1998. Without further appropriation by the town, the town shall simultaneously transfer all amounts then on deposit in its Land Bank Fund to its Community Preservation Fund, and all investments thereof shall become investments of the Community Preservation Fund. In addition to the amounts so transferred from the town's Land Bank Fund, the town shall thereafter deposit the following amounts into its Community Preservation Fund: (i) all amounts required to be deposited into the fund pursuant to section 7 of said chapter 44B; (ii) all receipts from the excise on real property levied pursuant to section 5 of chapter 293 of the acts of 1998 in any fiscal year prior to the fiscal year in which the Community Preservation Fund of the town is established pursuant to this subsection, and all interest thereon, which is received by the town after the establishment thereof; (iii) all proceeds of bonds or notes issued pursuant to section 7 of chapter 293 of the acts of 1998; and (iv) any other grants, donations or other amounts received by the town for the benefit of, for deposit in or for the purposes of the Land Bank Fund.

(f). Upon the adoption of this section by a vote of the voters of a town in accordance with subsection (c), the town's open space committee established pursuant to section 4 of chapter 293 of the acts of 1998 shall be abolished. Any town, which has so adopted this section, shall establish a community preservation committee by bylaw in accordance with section 5 of said chapter 44B. The community preservation committee shall have the rights and powers, and shall be subject to the duties, obligations and restrictions, set forth in section 5 of said Chapter 44B.

(g). All amounts transferred to or deposited in the Community Preservation Fund of a town pursuant to subsection (e) shall be appropriated in every fiscal year in accordance with section 6 of said chapter 44B; provided, however, that any amount appropriated by the town from the Land Bank Fund in accordance with chapter 293 of the acts of 1998 prior to the vote of the voters of the town approving the adoption of this section pursuant to subsection (c) which has not been expended prior to the establishment of the Community Preservation Fund and the termination of the Land Bank Fund pursuant to subsection (e) shall be expended solely for the purpose of such appropriation pursuant to chapter 293 of the acts of 1998, and the vote of the town meeting or, in the case of the town of Barnstable, of the town council therefore. Any such amount expended from the Community Preservation Fund in accordance with a prior appropriation made pursuant to chapter 293 of the acts of 1998 shall not require a further appropriation of the town and the amount and purpose of such an expenditure shall not be taken into account for purposes of determining annual revenues of the Community Preservation Fund and compliance by the town with the minimum spending requirements prescribed in section 6 of said chapter 44B. No appropriation may be made from the Land Bank Fund by any town that adopts the provisions of this section after the date on which the voters of the town vote to approve the adoption of the provisions of this section pursuant to subsection (c). Any town that adopts this section may appropriate amounts from its Community Preservation Fund only after the establishment of such Fund pursuant to subsection (e) and after the establishment of its Community Preservation Committee pursuant to subsection (f).

(h). Any bonds or notes authorized by a town pursuant to section 7 of chapter 293 of the acts of 1998 prior to the vote of the voters of the town approving the adoption of this section pursuant to subsection (c) may be issued by the town pursuant to section 7 of chapter 293 of the acts of 1998 at any time prior to such vote. Notwithstanding section 7 of chapter 293 of the acts of 1998 and section 11 of said chapter 44B to the contrary, a town that has adopted the provisions of this section may pay any bonds and notes issued pursuant to section 7 of chapter 293 of the acts of 1998 from amounts on deposit in its Community Preservation Fund to the same extent as if such bonds or notes were issued pursuant to section 11 of said chapter 44B regardless of whether such bonds or notes were issued prior to or after the adoption of this section by the town. Any appropriation by a town for the payment of debt service on any such bonds or notes from amounts on deposit in its Community Preservation Fund shall constitute an expenditure for the acquisition, creation or preservation of open space and shall be made in accordance with and subject to the restrictions of section 6 of said chapter 44B; provided, however, that the town meeting or, in the case of the town of Barnstable, the town council may, upon the recommendation of the community preservation committee, appropriate and expend the entire amount needed to pay debt service on any such bonds or notes that were authorized by a vote of the town meeting or the or, in the case of the town of Barnstable, by the town council which was passed on or before June 30, 2005, even if the aggregate amount of such expenditures exceeds 80 per cent of the annual revenues of the town's Community Preservation Fund for historic resources and half of such remaining annual revenues for community housing.

(i). With respect to any town that adopts this section, any real property it acquired or acquires with funds appropriated pursuant to the provisions of chapter 293 of the acts of 1998 shall continue to be subject to the provisions thereof, and any real property it acquires pursuant to said chapter 44B shall be subject to the provisions of said chapter 44B.

(j). Any town that adopts this section may not thereafter independently adopt sections 3 to 7, inclusive, of said chapter 44B in accordance with the provisions thereof unless the town has previously voted to revoke the surcharge on real property as permitted pursuant to subsection (d). This section does not, however, (i) require any town in Barnstable County to seek the adoption thereof, (ii) prevent any such town from continuing to operate its Cape Cod Open Space Land Acquisition Program in accordance

with chapter 293 of the acts of 1998, or (iii) prevent any such town from continuing to operate its Cape Cod Open Space Land Acquisition Program and independently adopting sections 3 to 7, inclusive, of said chapter 44B in accordance with the provisions thereof. Notwithstanding said chapter 44B to the contrary, any town that adopts the provisions of this section after it has independently adopted sections 3 to 7, inclusive, of said chapter 44B shall be subject to the provisions of chapter 44B as adopted pursuant to and as modified by this section beginning in the fiscal year of the town following the fiscal year in which the voters of the town vote to approve the adoption of this section pursuant to subsection (c), and the surcharge on real property and the exemptions therefrom adopted pursuant to this section shall at such time replace the surcharge on real property and exemptions therefrom previously adopted by the town in accordance with said chapter 44B.

The amendment was **adopted**.

Messrs. Moore, Montigny, O'Leary, Ms Wilkerson and Messrs. Tisei and Barrios moved that the bill be amended in section 2, in line item 4000-1400, by striking out the words "133 per cent of the federal poverty level;" and inserting in place thereof the words "200 per cent of the federal poverty level;"

The amendment was **adopted**.

Messrs. Pacheco and Knapik moved that the bill be amended in Section 290 by inserting after the words "publicly-owned or publicly-operated providers" the following words:-

"including, but not limited to, Neville Communities Home, Inc., Cape End Manor, Taunton Nursing Home, Hampshire Care, Our Island Home, and the Geriatric Authority of Holyoke"

The amendment was **adopted**.

Ms. Chandler, Messrs. Moore, Montigny, Nuciforo, McGee, Ms. Tucker, Messrs. Tisei and O'Leary and Ms. Resor moved that the bill be amended by striking out Section 300 and inserting in place thereof the following new Section:-

"SECTION 300. (a) Notwithstanding any general or special law to the contrary, the Executive Office of Health and Human Services shall develop and issue a Request for Proposals no later than March 31, 2005, to outsource the delivery of the MassHealth Dental Program benefits to a third party administrator. The third party administrator shall be an experienced dental benefits administrator capable of maintaining an adequate dental provider panel to provide access for MassHealth clients in a cost-effective manner.

(b) The Executive Office shall utilize the information it collected to assist in the development of a Request for Proposals to seek a third party administrator for the MassHealth Dental Program. The Executive Office shall design the third party administered MassHealth Dental Program with features consistent with a private dental benefits plan.

(c) Prior to awarding any contract for the services of a third party administrator for the MassHealth Dental Program, the Executive Office shall file a report with the Senate and House committees on ways and means no later than January 15, 2006 regarding the anticipated costs and benefits of contracting with such administrator."

Mr. Leary moved that the bill be amended by inserting, after Section 362, the following new Section:-

SECTION _____. Notwithstanding the provisions of any federal or special law, rule or regulation to the contrary, the Division of Medical Assistance may on a Demonstration basis in the area defined and limited under the federally funded DOHHS HRSA CAP Grant 1-G92-OA 00005-02 provide benefits described in section 9C of chapter 118E to employees and employers who are described and limited under the terms of the program set forth in said Demonstration, and may expend monies from any appropriation for benefits provided under said section 9C to also provide benefits specified in said Demonstration expanding the income limits set forth in section 9C from 200% to 300% of federal poverty level, provided that the Division will seek to obtain a modification of its Demonstration, as defined in subsection (1) of section 9A of chapter 118E, that would allow for federal reimbursement for some or all of the expenditures for providing the benefits specified in the Demonstration; further provided that said Demonstration, without expenditure of monies from any appropriation for benefits provided under said section 9C, also be permitted to offer health coverage to employees between 300% and 400% of the federal poverty level. The provision of M.G.L.c.176J, section 3-8, inclusive, and 211 CMR 66.00 shall not apply to health coverage provided by carriers pursuant to this section."

Mr. Moore moved that the bill be amended by inserting at the end thereof the following new section:-

SECTION _____. Notwithstanding the provisions of any general or special law to the contrary, the Division of Medical Assistance is hereby directed to promulgate regulations designed to: (a) streamline and simplify signature authorization procedures for clinical laboratory services, and specifically to exclude, as a condition of payment for any laboratory test order form, a physician's handwritten signature; and (b) clarify the billing procedures for specimen referral where the referring laboratories and testing laboratories are subsidiary related. Any change to existing regulation shall require the referring laboratory to disclose on its claim forms (i) the MassHealth provider number for the testing laboratory and (ii) the tests performed by the testing laboratory.

The amendment was **adopted**.

Mr. Baddour moved that the bill be amended by inserting, after Section ____, the following new Section:-
"; SECTION ____. Section 2A of chapter 101 of the acts of 1999 is hereby amended by striking item 1599-1499 and inserting in place thereof the following: -

1599-1499

For a one-time loan to the city of Quincy for the purpose of facilitating the conversion of Quincy Hospital from ownership by the city of Quincy to ownership by a private nonprofit corporation; provided, that such loan shall be repaid by the city in one installment, without interest, in fiscal year 2005; provided further, that 22 per cent of said repayment amount shall be dedicated for a payment to a municipality in Essex county to defray debt resulting from the operation of a former municipally-owned hospital; provided further, that the terms of the loan shall be established by and subject to the terms of an agreement to be negotiated between the city, represented by the mayor, and the secretary of administration and finance; provided further, that the state comptroller shall intercept cherry sheet payments due the city from the commonwealth upon certification by the secretary that the city is in default on the loan or any other terms of the agreement; provided further, that the proceeds of the loan shall be used by the city for the costs associated with the conversion, including, but not limited to, obligations of the hospital to the city for employee benefits and for any indebtedness incurred by the city on behalf of the hospital; provided further, that in the event that the financial commitments of the city to the hospital in fiscal years 2000 to 2004, inclusive, terminate for any reason prior to fiscal year 2005, the annual installment payments of the loan shall become due in the fiscal year following the fiscal year in which the financial commitments terminate; provided further, that the city, in collaboration with the corporation, shall file annually with the secretary and with the secretary of health and human services, the house and senate committees on ways and means and the joint committee on health care a report delineating the benchmarks and milestones established by the corporation to achieve financial viability and the status of the corporation in achieving the benchmarks and milestones, including changes in patient volume and payer mix, the establishment and maintenance of community benefits by the corporation and the results of affiliations with other health care providers and health care entities; and provided further, that the report shall be filed not later than the January 1 following the end of each hospital fiscal year 2000 to 2005, inclusive\$12,100,000."
The amendment was **adopted**.

Messrs. Moore and Montigny moved that the bill be amended by adding at the end thereof the following:-
"SECTION XX. Notwithstanding any general or special law to the contrary, the division of medical assistance may seek a waiver under the titles XIX and XXI of the Social Security Act to expand MassHealth comprehensive family planning services for individuals whose income is at least up to 200% of the federal poverty line. Said division shall only seek said waiver if said division determines that said expansion would be cost neutral to the Commonwealth and would not incur a deficiency in any item funded in section 2 of this act. Said waiver shall at least include those services currently covered as comprehensive family planning services including comprehensive medical and gynecological examinations, contraceptive counseling and methods, sexually transmitted disease testing and treatment, screening for breast and cervical cancer, related laboratory screenings, non directive counseling and referral for pregnancy and prenatal care, infertility and other health related issues. Said division shall notify the house and senate ways and means committees within 10 days of the filing of said waiver with the Centers for Medicare and Medicaid Services and shall notify said committees within 10 days of approval of said waiver.
The amendment was **adopted**.

Mr. Moore moved that the bill be amended by adding at the end thereof the following new Section:-
SECTION __. Section 632 of chapter 26 of the acts of 2003 is hereby repealed
The amendment was **adopted**.

Mr. Joyce moved that the bill be amended by inserting, after Section ____, the following new Section:-
"SECTION ____. Section 13A of chapter 118E of the General Laws, as appearing in the 2002 Official Edition is hereby amended by adding the following paragraph:-

For any hospital fiscal year commencing on or after October first two thousand and three, the division shall not classify any ventilator dependent patients in a public payor-dependent non-acute hospital as an administratively necessary day patient, unless a physician member of the hospital's utilization review committee finds and certifies that the medical services required by any such patient are actually available in a non-hospital facility located within a twenty-five mile radius of the patient's principle residence and that the patient will receive safe and effective care. The division shall not make any decision or take any action as to the continuing necessity of hospital care in a public payor-dependent non-acute hospital which is inconsistent with the hospital utilization review committee findings. The division shall pay public payor-dependent non-acute hospitals at the full hospital inpatient per diem rate for services provided to such ventilator dependent patients entitled to medical assistance and such ventilator dependent patients shall not be subject to administratively necessary day rates.
The amendment was **adopted**.

Mr. Berry moved that the bill be amended in section 2, in item 4000-0600, by adding at the end thereof the following:-
";provided, further, that in the event the division of health care finance and policy conducts or utilizes an audit of nursing facilities' calendar year 2002 base year costs to reduce rates below levels that would be in effect in the absence of the audit, then

(i) the results of said audit may only be utilized if the audit is concluded prior to July 1, 2004; each affected nursing facility is given written notice setting forth the audit findings related to the nursing facility and specifying that the nursing facility has a right to appeal those audit findings to the division of administrative law appeals within thirty days of receipt of the audit findings; and rate adjustments based upon the audit are retrospectively adjusted to reflect any decision of the division of administrative law appeals affording a nursing facility relief on the nursing facility's appeal of audit findings, and (ii) the results of said audit may not be utilized to impose a reduction exceeding one percent in each of the nursing costs cost center, other operating costs cost center, or administrative and general costs cost center unless the sample size of the nursing facilities audited is equal to or greater than fifty percent of the nursing facilities for which the division maintains calendar year 2002 data and, provided further, that in no event may the sample size of any such audit be less than ten percent of the nursing facilities for which the division maintains calendar year 2002 data;"

The amendment was **adopted**.

Ms. Tucker moved that the bill be amended in section 2, in item 9110-1636 by striking out the words "provided, that not more than \$480,000 may be expended for guardianship services" and inserting in place thereof the following words:- "and guardianship services".

The amendment was **adopted**.

Mr. Joyce, Ms. Tucker and Messrs. Montigny and Nuciforo moved that the bill be amended in Section 279 by striking out the words:- "include in said waiver request the feasibility of offering," and inserting in place thereof the word:- "offer" and by further amending the bill in Section 279 by adding after the words:- "Said waiver" the following words:- "shall utilize additional federal financial participation from said expansion to increase the community benefit plans for eligible individuals at risk of nursing home care, while ensuring that this."

The amendment was **adopted**.

Mr. Montigny moved that the bill be amended in section 281 in subsection (a)(1) by striking out the words:- "ten bed hold days," and inserting in place thereof the following:- "20 bed hold days."

The amendment was **adopted**.

Mr. Berry moved that the bill be amended in Section 281, subsection (4), by adding the following words:- ",and to the extent that an annual amount of \$17 million in this subsection is not fully allocated, the division shall first fund capital rate adjustments for nursing homes in urban or geographically remote underbedded areas; and provided further that in fiscal year 2005 the division shall continue to make supplemental rate payments in accordance with the regulation 114.2 CMR 6.06 (10)(a) in effect September 1, 2003."

The amendment was **adopted**.

Mr. Tisei moved that the bill be amended by inserting, after Section 362, the following new section:-

"SECTION ____ . Section 14A of chapter 118E of the General Laws is hereby amended by adding the following paragraph:-

" In the event that a nursing facility resident who is 22 years or under and is a MassHealth recipient leaves the nursing facility for non-medical reasons, the facility shall preserve his or her bed for a period up to 10 calendar days per year and the division shall pay to preserve his or her bed in the facility for a period of up to 10 calendar days per year. The division shall reimburse the nursing facility for the non-medical leave of absence at the recipient's pre-absence rate during the non-medical leave and upon the resident's return."

The amendment was **adopted**.

Messrs. Lees, Tisei, Tarr, Knapik and Brown Mrs. Sprague move to amend the bill be inserting after Section 338 the following section:-

"Section 338A. The secretary of the executive office of health and human services shall conduct a study to determine the costs of allowing MassHealth participants who care for elderly parents to obtain additional benefits to offset the expenses paid for caring for elderly parents. The secretary shall submit this report no later than March 1, 2004 to the Senate President, Senate Minority Leader, Chairman of Senate Ways and Means committee, Speaker of the House of Representatives, House Minority leader and Chairman of the House Ways and Means committee."

The amendment was **adopted**.

Mr. Moore moved that the amendment of Messrs. Lees, Tisei, Tarr, Knapik and Brown and Mrs. Sprague ("MassHealth Benefits," floor number 755) be amended by striking the words:- "March 1, 2004" and replacing them with "October 1, 2004"; and

By inserting at the end thereof, the following: "Said report shall also include a comprehensive description and list of all MassHealth benefits cuts implemented since January 1, 2003, including but not limited to cuts in available benefits, changes in eligibility requirements that have caused individuals to lose benefits, and changes in co-payments, premiums, and other program conditions that have caused individuals to incur greater costs or lose benefits. The secretary's report submitted pursuant to this section shall recommend whether funds should be devoted to restoring previous MassHealth cuts rather than allowing

MassHealth participants who care for elderly parents to obtain additional benefits to offset the expenses paid for caring for elderly parents."

The amendment was **adopted**.

Mr. O'Leary moved that the bill be amended by inserting in Section 295, at the end of the second sentence after the words "Massachusetts Hospital Association" the following:-
"; provided that the secretary shall provide a \$200,000 one-time grant from said fund for a community health center serving the full range of the underserved population in the town of Barnstable and further serving the dental needs of all the underserved population throughout the mid-cape area; provided further, that said secretary shall provide a \$750,000 one-time grant from said fund for a sole community hospital under the Medicare program located in Barnstable county; provided further, that said secretary shall provide a \$250,000 one-time grant from said fund for an acute care hospital serving the Melrose and Wakefield communities that operates a family health service clinic; provided further, that said secretary shall provide a \$750,000 one-time grant from said fund for a non-teaching, community, disproportionate share, acute care hospital located in Southeastern Massachusetts, which provides inpatient care to over 5,000 Mass Health or Mass Health HMO patients per year; provided further, that said secretary shall provide a \$750,000 one-time grant from said fund for a non-profit visiting nurse association located in Boston, that delivers at least 30 per cent of all MassHealth reimbursed skilled nursing visits and at least 50 per cent of all MassHealth reimbursed home health aide services in Suffolk county; provided further, that said secretary shall provide a \$400,000 one-time grant from said fund for a community health center located in South Boston which operates an urgent care center and which is affiliated with the disproportionate share teaching hospital in Suffolk County with the highest volume of free care; provided further, that said secretary shall provide a \$350,000 in a one-time grant from said fund for a community health center located in the Codman Square neighborhood of Dorchester providing health care to medically underserved patients in Dorchester, who has formed an integrated health services network to provide access to primary and preventive public health services; provided further, that said secretary shall provide a \$350,000 in a one-time grant from said fund for a community health center located near the Fields Corner neighborhood of Dorchester, on Dorchester Avenue, providing health care to medically underserved patients in Dorchester, who has formed an integrated health services network to provide access to primary and preventive public health services; provided further, that said secretary shall provide a \$400,000 in a one-time grant from said fund for a community health center with at least three sites serving the medically underserved areas of Dorchester and South Boston, including at least one public housing project; provided further, that said secretary shall provide a \$750,000 one-time grant from said fund to a disproportionate share hospital provider in the county formerly known as Essex County who has a family practice residency in partnership with a federally qualified community health center; provided further, that said secretary shall provide a \$750,000 one-time grant from said fund for a teaching hospital located in central Berkshire county; provided further, that said secretary shall provide a \$500,000 one-time grant from said fund for a hospital located in Hampden County, west of the Connecticut River with under 100 beds that participates in MassHealth; provided further, that said secretary shall provide a \$1,000,000 one-time grant from said fund for a hospital that is a member of the UMass Memorial Health Care system located in Hampden County with less than 50 licensed beds; provided further, that said secretary shall provide a \$1,000,000 one-time grant from said fund for a community hospital located in Hampshire County with an affiliation with a teaching hospital located in Hampden County; provided further, that said secretary shall provide a \$500,000 one-time grant from said fund for a community health center that serves as a family practice residency training site for a commonwealth funded medical school and that assumed the primary care services of the former Worcester City Hospital; provided further, that said secretary shall provide a \$250,000 one-time grant from said fund for a not-for-profit long term acute care hospital located in Roxbury; provided further, that said secretary shall provide a \$500,000 one-time grant from said fund to a disproportionate share acute care hospital located in Southeastern Massachusetts division of the medical assistance psychiatric service area that operates an inpatient psychiatric unit within the City of Brockton; provided further, that said secretary shall provide a \$1,500,000 one-time grant from said fund for statewide providers with the service area of the Sisters of Providence Health System and Providence Behavioral Health Hospital; provided further, that said secretary shall provide a \$500,000 one-time grant from said fund for an acute care hospital located in Gloucester that is part of a health care system; provided further, that said secretary shall provide a \$2,500,000 one-time grant from said fund for an acute care hospital located in Holyoke that is affiliated with a commonwealth-owned university medical school and that provides clinical training programs for nurses, allied health professionals and technicians through affiliations with community colleges and private universities; provided further, that said secretary shall provide a \$500,000 one-time grant from said fund for Waltham Community Health Center; provided further, that said Secretary shall provide a \$3,000,000 one-time grant from said fund for a community health center located in Suffolk county that participates in the MassHealth program, so-called; provided further, that said secretary shall provide a \$1,200,000 one-time grant from said fund for a disproportionate share teaching hospital located in Hampden County; provided further, that said secretary shall provide a \$300,000 one-time grant from said fund to inpatient behavioral health providers under contract with MassHealth's managed care contractors for mental health and substance abuse for costs associated with providing care to stuck kids, so called; provided further, that said secretary shall provide a \$285,000 one-time grant from said fund for a community, non-profit, acute care regional teaching hospital located in Worcester county affiliated with the University of Massachusetts Memorial Health Care System; provided further, that said secretary shall provide a \$250,000 one-time grant from said fund for a community health center located in the North End section of the City of Boston, so-called; provided further, that said secretary shall provide a \$500,000 one-time grant for a community hospital located in the city of Lynn."

The amendment was **adopted**.

Mr. Moore moved that the bill be amended Section 296, by striking the fourth paragraph and replacing therein the following:-
"In hospital fiscal year 2005, the total surcharge liability of surcharge payers to the uncompensated care trust fund shall be \$160,000,000. The surcharge amount for each surcharge payer shall be equal to the product of (a) the surcharge percentage and (b) amounts paid for services of an acute hospital or ambulatory surgical center by each surcharge payer, minus (c) any net loss incurred during the previous calendar year on operations as a MassHealth managed care organization contracted with the division of medical assistance pursuant to section 12 of chapter 118E. The division of health care finance and policy shall calculate the surcharge percentage by dividing \$160,000,000 by the projected annual aggregate "payments subject to surcharge", as that phrase is defined in section 1 of chapter 118G of the General Laws. Net loss incurred during the previous calendar year on operations as a MassHealth managed care organization contracted with the division of medical assistance shall be determined based on the results of the annual financial reports submitted to the division of insurance by managed care organizations under section 10 of chapter 176G."

The amendment was **adopted**.

Mr. Moore moved that the bill be amended by adding at the end thereof the following new Section:-

SECTION ___. Notwithstanding the provisions of any general or special law or regulation to the contrary, the division of medical assistance may expend, subject to federal approval, an amount not to exceed \$16,000,000 from the medical assistance intergovernmental transfer account within the medical assistance intergovernmental uncompensated care trust fund for Title XIX payments to Neighborhood Health Plan. The payments shall be established in accordance with Title XIX of the federal Social Security Act, or any successor federal statute, any regulations promulgated thereunder, the Commonwealth's Title XIX state plan, and the terms and conditions of agreements reached with the division for such payments. No such funds shall be expended unless Neighborhood Health Plan has executed a managed care contract with the division of medical assistance and makes an intergovernmental funds transfer in an amount specified in an agreement, which amount shall be not less than 50 per cent of the Title XIX payment. All revenues generated pursuant to the provisions of this section shall be credited to the medical assistance intergovernmental transfer account and administered in accordance with the provisions of paragraph (o) of section 18 of chapter 118G of the General Laws.

The amendment was **adopted**.

Mr. Hart moved that the bill be amended by inserting, after Section ___ the following new Section: -

"SECTION ___. Notwithstanding the provisions of any general or special law or regulation to the contrary, the division of medical assistance may expend, subject to federal approval, an amount not to exceed \$10,000,000 from the medical assistance intergovernmental transfer account within the Uncompensated Care Trust Fund for Title XIX payments to qualifying hospitals located in the Dorchester section of the city of Boston. The payments shall be established in accordance with Title XIX of the federal Social Security Act, or any successor federal statute, any regulations promulgated thereunder, the Commonwealth's Title XIX state plan, and the terms and conditions of agreements reached with the division for such payments. No such funds shall be expended unless said qualifying hospitals have executed the division of medical assistance's current Acute Hospital Request for Applications and Contract, and the Boston Public Health Commission makes an intergovernmental funds transfer in an amount specified in an agreement, which amount shall be not less than 50 per cent of the Title XIX payment. All revenues generated pursuant to the provisions of this section shall be credited to the medical assistance intergovernmental transfer account and administered in accordance with the provisions of paragraph (o) of section 18 of chapter 118G of the General Laws."

The amendment was **adopted**.

Messrs. Knapik, Lees, Rosenberg and Ms. Melconian moved that the bill be amended after Section ___ by inserting the following new Sections:-

"SECTION ___. Notwithstanding the provisions of any general or special law or regulation to the contrary, the division of medical assistance may expend, subject to federal approval, an amount not to exceed \$10,000,000 from the medical assistance intergovernmental transfer account within the Uncompensated Care Trust Fund for Title XIX payments to the Holyoke Medical Center. The payments shall be established in accordance with Title XIX of the federal Social Security Act, or any successor federal statute, any regulations promulgated thereunder, the Commonwealth's Title XIX state plan, and the terms and conditions of agreements reached with the division for such payments. No such funds shall be expended unless the Holyoke Medical Center has executed the division of medical assistance's current Acute Hospital Request for Applications and Contract, and the City of Holyoke makes an intergovernmental funds transfer in an amount specified in an agreement, which amount shall be not less than 50 per cent of the Title XIX payment. All revenues generated pursuant to the provisions of this section shall be credited to the medical assistance intergovernmental transfer account and administered in accordance with the provisions of paragraph (o) of section 18 of chapter 118G of the General Laws.

SECTION ___. Notwithstanding the provisions of any general or special law or regulation to the contrary, for the purpose of qualification as an essential MassHealth hospital, teaching hospitals affiliated with a commonwealth-owned university medical school shall include hospitals with such affiliation that (i) have at least 25 full time equivalent residents and interns, or (ii) provide clinical training programs for nurses and allied health professionals and technicians through affiliations with community colleges and private universities.

The amendment was **adopted**.

Messrs. Morrissey and Baddour moved that the bill be amended by inserting after section 353 the following new section:-
SECTION _____. Notwithstanding the provisions of any general or special law or regulation to the contrary, the division of medical assistance may expend, subject to federal approval, an amount not to exceed \$90,000,000 from the medical assistance intergovernmental transfer account within the Uncompensated Care Trust Fund for title XIX payments to the Quincy Medical Center. The payments shall be established in accordance with Title XIX of the federal Social Security Act, or any successor federal statute, any regulations promulgated thereunder, the commonwealth's Title XIX state plan, and the terms and conditions of agreements reached with the division for such payments. No such funds shall be expended unless the Quincy Medical Center has executed the division of medical assistance's current Acute Hospital Request for Applications and Contract, and the City of Quincy makes an intergovernmental funds transfer in the amount specified in an agreement, which amount shall be not less than 50 per cent of the Title XIX payment. No such funds shall be expended by Quincy Medical Center unless the Quincy Medical Center repays in full the entire the state loan due pursuant to chapter 101 of the acts of 1999, as amended by chapter 47 of the acts of 2003; provided however, that of the amount repaid in full to the state pursuant to chapter 101 of the acts of 1999, as amended by chapter 47 of the acts of 2003, not less than \$2,662,000 shall be dedicated for a payment to a municipality in Essex county to defray debt resulting from the operation of a former municipally-owned hospital. All revenues generated pursuant to the provisions of this section shall be credited to the medical assistance intergovernmental transfer account and administered in accordance with the provisions of paragraph (o) of section 18 of chapter 118G of the General Laws.
As previously stated, the above amendments were considered as one and **adopted**.

There being no objection, the following amendments were considered as one and rejected, to wit:

Messrs. Lees, Tarr, Knapik, Brown and Brewer moved that the bill be amended in section 2, in item 8000-0000, by inserting the following wording:-
"provided further, that funds may be expended from this line item for neighborhood crime watch programs to be administered by local law enforcement agencies"
The amendment was *rejected*.

Mr. Shannon moved that the bill be amended in section 2, in line item 8100-0000, by inserting after the words "fiscal year 2005" following:-
", provided, however, that of the \$365,000 in funding previously earmarked for directed patrols under the Zero Tolerance and Fire Risk Prevention Program, so-called, \$115,000 shall be expended for the City of Somerville and \$15,000 shall be expended for the City of Medford to provide one-time compensation for police overtime costs associated with the 2004 Democratic National Convention".
The amendment was *rejected*.

Mr. Hedlund moved that the bill be amended, in section 2, in item 8100-0000, by striking the figure "2,328,924" and inserting in place thereof the figure:- "2,048,924";

By inserting, in section 2, in line item 8100-0000, after the figure "2005" the following :-
"except those funds earmarked for directed patrols of Nantasket Beach in Hull";

By striking, in section 2, in item 8100-0000, the figure "196,375,102" and inserting in place thereof the figure: -
"196,095,102"; "; and

By inserting in section 2 the following new line item :-
8000-_____
For a grant to the Town of Hull for the costs of increased patrols during the months of June to September, inclusive, for Nantasket Beach.....\$200,000.
The amendment was *rejected*.

Mr. McGee moved that the bill be amended in section 2, in item 8400-0001, by striking out the following:-
"that the registry may run a license express office in the city of Lynn"

and inserting in place thereof the following:-
"that \$110,000 shall be expended to operate a license express office in the city of Lynn".
The amendment was *rejected*.

Mr. Nuciforo moved that the bill be amended in section 2 by inserting after item 8910-7101 the following item:
"8910-7902.
For the operation of the Berkshire County Juvenile Resource Center operated by the sheriff of the former Berkshire County in the city of Pittsfield -; \$535,000".
The amendment was *rejected*.

Mr. Havern and Ms. Fargo moved that the bill be amended by adding the following section at the end thereof:-

"SECTION __. Provided further that all monies collected by the Massachusetts Highway Department in the form of contractors fines for nonperformance or late performance on the so called Route 3 North project shall be expended to construct sound barriers in the town 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 Eliot Street bridge and extending 700 yard north of Eliot Street bridge on the northerly side of Route 3; provided, further, that said barriers in the town of Lexington shall be constructed 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 in the town of Chelmsford as follows: designated Area Number 21, Waterford Place in Chelmsford, designated Area 1, Ledgewood/Lido Land in Bedford, as designed by HMMH Report Number 298280 as prepared for said document." The amendment was *rejected*.

Messrs. Morrissey and Moore moved that the bill be amended by striking out section 5 in its entirety and inserting in place thereof the following new section:-

SECTION 5. Chapter 6 of the General laws, as appearing in the 2002 Official Edition, is hereby amended by striking out Section 57 and inserting in place thereof the following new section: -

Section 57. There shall be a commission to be known as the Massachusetts Aeronautics Commission, consisting of five members to be appointed by the governor, no more than three of whom shall, at any one time be members of the same political party. As of December 31, 2005 the secretary of the executive office of transportation will serve as chairperson of the commission. Upon expiration of the term of office of a member of the commission, his successor shall be appointed for a term coterminous with that of the governor. Each member of the commission shall serve as a commissioner without pay. The commission shall be provided with suitable offices at the General Edward Lawrence Logan Airport and elsewhere within the commonwealth as the commission may determine.

The commission may, subject to appropriation, incur such expenses as may be necessary to administer and enforce sections 35 to 52, inclusive, of chapter 90 and the laws of the commonwealth relating to aeronautics.

The commission may pay a proper charge for effecting insurance for the indemnification and protection of a pilot of the aircraft under its custody, care and control, for expenses or damages incurred by him in the defense or settlement of claims against him for bodily injuries, death, acting within the scope of his official duties or employment.

The amendment was *rejected*.

Ms. Melconian, Ms. Resor, Ms. Wilkerson and Mr. Tarr moved that the bill be amended by inserting after section 13, the following new section:-

"Section 13A. The Massachusetts Turnpike Authority shall conduct a study to compile a list of all its assets and their present market value. The authority shall file its report to the joint committee on transportation and the House and Senate committees on Ways and Means no later than October 1, 2005."

The amendment was *rejected*.

Ms. Resor, Mr. Brewer, Ms. Creem, Messrs Creedon, Moore, Barrios and Morrissey, Ms. Wilkerson, Messrs. O'Leary and Joyce, Ms. Walsh moved that the bill be amended in section 2, in line item 2800-0100, by striking out the figures, "\$3,773,905" and inserting in place thereof the figures:- "\$5,023,416."

The amendment was *rejected*.

Mr. Montigny moved that the bill be amended in section 2, in line item 2800-0101, in line 18 by inserting after the word "charged," the following:-

"provided further that no less than \$80,000 be used for a Buzzards Bay water quality restoration projects including, but not limited to: engineering and permitting costs for restoration in Mattapoisett of the Eel Pond drainage culvert; storm separators in West Island and Little Bay in the Town of Fairhaven; and similar water quality projects in Buzzards Bay.

The amendment was *rejected*.

Ms. Chandler moved that the bill be amended in section 2, in item 2800-0101, by adding at the end the following wording:-

"; provided further, that not less than \$8,000 shall be expended for the Division of Water Supply Protection for the purchase of materials relating to the rehabilitation of the Wachusett Reservoir and Dam area in the town of Clinton".

The amendment was *rejected*.

Mr. Joyce moved that the bill be amended in section 2, in item 2800-0101, in line 3, by inserting after "conservation and recreation" the following:-

"; and provided, that not less that \$100,000 shall be expended for Pine Tree Brook in the town of Milton to implement phase IV of a project for clearing and dredging;"

The amendment was *rejected*.

Mr. Tisei moved that the bill be amended in section 2, item 2800-0200, by striking the figure "\$4,000,000" and inserting the following new figure:- "\$6,000,000."

The amendment was *rejected*.

Mr. Montigny moved that the bill be amended in section 2, line item 2800-0200, by striking the following "that funds may be expended for the Buttonwood Park Zoo and the Forest Park Zoo" and inserting in place thereof the following:- "that \$100,000 shall be expended for the Buttonwood Park Zoo and the Forest Park Zoo"

The amendment was *rejected*.

Mr. Shannon moved that the bill be amended in section 2, in line item 2810-0100, by striking out the figure "\$17,699,682" and inserting in place thereof the following figure:-

"\$18,464,682", and by inserting the following wording:- "provided further, that funding shall be expended from this line item to ensure that all urban pools, including the pools located at Dilboy Stadium and Foss Park in the City of Somerville, shall remain open and fully operational".

The amendment was *rejected*.

Mr. Shannon moved that the bill be amended in section 2, in line item 2810-0100, by striking out the figure "\$17,699,682" and inserting in place thereof the following figure:- "\$25,699,682", and by inserting the following wording:-

"provided further, that \$8,000,000 shall be expended for the reconstruction of Dilboy Stadium in the City of Somerville".

The amendment was *rejected*.

Mrs. Sprague moved that the bill be amended in section 2, in item 2810-0100, by striking out the figure "\$17,699,682" and inserting in place thereof the figure "\$18,164,818".

The amendment was *rejected*.

Ms. Resor, Mr. Brewer, Ms. Creem, Mr. Creedon, Mr. Moore, Mr. Nuciforo, Ms. Tucker, Mr. Morrissey, Mr. Barrios, Ms. Wilkerson, Mr. Hedlund, Mr. Joyce, Ms. Fargo, Mr. O'Leary, Ms. Walsh, Mr. Nuciforo moved that the bill be amended in section 2, in line item 2810-0100, by striking out the figure, "17,699,682" and inserting in place thereof the figure:- "18,264,818".

The amendment was *rejected*.

Mr. Hedlund moved that the bill be amended in section 2, in item 2820-0100, by adding at the end thereof the following:- "; and provided further that \$150,000 shall be expended for Legion Park in the town of Weymouth.."

The amendment was *rejected*.

Mr. Barrios moved to amend the Havern amendment by adding the words "Simoni Memorial Rink, Cambridge"

The amendment was *rejected*.

Mr. Nuciforo moved that the bill be amended by inserting at the end thereof the following section:-

Section--. (1) The lease agreement by and between the board of metropolitan park commissioners and the President and Fellows of Harvard College, dated June 26, 1900, which purports to convey a leasehold interest to certain public property located in the city of Boston known as the Newell Boat House for a term of one thousand years, with an option to renew for an additional term of one thousand years, is hereby declared to be a nullity and violative of public policy.

(2) Notwithstanding the provisions of any special or general law, the commissioner of the division of capital asset management and maintenance is hereby authorized and directed, in consultation with the commissioner of the department of conservation and recreation, the statutory successor to said board, for the consideration set forth in section three, to enter into a new lease agreement with the President and Fellows of Harvard College, for the transfer of a leasehold interest in and to that certain property which is subject to the protection of Article 97 of the Articles of Amendment to the Massachusetts Constitution and which is located in the city of Boston and known as the Newell Boat House, which property contains approximately 1.99 acres and is a portion of that land taken by said board by an instrument of taking dated November 3, 1897, and recorded with the Suffolk County Registry of Deeds in Book 2486, Page 121. Said property comprises the land and the building thereon and shown on a plan of land entitled "Commonwealth of Massachusetts, Metropolitan Park Commission, Charles River Reservation, Plan of Land near North Harvard Street, Boston, to be leased to President and Fellows of Harvard College x x x Oct. 30, 1899, Wm. T. Pierce, Engineer," being Metropolitan Park Commissioners' Plan No. 230.

(3) The commissioner of the division of asset management and maintenance is hereby authorized to enter into a license agreement with the President and Fellows of Harvard College, to be effective from the date of the enactment of this act up to the date of the execution of the lease agreement authorized by this act, on such term as the said commissioner may determine, in consultation with the commissioner of the department of conservation and recreation.

(4) The consideration for the conveyance of the leasehold interest in the parcel of land described in paragraph (2), shall be the full and fair market rental value of the property as determined by the commissioner of the division of capital asset management and maintenance based upon an independent real estate appraisal prepared in accordance with the usual and customary professional appraisal practice by a qualified appraiser contracted by said commissioner.

(5) Said commissioner shall submit said appraisal or appraisals to the inspector general for his review and comment. Said inspector general shall review and approve said appraisal or appraisals, and said review shall include an examination of the methodology utilized for said appraisal or appraisals. The inspector general shall prepare a report of his review and file said report with the commissioner for submission by said commissioner to the House and Senate committees on ways and means and the chairmen of the Joint Committee on State administration. Said commissioner shall submit copies of said appraisals, and the inspector general's review and approval, and comments, if any, to the House and Senate committees on ways and means and the chairmen of the Joint Committee on State Administration at least fifteen days prior to the execution of said lease agreement.

(6) The Lessee shall be responsible for all costs associated with any appraisal, survey, deed preparation and plan preparation, or other expenses incurred by the commonwealth relating to the transfer authorized by section two.

(7) At the option of the commissioner of the division of capital asset management and maintenance, in consultation with the commissioner of the department of conservation and recreation, any additional consideration to be paid by the Lessee may be provided by in-kind contribution, so-called, as may be set forth in the lease agreement. Any monetary consideration paid to the commonwealth for the conveyance of the leasehold interest authorized by this act shall be deposited into the Urban Parks Trust Fund in accordance with the provisions of section 34 of chapter 92 of the General Laws.

The amendment was *rejected*.

Mr. Montigny moved that the bill be amended by adding the following new section:-

SECTION __. Chapter 29 of the General Laws, as so appearing, is hereby further amended by inserting after section 2MMM the following new section: -

Section 2NNN. There is hereby established and set up on the books of the Commonwealth a separate fund to be known as the State Piers Maintenance and Improvements Fund. There shall be credited to said fund such revenues as are received by the department of environmental management from the operation of the Jodrey Memorial State Pier in the city of Gloucester; the Frazier Memorial State Pier in the town of Plymouth, the New Bedford State Pier in the city of New Bedford, and the Fall River State Pier in the city of Fall River. All monies in the fund may be expended by the department of environmental management without further appropriation for the care, maintenance, improvement and repair of these state piers as determined to be necessary and appropriate by the commissioner of the department. The commissioner of the department of environmental management shall annually, no later than September 30, file with the chairpersons of the committees on ways and means a report detailing the revenues and expenditures of said fund for the preceding fiscal year.

The amendment was *rejected*.

Mr. Shannon moved that the bill be amended in section 2, in line item 2000-0100, by striking out the figure "\$7,775,647" and inserting in place thereof the following figure:- "\$8,050,647", and by inserting the following wording:- "provided further, that \$275,000 shall be expended for a study, including a water table analysis, storm water runoff and other flood-related issues related to the Aberjona River in the Town of Winchester.

The amendment was *rejected*.

Messrs. Brewer and Moore, Ms. Resor, Messrs. Lees and Hedlund moved that the bill be amended in section 2, in item 2000-0100, by striking the words "funds may be expended for volunteer water monitoring grants" and inserting in place thereof the following:-

"not less than \$250,000 shall be expended for volunteer water monitoring grants"

The amendment was *rejected*.

Ms. Resor moved that the bill be amended in section 2000-0100, by inserting at the end thereof the following:-

", provided, further, that not less than \$250,000 be expended for the Product Stewardship Institute within the University of Massachusetts in Lowell."

The amendment was *rejected*.

Mr. Montigny moved that the bill be amended in section 2, in line item 2200-0100 by inserting after the word "Dartmouth" the following:-

"provided further, that not less than 116 full-time employees shall be staffed at the southeastern Massachusetts regional area office, not less than 130 full-time employees shall be staffed at the central Massachusetts regional area office, and not less than 87 full-time employees shall be staffed at the western Massachusetts regional area office."

The amendment was *rejected*.

Messrs. Creedon and Joyce moved that the bill be amended by inserting at the end thereof, the following section:-
SECTION ____ Section 150A ½ of Chapter 111 of the General Laws is hereby amended by inserting the following:
(18) to prohibit the siting of a solid waste facility or the granting of a permit for the establishment, construction, expansion, maintenance, or operation of a solid waste facility within the Zone II area of contribution of an existing public water supply well; this prohibition shall apply to any solid waste facility which had not received a site assignment on or before January 1, 2004.
The amendment was *rejected*.

Ms. Resor moved that the bill be amended by inserting, after section 227, the following new section:-
"SECTION 227A. Chapter 236 of the Acts of 2002 is hereby amended in line item 2200-2013 by inserting after the words "expended for such personnel," the following:- "and/or individual contractors", and, in line item 2200-2015 by inserting after the words "shall not exceed the level expended for such personnel" the words:- "and/or individual contractors."."
The amendment was *rejected*.

Mr. Joyce moved that the bill be amended in section 2, in item 7027-0016, in line 15, by inserting after the word "activities," the following item:-
"and provided further that \$47,926 shall be made available to the Blue Hills regional vocational high school for the Blue Hills School to Career Partnership to fund a Teacher Externship Program and a Student Internship Program."
The amendment was *rejected*.

Mr. Tarr moved that the bill be amended in item 7061-0011 by adding after the words "Chapter 70 aid" in line 26 the following:-
"(8) for transitional assistance to regional school districts which, prior to fiscal year 2005, have assessed member towns using the provisions of their regional agreement, and which, in fiscal year 2005, will assess member towns using the required contributions calculated pursuant to chapter 70 of the general laws and section three of this act;"
The amendment was *rejected*.

Mr. Creedon moved that the bill be amended in item 4510-0600, by adding at the end thereof the following new language:-
"; provided further, that \$30,000 shall be expended for a renal disease program administered by National Kidney Foundation of Massachusetts, Rhode Island and Vermont for nutritional supplements and early intervention services for those affected by renal disease and those at risk of renal disease"

Mr Lees moved that the bill be amended by striking section 123 in its entirety and inserting in place thereof the following:-

"SECTION 123. The Department of Education and the Executive Office for Administration and Finance shall establish a working group to study all aspects of the current tuition financing system for charter schools, make recommendations for any necessary changes to the current system, and develop related legislation. The first meeting of the working group shall take place within 30 days of the passage of this act. The working group shall consult with the house and senate chairs of the committee on ways and means, the house and senate chairs of the joint committee on education, arts, and humanities, the Massachusetts association of school superintendents, the Massachusetts charter school association, the Massachusetts municipal association, the Massachusetts taxpayers foundation, and any other interested parties. The working group shall compile data that compares the demographic profile and educational needs that characterize charter school students with those that characterize students in the districts from which they are sent. The working group shall make recommendations as to whether the existing financing system is fair and equitable or can be improved in order to more closely align the funds sent to charter schools from state and local sources with the funds that would have been expended on the education of the charter school students if they remained in the districts from which they are drawn. The study shall include an examination of actual costs associated with the grade level, program participation, and demographic profile of students attending charter schools, including all capital costs, transportation costs and other factors that contribute to the actual cost of educating these students. The working group shall also examine the relationship between charter funding and state education funding under the provisions of chapter 70 of the General Laws, and shall ensure that any recommendations for changes in charter school funding are consistent with the principles, objectives, and formulas embodied in the funding formula under chapter 70. The working group shall file a report containing its recommendations, including any legislation necessary to carry out its recommendations, with the joint committee on education, arts, and humanities on or before September 1, 2004."

The amendment was *rejected*.

Messrs. Antonioni, O'Leary, Baddour and Hart moved that the bill be amended by striking Section 123 and inserting in place thereof the following new Section:-

SECTION 123. Notwithstanding the provisions of any general or special law to the contrary, the authority of the board of education to grant commonwealth charters to any applicant pursuant to section 89 of chapter 71 of the general laws is suspended until July 31, 2005, or until such time as a new tuition formula consistent with the recommendations of the house and senate working group authorized in this section has been enacted into law, whichever is sooner. During said period, the board of education shall not authorize additional enrollment, beyond that approved by the board prior to January 1, 2004, in any existing or previously authorized commonwealth charter school.

There is hereby established a house and senate working group to study all aspects of, make recommendations on how to improve, and develop legislation to change, the current tuition financing system for charter schools. The first meeting of the working group shall take place within 30 days of the passage of this act. The working group shall consist of the speaker of the house of representatives, or his designee, the president of the senate, or his designee, the minority leaders of the house and senate, or their designees, the house and senate chairs of the joint committee on education, arts, and humanities, and the chairs of the house and senate committees on ways and means. To assist in its study, said working group shall contract with a third party with experience in educational funding, financial analysis and municipal finance to conduct independent analysis of charter school funding, provided not less than \$100,000 shall be appropriated for such independent study and analysis. The independent study shall include an analysis of the following: specific revenues, costs, and services represented in the average cost per student formula; specific revenues, costs, and services not represented in the average cost per student formula; specific revenues, costs, and services in charter schools and a comparison of revenues, costs and services in school districts to those in charter schools. Based on the findings of its study, the working group shall make recommendations on how the existing financing system can be improved in order to more closely align the funds sent to charter schools from state and local sources with the funds that would have been expended on the education of the charter school students if they remained in the districts from which they are drawn. The recommendations shall reflect actual costs associated with the grade level, program participation, and demographic profile of students attending charter schools, including all facilities and capital costs, transportation costs and other factors, which contribute to the actual cost of educating these students. The working group shall also examine the relationship between charter funding and state education funding under the provisions of Chapter 70 of the General Laws, and shall ensure that any recommendations for changes in charter school funding are consistent with the principles, objectives, and formulas embodied in the funding formula under Chapter 70. Any legislation proposed by the working group shall require that funding be reflective of the grade level, program participation, and demographic profile of the actual students enrolled in charter schools. The working group shall compile data which compares the demographic profile and educational needs that characterize charter school students with those that characterize students in the districts from which they are sent. The working group shall solicit advice from such persons and entities as they deem necessary, including the department of education, as well as associations representing superintendents, school budget officers, municipal officials, and charter schools. The working group shall file a report containing its recommendations, including legislation necessary to carry out its recommendations, with the joint committee on education, arts, and humanities on or before December 1, 2004.

The amendment was *rejected*.

Ms. Resor, Mr. Havern moved that the bill be amended by adding to the end of Section 124 the following:-

"Section 7C of Chapter 74 of the General Laws is hereby amended by inserting after the word "program" in the last sentence of the first paragraph the following words: "and further provided that the commissioner under the state board will approve tuition fees based on the expenditure per pupil of receiving schools but not to exceed 150% of the statewide average Foundation Budget for vocational students except in the cases of students receiving service under an individualized educational plan or in higher cost agricultural programs involving animal care and other unusual expenses. In the cases of service under individual education plans, the receiving schools may assess an additional average cost differential for such service equal to what they assess for such service to residents students or to actual documented extra costs whichever is higher. In the case of higher cost agricultural programs, the commissioner will consider extra cost proposals before establishing a total tuition fee."

The amendment was *rejected*.

Mr. Antonioni, Ms. Sprague, Messrs. Hedlund, Baddour and Hart moved that the bill be amended by striking Section 123 and inserting in place thereof the following new Section:-

SECTION 123. Notwithstanding the provisions of any general or special law to the contrary, the authority of the board of education to grant commonwealth charters to any applicant pursuant to section 89 of chapter 71 of the general laws is suspended until July 31, 2005, or until such time as a new tuition formula consistent with the recommendations of the house and senate working group authorized in this section has been enacted into law, whichever is sooner. During said period, the board of education shall not authorize additional enrollment, beyond that approved by the board prior to April 1, 2004, in any existing or previously authorized commonwealth charter school.

There is hereby established a house and senate working group to study all aspects of, make recommendations on how to improve, and develop legislation to change, the current tuition financing system for charter schools. The first meeting of the working group shall take place within 30 days of the passage of this act. The working group shall consist of the speaker of the house of representatives, or his designee, the president of the senate, or his designee, the minority leaders of the house and senate, or their designees, the house and senate chairs of the joint committee on education, arts, and humanities, and the chairs of the house and senate committees on ways and means. To assist in its study, said working group shall contract with a third party with experience in educational funding, financial analysis and municipal finance to conduct independent analysis of charter school funding, provided not less than \$100,000 shall be appropriated for such independent study and analysis. The independent study shall include an analysis of the following: specific revenues, costs, and services represented in the average cost per student formula; specific revenues, costs, and services not represented in the average cost per student formula; specific revenues, costs, and services in charter schools and a comparison of revenues, costs and services in school districts to those in charter schools. Based

on the findings of its study, the working group shall make recommendations on how the existing financing system can be improved in order to more closely align the funds sent to charter schools from state and local sources with the funds that would have been expended on the education of the charter school students if they remained in the districts from which they are drawn. The recommendations shall reflect actual costs associated with the grade level, program participation, and demographic profile of students attending charter schools, including all facilities and capital costs, transportation costs and other factors which contribute to the actual cost of educating these students. The working group shall also examine the relationship between charter funding and state education funding under the provisions of Chapter 70 of the General Laws, and shall ensure that any recommendations for changes in charter school funding are consistent with the principles, objectives, and formulas embodied in the funding formula under Chapter 70. Any legislation proposed by the working group shall require that funding be reflective of the grade level, program participation, and demographic profile of the actual students enrolled in charter schools. The working group shall compile data which compares the demographic profile and educational needs that characterize charter school students with those that characterize students in the districts from which they are sent. The working group shall solicit advice from such persons and entities as they deem necessary, including the department of education, as well as associations representing superintendents, school budget officers, municipal officials, and charter schools. The working group shall file a report containing its recommendations, including legislation necessary to carry out its recommendations, with the joint committee on education, arts, and humanities on or before December 1, 2004.
The amendment was *rejected*.

Ms. Creem moved that the bill be amended by striking out Sections 255, 256, 257 and 258;

In Section 2, by striking the language and the appropriation in line item 7062-0000 and inserting in place thereof the following:-

7062-0000

For the maintenance and operation of the board of early education and care; provided that said board may enter into interagency service agreements with other state agencies for the administration of early education and care services.....\$50,000

In Section 35, in Section 1, by striking subsection (b) (2) and inserting in place thereof the following:-

(2) to encourage family choice by ensuring a mixed system of high-quality public and private programs, with local points of entry, staffed by well-qualified professionals;

In Section 35, in Section 1, by striking subsection (b) (6) and inserting in place thereof the following:-

(6) to develop a seamless service delivery system with early childhood programs administered by local, state and federal agencies with local points of entry;

In Section 35, in Section 1, by striking subsection (c) and inserting in place thereof the following new subsection:-

(c) There shall be a board of early education and care, hereinafter referred to as the board. The board shall set policies and establish regulations related to early education and care programs, services and contracts. The board shall consist of the secretary of the executive office of health and human services, ex officio, the commissioner of the department of education, ex officio, the chancellor of higher education, ex officio, one member appointed by the auditor of the commonwealth, and five members appointed by the governor. Of the members appointed by the governor, one shall be a representative of the business community, selected by the governor from a list of three nominees provided by the Massachusetts Business Alliance for Education, who shall have had practical experience in the management and administration of early education and care programs; one current or former early education teacher selected by the governor from a list of three nominees provided jointly by the Massachusetts State Labor Council, AFL-CIO and the Massachusetts Teachers Association; one shall be a pediatrician with a focus on child development, selected by the governor from a list of three nominees provided by the Massachusetts Chapter of the American Academy of Pediatrics; one shall be a representative of parents selected by the governor from a list of three nominees provided by the Massachusetts Association of Community Partnerships for Children; and one shall be a person nationally recognized for research in the field of educational or developmental psychology selected by the governor from a list of three nominees provided by the Massachusetts Society for Research in Child Development. In making such selections, the governor shall seek to appoint persons who are from geographically diverse regions of the commonwealth, who are familiar with the differing interests, perspectives and needs of urban, rural and suburban regions, and who reflect the ethnic and racial diversity of the population served by the commonwealth's early education and care services.

Five members shall constitute a quorum, and the affirmative vote of five members shall be necessary for any action taken by the board. Appointed members shall serve for terms of five years. Notwithstanding the provisions of any general or special law to the contrary, of the five initial board members appointed by the governor, one shall be appointed for a one year term, one shall be appointed for a two year term, one shall be appointed for a three year term, one shall be appointed for a four year term, and one shall be appointed for a five year term; provided that the initial board member appointed by the auditor shall be appointed for a term of five years. No member shall be appointed to serve more than two consecutive full terms. Upon expiration of the term of office of an appointed member, a successor shall be appointed in like manner. A vacancy shall be filled by the governor or

auditor, as the case may be, for the remainder of the term. If the governor does not make an appointment for any vacancy of a gubernatorial appointee within nine months, the auditor of the commonwealth shall make said appointment. If an appointed member is absent from any five regularly scheduled meetings, exclusive of July and August, in any calendar year, his office as a member of said board shall be deemed vacant. The chairperson of the board shall forthwith notify the governor and the auditor that such vacancy exists.

No appointive member of said board shall be employed by or receive regular compensation from the department of early education and care. The board shall appoint a chairperson by a majority vote of all of its members. The board shall meet not fewer than ten times annually at the call of the chairperson. The members of the board shall serve without compensation, but shall be reimbursed for all expenses reasonably incurred in the performance of their duties.

In Section 35, in Section 5, by striking the last sentence and inserting in place thereof the following sentence: -

The board, in consultation with the board of higher education and the board of education, shall oversee a workforce development system designed to support the education, training and compensation of the early education and care workforce, including all center, family child care, infant, toddler, preschool and school-age providers; further, the board shall ensure that the teacher qualification requirements comply with the department of education's program standards.

By inserting at the end thereof the following new sections:

SECTION __. There is hereby established an advisory committee on early education and care for the purpose of undertaking a study and making recommendations on those foundational and organization elements that will allow the state to build a first-rate early education and care system that provides every three and four year old child access to a high quality early education and care program which meets professionally accepted standards and is delivered by a well-trained early educator in a variety of public and private settings under the provisions of chapter 15D, and in conjunction with special education services offered by the department of education, if applicable. In carrying out its study, the advisory committee shall review relevant documents, including the 2001 Report of the Governor's Commission on School Readiness and the 2004 Report of the Massachusetts Early Education and Care Council. The advisory committee shall identify elements of a workforce development system designed to support the education, training and compensation of the early education and care workforce and shall make recommendations on how to ensure that teacher qualification requirements comply with department of education program standards. The advisory committee shall seek to determine elements of a multi-purpose school readiness assessment system for preschool children, as well as an independent evaluation mechanism to monitor program quality. The advisory committee shall consider how to align the new department of early education and care with the department of education's early learning services. The advisory committee shall consist of the house and senate chairs of the joint committee on education, arts, and humanities, who shall serve as co-chairs of the advisory committee, the speaker of the house of representatives, or his designee, the senate president, or his designee, the house minority leader, or his designee, the senate minority leader, or his designee, the governor, or his designee, the chair of the house ways and means committee, or his designee, the chair of the senate ways and means committee, or his designee, the chair of the children's caucus, or his designee, the commissioner of education, or his designee and one person appointed by said commissioner from early learning services, the chancellor of higher education, or his designee, the commissioner of public health, or his designee, the commissioner of the office of child care services, or his designee, and one person appointed by said commissioner from the office of child care services, the commissioner of the department of social services, or his designee, the commissioner of the department of mental health, or his designee, the commissioner of the department of transitional assistance, or his designee, the commissioner of the department of mental retardation, or his designee, and one representative selected by each of the following organizations: the Massachusetts Association for the Education of Young Children, the Children's Trust Fund, Massachusetts Head Start Association, Strategies for Children, the Massachusetts Association of Community Partnerships for Children, the Massachusetts Association of Day Care Administrators, the U.S. Department of Health and Human Services Administration for Children and Families, the Massachusetts Child Care Resource and Referral Agencies Network, the Massachusetts Independent Child Care Organization, the Early Intervention Consortium, the Massachusetts Teachers Association, the Massachusetts Federation of Teachers, the Massachusetts Association of School Committees, the Massachusetts Elementary School Principals, the Massachusetts Chapter of the American Academy of Pediatrics, the Federation for Children with Special Needs, the YMCA's of Massachusetts, The Massachusetts Association of Early Childhood Teacher Educators, the Massachusetts Association of School Superintendents, the Massachusetts Community Colleges Executive Office, the Massachusetts Council of State College Presidents, the Massachusetts Association for Community Action, and five additional members appointed by the advisory committee co-chairs, one of whom shall be a representative of a family child care system, and one of whom shall be a parent. The advisory committee shall submit a report containing its recommendations by filing the same with the clerks of the senate and house of representatives, the senate and house committees on ways and means, and the joint committee on education, arts, and humanities not later than December 31, 2004.

SECTION __. The council on early education and care created pursuant to section 608 of chapter 140 of the acts of 2003 shall develop a comprehensive plan to consolidate and transfer the management and administration of programs, services, contracts and funding for existing early education and care programs and services from the department of education and the office of child care services, to the department of early education and care, established pursuant to Chapter 15D. Further, the council shall

identify, if possible, statutory and regulatory duplication of early education and care program administration and services and, if possible, recommend consolidation of early education and care line items. The council shall recommend how the new department of early education and care will be aligned with the Department of Education's Early Learning Services and how to implement the programs required under section 54 of Chapter 15 of the General Laws under any new administrative structure.

The council shall submit a report containing its recommendations by filing the same with the clerks of the senate and house of representatives, the senate and house committees on ways and means, and the joint committee on education, arts, and humanities not later than December 31, 2004; provided that the work of the council shall end upon the submission of said report. The amendment was *rejected*.

Ms. Wilkerson moved that the bill be amended in Section 2, in item 7100-0020 by inserting in line 7 after the words "division of capital asset management and maintenance", the following:- "; provided further, that nothing herein nor said policies, rules and regulations shall exempt said auxiliary organizations from the procurement laws of the commonwealth as such laws relate to design services and construction services;" The amendment was *rejected*.

Mr. Antonioni moved that the bill be amended by inserting at the end thereof the following section:

"Section 18 of Chapter 138 of the General Laws, as most recently amended by section 413 of chapter 26 of the Acts of 2003, is hereby further amended by striking the last sentence of the first paragraph and inserting in place thereof the following:--

"The annual license fee for a license to sell and import wines and malt beverages only issued under this section shall be computed based on the gallonage sold as follows: 7,500 gallons or less per annum-thirty five hundred dollars; more than 7,500 and less than 10,000 gallons per annum-four thousand dollars; and more than 10,000 gallons per annum-five thousand dollars.

Every applicant for such a license shall, at the time of filing an application, pay a license fee based on a reasonable estimate of the amount of wine and malt beverages to be sold or imported during the year covered by the license. Persons holding such licenses shall report annually at the end of the year covered by the license the amount of wine and malt beverages sold or imported during such year. If the total amount of such wine and malt beverages exceeds the amount permitted by the fee already paid, the licensee shall pay whatever additional fee is owing under this section." The amendment was *rejected*.

Ms. Wilkerson moved that the bill be amended in section 2, in item 0640-0300 by inserting after the figure "100,000" the following:-
"; provided further, that not less than \$50,000 shall be expended for a grant to the Caribbean Carnival Association;" The amendment was *rejected*.

Mr. Hart moved that the bill be amended in section 2, in item 0340-0100, in line 11, by inserting after the word "county" the following: "provided further, that not more than \$110,000 shall be expended for Operation 2006, in Suffolk county;" The amendment was *rejected*.

Messrs. Tisei, Morrissey and Hedlund moved that the bill be amended in section 2, item 0611-5510 by adding at the end thereof the following new language:- ";including all land formerly owned or under the control of the former metropolitan district commission, which is now under the control of the department of conservation and recreation." The amendment was *rejected*.

Ms. Walsh moved that the bill be amended by inserting after Section __, the following new Section: -
SECTION __. (a)(1) Subsection (a) of section 21 of chapter 138 of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by striking out, in line 16, the words "three dollars and thirty cents" and inserting in place thereof the following words:- "\$8.50".
(2) Subsection (b) of section 21 of chapter 138 of the General Laws, as appearing in the 2000 Official Edition is hereby amended by striking out, in line 20, the words "three cents" and inserting in place thereof the following words:- "\$0.08".
(3) Subsection (c) of section 21 of chapter 138 of the General Laws, as appearing in the 2000 Official Edition is hereby amended by striking out, in lines 24 to 25, the words "fifty-five cents" and inserting in place thereof the following words:- "\$1.41".
(4) Subsection (d) of section 21 of chapter 138 of the General Laws, as appearing in the 2000 Official Edition is hereby amended by striking out, in line 27, the words "seventy cents" and inserting in place thereof the following words:- "\$1.80".
(5) Subsection (e) of section 21 of chapter 138 of the General Laws, as appearing in the 2000 Official Edition is hereby amended by striking out, in line 30, the words "one dollar and ten cents" and inserting in place thereof the following words:- "\$2.80".
(6) Subsection (f) of section 21 of chapter 138 of the General Laws, as appearing in the 2000 Official Edition is hereby amended by striking out, in line 35, the words "four dollars and five cents" and inserting in place thereof the following words:- "\$10.41".
(7) Subsection (g) of section 21 of chapter 138 of the General Laws, as appearing in the 2000 Official Edition is hereby amended by striking out, in lines 38 to 39, the words "four dollars and five cents" and inserting in place thereof the following words:-

"\$10.41".

(b) Chapter 29 of the General Laws, as so appearing, is hereby amended by inserting after section 2XX the following section: -

Section 2AAA. There shall be established and set up on the books of the commonwealth a separate fund to be known as the Substance Abuse Health Protection Fund. Amounts credited to said fund shall be expended, subject to appropriation, to provide funding, or supplement existing levels of funding, for the following purposes: (a) For a comprehensive substance abuse treatment program, to be administered by the department of public health, for the treatment of individuals who are dependent on or addicted to alcohol or controlled substances, or both alcohol and controlled substances, and who lack public or private health insurance that would provide coverage for such treatment; (b) To fund such substance abuse treatment programs that are administered by the office of community corrections, the department of corrections, the department of social services, the department of youth services, and the office of the commissioner of probation; (c) For comprehensive school health education programs, to be administered by the department of education, provided that such programs shall incorporate information relating to the hazards of alcohol and controlled substances use; and (d) For workplace-based and community substance abuse prevention and drinking cessation programs, for substance abuse-related public service advertising and for drug and alcohol education programs, to be administered by the department of public health.

(c) Notwithstanding any general or special law to the contrary, there shall be credited to the Substance Abuse Health Protection Fund, 20 per cent of the amounts collected from January 1, 2005 to December 31, 2005, 30 per cent of the amounts collected from January 1, 2006 to December 31, 2006, 46 per cent of the amounts collected on and after January 1, 2007 under section 21 of chapter 138 from the sale of alcoholic beverages together with any penalties, forfeitures, interest, costs of suits and fines collected in connection therewith, all as determined by the commissioner of revenue according to his best information and belief; and any appropriation, grant, gift, or other contribution explicitly made to said fund at any time, and any income derived from the investment of amounts credited to said fund.

The amendment was *rejected*.

Ms. Walsh moved that the bill be amended by inserting, after Section ____, the following new Section: -

"SECTION ____ . Chapter 59 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by adding the following section: -

Section 5L. With respect to each parcel of real property classified as Class Three, commercial, or Class Four, industrial, in each city or town certified by the commissioner to be assessing all property at its full and fair cash valuation, and at the option of the board of selectmen or mayor, with the approval of the city council, as the case may be, there shall be an exemption equal to not more than \$1,000,000 of assessed value of all Class Three, commercial, and Class Four, industrial, parcels within such city or town. This exemption shall be in addition to any exemptions allowable under section 5; provided, however, that in no instance shall the taxable valuation of such property after all applicable exemptions be reduced below 70 per cent of its full and fair cash valuation.

Where, under the provisions of section 5, the exemption is based upon an amount of tax rather than on valuation, the reduction of taxable valuation for purposes of the preceding sentence shall be computed by dividing the said amount of tax by the commercial and industrial class tax rate of the city or town and multiplying the result by \$1,000. For purposes of this paragraph, "parcel" shall mean a unit of real property as defined by the assessors in accordance with the deed for such property and shall include a condominium unit.

The value of exemptions granted under this section shall be borne by the combined value of class three commercial property and class four industrial property.

In those cities and towns in which an exemption is made available hereunder, a taxpayer aggrieved by the failure to receive such exemption may apply for such exemption to the assessors, in writing, on a form approved by the commissioner within 3 months after the date on which the bill or notice of assessment was sent.

A timely application filed hereunder shall, for the purposes of this chapter, be treated as a timely filed application pursuant to section 59."

The amendment was *rejected*.

Mr. Rosenberg and Ms. Fargo moved that the bill be amended by inserting, after Section ____, the following new Sections:-

"SECTION ____ . Section 15 of Chapter 60 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out, in line , the words "five dollars" and inserting in place thereof the figure:- \$10." [clause 2-demand]

"SECTION ____ . Section 23 of said Chapter 60, as so appearing, is hereby amended by striking out, in line , the words:- "twenty-five dollars" and inserting in place thereof the figure:- \$50."

"SECTION ____ . Section 23B of said Chapter 60, as so appearing, is hereby amended by striking out, in line 6, in line 9, in line 11, and in lines 13 and 14, the words:- "twenty-five dollars" and inserting in place thereof the figure:- \$50."

"SECTION ____ . Section 23B of said Chapter 60, as so appearing, is hereby further amended by striking out, in lines 15 and 16, the words:- "one hundred dollars" and inserting in place thereof the figure:- \$125."

"SECTION ____ . Section 23B of said Chapter 60, as so appearing, is hereby further amended by striking out, in line 18, the words:- "one hundred and fifty dollars" and inserting in place thereof the figure:- \$175."

"SECTION ____ . Section 23B of said Chapter 60, as so appearing, is hereby further amended by striking out, in lines 19 and 20, the words:- "fifty dollars" and inserting in place thereof the figure:- \$75."

"SECTION ____ . Section 62 of said Chapter 60, as so appearing, is hereby amended by striking out, in lines 19 through 22, the words:- ",each of which except the last, shall be in an amount of not less than twenty-five per cent of the sum for which the land was originally sold" and by striking out, in lines 34 through 37, the words:- ", for a period not exceeding one year beyond the time period provided by section sixty-five; but not more than one such extension shall be granted" and inserting in place thereof the words: - ", for a period not exceeding two years beyond the time period provided by section sixty-five. "

The amendment was *rejected*.

Ms. Creem moved that the bill be amended in Section 2, in item 7000-9501, by striking out the figure "\$7,339,844" and inserting in place thereof the following figure:- "\$8,539,844".

The amendment was *rejected*.

Messrs. Barrios and Joyce moved that the bill be amended in line item 1108-5100, by inserting after "General Laws" the following:-

"provided that the commission shall develop a report setting forth plan designs for plans established pursuant to chapter 32A, section 10F and appropriate administrative mechanisms for said plans, with the costs associated with both the benefits provided under said plans and administration, and shall file the report with the house and senate committees on ways and means no later than March 1, 2005. Not more than \$100,000 shall be spent towards the development of said report" and further moves to amend by inserting after section 101 the following sections:-

"Section 101A. M.G.L. c. 32A, Section 2b, is amended effective January 1, 2005, by inserting after 'United States' in line 2 the following: 'and a person who is an employee of a vendor which provides human services and which is under contract with any agency within the executive office of health and human services;'

M.G.L. c. 32A, Section 2c, is amended effective January 1, 2005, by inserting after 'Massachusetts' in line 1 the following: 'or employer of any employee, as defined in Subsection (b);'

M.G.L. Chapter 32A is amended effective January 1, 2005, by inserting, 'Section 10F Insurance for employees of human service vendor employers;'

Section 10F. The commission shall negotiate with and purchase on such terms as it deems to be in the best interest of the commonwealth, the vendor employers covered under this section chapter, and the affected employees and their dependents, from one or more insurance companies or non-profit hospital, medical or other service corporations, a policy or policies of group general or blanket insurance providing hospital, surgical, medical, and other health insurance benefits for said agency employees and their dependents. Such policy or policies shall consist of a schedule of hospital, surgical, medical, dental and other health insurance benefits for agency employees and their dependents which shall be unrelated to the schedule of hospital, surgical, medical, dental and other health insurance benefits purchased by the commonwealth under the provisions of section four, or the schedule of hospital, surgical, medical, dental and other health insurance benefits purchased by counties, cities, towns and districts under the provisions of section three of chapter thirty-two B.

(a) With respect to any period of insurance which is in effect for the vendor employees and their dependents, the full cost of the insurance shall be borne by the vendor employer and the participating employee. The commonwealth will not be responsible for contributing to the cost of this insurance.

(b) The employee's per cent share of the premium shall be withheld by the appropriate employer from the employee's salary on a periodic basis, and shall be forwarded by the responsible official at each vendor employer to the commission in accordance with its rules and regulations.

(c) The commission shall determine at least annually, or sooner, the amount of premiums for each health plan which shall be reimbursed to the commonwealth by each contracting agency having employees insured under this section. The commission shall also determine, at least annually, the portion of the commission's expense of administering this hospital, surgical, medical, and other health insurance coverage for the employees of vendor employer for this coverage. After such determinations, the commission shall assess each agency an administrative charge equal to their pro rata share of the cost of administering this program.

(d) Any dividend or refund accepted by the commission from any insurance carrier as a result of the contract negotiated under this section shall be deposited by the commission with the state treasurer as provided in section

nine. The commission shall determine the amount of dividend or refund apportionable to the various vendor employers having employees insured hereunder, and shall reduce the administrative expenses in section (c) attributable to each such vendor employer by the amount of refund attributable thereto.

(e) Each employee of a vendor employer to whom this chapter applies shall furnish the commission, in such form as it shall prescribe, such information as is necessary to insure himself or himself and his dependents under the hospital, surgical, medical, and other health insurance herein provided, and shall authorize the withholding of the appropriate premium from his salary by the appropriate vendor employer.

(f) Participation in the health insurance program described in this section is voluntary for vendors which contract to provide human service with the following departments of the Commonwealth: the Commission for the Deaf and Hard of Hearing, the Department of Mental Health, the Department of Mental Retardation, the Department of Social Services, the Department of Transitional Assistance, the Department of Youth Services, the Disabled Persons Protection Commission, the Division of Employment & Training, the Division of Medical Assistance, the Executive Office for Elder Affairs, the Executive Office of Health and Human Services, the Massachusetts Commission for the Blind, the Massachusetts Rehabilitation Commission and the Office of Child Care Services.

This section does not apply to individuals or families which contract directly with the Department of Social Services or the Office of Child Care Services to provide foster care or in-home family daycare. This section also does not apply to individuals who enter into contracts with said departments of the Commonwealth as consultants or independent contractors."

The amendment was *rejected*.

Mr. Tolman moved that the bill be amended by inserting, after Section 362, the following new Section:-

"SECTION 363. Pursuant to section 12 of chapter 32A of the General Laws, the group insurance commission shall negotiate with and purchase on such terms as it deems to be in the best interests of the commonwealth, the political subdivisions that have accepted the provisions of this section and retired teachers from such political subdivisions, who are receiving a pension, annuity or retirement allowance from the state teachers retirement system, a policy or policies to make available, beginning July 1, 2004, the services of a health care organization to all such eligible and retired teachers and dependents, including the surviving spouse and dependents of such retired teachers, who reside in the Commonwealth."

The amendment was *rejected*.

Mr. Creedon moved that the bill be amended in Section 2, in item 0339-2100, by striking out the words "; provided, that the office shall be located at the Charlestown division of the Boston municipal court"

The amendment was *rejected*.

Mr. Creedon moved that the bill be amended in Section 2, by adding after item 0330-0300 the following item:-
0330-0301

For the administrative office of the trial court for purposes of providing law clerks to the several departments of the trial court; provided, further that notwithstanding any general or special law to the contrary, funds appropriated to this item may not be transferred to any other item of appropriation within the trial court department.....2,000,000

The amendment was *rejected*.

Mr. Creedon moved that the bill be amended by adding the following the new section at the end of the bill:

SECTION _____. Section 8 of chapter 218 of the General Laws is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:-- Each district court shall have a clerk and the central division of the Boston municipal court department shall have one clerk as provided in. section 52A.

The amendment was *rejected*.

Mr. Creedon moved that the bill be amended by adding the following the new section at the end of the bill:

SECTION _____. Chapter 218 of the General Laws is hereby amended by inserting the following new section:--
Section 52A. The central division of the Boston municipal court department shall have one clerk for both criminal and civil business. The position of clerk for civil business shall be abolished when said position becomes vacant and the duties of such clerk shall be assumed by the clerk for criminal business who shall be hereinafter the one clerk for the said central division of the Boston municipal court department. Any reference in any general or special law to a clerk of the Boston municipal court for civil business shall be construed to refer to the one clerk of the central division of the Boston municipal court department as proscribed herein.

The amendment was *rejected*.

Mr. Creedon moved that the bill be amended by adding the following the new section at the end of the bill:

SECTION _____. Said chapter 218 of the General Laws is hereby further amended by striking out section 53 and inserting in place thereof the following new section:--

Section 53. In the central division of the Boston municipal court department, there shall be one clerk and the same number of assistant clerks of said court as were authorized in statute on January first, two thousand three. The assistant clerks shall be appointed by the clerk, subject to the approval of the chief justice for administration and management with respect to compliance with the personnel standards promulgated under section eight of chapter two hundred and eleven B, and the clerk shall be responsible for the doings of his assistants, and may remove them at his pleasure. The salary of the clerk shall be seventy-five and forty-seven hundredths percent of the salary of the chief justice of the department, and shall be paid, subject to appropriation, by the commonwealth. The salaries of the assistant clerks shall be seventy-seven percent of the salary of the clerk, and shall be paid, subject to appropriation, by the commonwealth.

The clerk and assistant clerks shall devote their entire time during ordinary business hours to their respective duties and shall not, directly or indirectly, engage in the practice of law.

Each assistant clerk of said court appointed to such position prior to January first, nineteen hundred and eighty-seven and serving continuously thereafter, shall be entitled to thirty days vacation and thirty days sick leave in each calendar year. Each such assistant clerk may accumulate vacation leave and sick leave not used in any such year; provided, however, that the number of vacation days so accumulated shall not exceed sixty and the total amount of sick leave so accumulated shall not exceed one hundred and eighty days; and provided, further, that no additional such days shall be accumulated on or after said January first except in accordance with the policies and procedures established by the chief justice for administration and management pursuant to section eight of chapter two hundred and eleven B. All other clerks and assistant clerks of said court shall be entitled to vacation leave and sick leave in accordance with the policies and procedures established by the chief justice for administration and management pursuant to said section eight.

Assistant clerks appointed under authority of this paragraph who have held said appointment for three consecutive years shall hold office during good behavior, but subject to applicable retirement laws, and may be removed by the clerk for cause shown, subject to the procedures authorized by section eight of chapter two hundred and eleven B.

The clerk may designate such employees in his office as in his judgment may be necessary for the convenience of the public, as deputy assistant clerks of said court who shall have the same authority to administer oaths as the assistant clerks of said court.

The amendment was *rejected*.

Mr. Creedon moved that the bill be amended by adding the following the new section at the end of the bill:

SECTION ____ . Said chapter 218 is hereby further amended by striking out section 53A and inserting in place thereof the following new section:

Section 53A. In case of the absence, death or removal of a salaried assistant clerk of the central division of the Boston municipal court department, the clerk of said court may, subject to the approval of the chief justice, appoint a temporary assistant clerk, to act until such assistant clerk resumes his duties or until the vacancy is filled.

The amendment was *rejected*.

Mr. Creedon moved that the bill be amended by adding the following the new section at the end of the bill:

SECTION ____ . Said chapter 218 is hereby further amended by striking out section 56 and inserting the following new section:

Section 56. The clerk shall, on or before the tenth day of each month, account for and pay over to the collector of the city of Boston or to the state treasurer, as the case may be, the balance due and payable at the end of the preceding month of all money received by them payable by law to the city of Boston or to the commonwealth, and shall render to said officers a detail account thereof under oath. Violation of this section shall be punished by a fine of not more than one hundred dollars.

The amendment was *rejected*.

Mr. Creedon moved that the bill be amended by adding the following the new section at the end of the bill:

SECTION ____ . Section 75B of said chapter 218 is hereby amended by striking out the words "for criminal business".

Ms. Melconian moved that the bill be amended in section 2, in item 7004-0099, by inserting after the words "Methuen-Arlington Neighborhood, Inc." the following: - "provided further that not less than \$100,000 shall be expended for the Springfield Neighborhood Housing Services, Inc."

The amendment was *rejected*.

Mr. Morrissey moved that the bill be amended in section 2, in line item 7004-0099 by inserting after the words "Methuen-Arlington Neighborhood, Inc." the following:- "provided further that no less then \$100,000 shall be expended for the Rockland Community Center in the Town of Rockland."

The amendment was *rejected*.

Messrs. Brown, Lees, Tisei, Knapik, Tarr and Hedlund, Mrs. Sprague, Mr. Joyce and Ms. Fargo moved that the bill be amended by inserting, after Section 43, the following new Section:-

"SECTION 43A.

A.) Section 15 of Chapter 19, of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by adding the following clause:-

(k) to collect and maintain information of the number of group home units in each community and report such information, including the location of such group home units, to the department of housing and community development on an annual basis. Such location shall be held by the department of housing community development subject to chapter 66A.

B.) Clause (b) of section 15 of chapter 19B of the General Laws, as so appearing, is hereby amended by adding the following sentence:-

The department of mental retardation shall report the number of group home units in each city or town on an annual basis to the department of housing and community development. The department of mental retardation shall also report the location of such group homes to the department of housing and community development. Such location shall be held by the department of housing and community development subject to chapter 66A.

C.) Section 20 of Chapter 40B of the General Laws, as so appearing, is hereby amended by inserting in the following language at the end thereof:-

"Group Homes", all group home units with twelve or less residents of the department of mental health or the department of mental retardation in each city or town as reported by said departments shall be reported annually to the department of housing and community development and be eligible to be included toward the city or town's affordable housing threshold."

Messrs. Lees, Knapik and Brown and Mrs. Sprague moved that the bill be amended by inserting, after Section ____, the following new Section:-

"SECTION _____. Said chapter 94, as so appearing, is hereby amended by inserting at the end thereof the following sections:-

Section 329A.

- (a) "Deputy director" shall mean the deputy director of the division of standards.
- (b) "Person" shall mean an individual, firm, partnership, association or corporation.
- (c) "Division" shall mean the division of standards.
- (d) "Computer-assisted check out system" shall mean any electronic device, computer system or machine which determines the selling price of a stock-keeping item by interpreting its universal product code, or by any other use of a price look-up function.
- (e) "Inspector" shall mean the deputy director or authorized agent to enforce the provisions of this chapter.
- (f) "Item price" shall mean the lowest indicated price on a shelf tag, sign or advertisement.
- (g) "Price look-up function" shall mean the capability of any checkout system to determine the retail price of a stock-keeping item electronically or by way of the manual entry into the system of a code number assigned to that particular unit by the retail store or by way of the checkout operator's consultation of a file maintained at the point of sale.
- (h) "Retail store" shall mean a store selling stock-keeping units at retail. A store which is not open to the general public but is reserved for use by its members shall come within the provisions of this definition unless the members must pay a direct fee to the store to qualify for membership and the store is not required to collect sales tax on transactions with members. Pursuant to this section a retail store shall not include any store which:

- 1) has its only full-time employee the owner thereof, or the parent, or the spouse or child of the owner, or in addition thereto, not more than three employees; or
- 2) had annual gross sales in a previous calendar year of less than \$5,000,000, unless the retail store is part of a network of subsidiaries, affiliates or other member stores, under direct or indirect common control, which as a group, had annual gross sales in the previous calendar year of \$5,000,000 or more; or
- 3) engages primarily in the sale of food for consumption on the premises or in a specialty trade which the deputy director determines, by regulation, would be inappropriate for item pricing.

- (i) "Sale items or weekend special" shall mean stock-keeping items offered for sale for a period of seven days or less in a retail store at a price below the price that the item is sold for 30 days previous to the start of the sale.
- (j) "Stock-keeping unit" shall mean each group of items offered for sale of the same brand name, quality of contents, retail price, and variety:

- 1) food, including all material, solid, liquid or mixed, whether simple or compound, used or intended for consumption by human beings or domestic animals normally kept as household pets and all substances or ingredients to be added thereto for any purpose; and
- 2) napkins, facial tissues, toilet tissues, and any disposable wrapping or container for the storage, handling or serving of food, and
- 3) detergents, soaps, other cleansing agents, and cleaning implements, and
- 4) non-prescription drugs, feminine hygiene products and health and beauty aids.

- (k) "Stock-keeping item" shall mean each item of a stock-keeping unit offered for sale.
- (l) "Universal product coding" shall mean any system of coding which entails electronic pricing.

Section 329B.

(a) Notwithstanding the provision of any law or regulation to the contrary, every person who sells, offers for sale or exposes for sale in a retail store a stock-keeping unit that bears a universal product code shall disclose to the consumer the item price of each stock-keeping item as defined in section 329A of this chapter.

(b) The following stock-keeping items need not be item priced as provided in subdivision (a) of this section and other applicable Massachusetts law provided that a shelf-price adjacent to the display is maintained for such stock-keeping items:

- (1) Stock-keeping items, which are under three cubic inches in size, and weigh less than three ounces, and are priced under 50 cents,
- (2) Items sold through a vending machine,
- (3) Milk,
- (4) Eggs,
- (5) Loose fresh produce,
- (6) Stock-keeping items, which are offered for sale in single packages and weighing three ounces or less,
- (7) Stock-keeping items offered as a sale item or weekend special,
- (8) Strained and junior size baby foods packaged in jars,
- (9) Single cans or bottles of soda where the selling price for different flavors packaged for or by the consumer,
- (10) Stock-keeping items, which are displayed for sale in bulk, which are either packaged for or by the consumer,
- (11) Snack foods such as cakes, gum, candies, chips and nuts offered for sale in single packages and weighing five ounces or less,
- (12) Food sold for consumption on premises, and
- (13) Frozen juice and ice cream.

(c) The provisions of this section may be subsequently modified or amended by order of the deputy director, either by adding or deleting stock-keeping units from the list of exemptions or by further directing the manner in which the selling price of exempted stock-keeping units shall be posted.

Section 329C.

(a) No retail store shall charge a retail price for any exempt or non-exempt stock-keeping item which exceeds the lower of any item, shelf, sale or advertised price of such stock-keeping item. In the event that the price exceeds the lowest price a store is permitted to charge for a stock-keeping unit, the store will be subject to a penalty as described in this chapter and other applicable law at the discretion of the deputy director.

(b) In a store with a laser scanning or other computer assisted checkout system, the inspector shall be permitted to compare the item, shelf, sale, or advertised price of any one stock-keeping item within a stock-keeping unit sold in the store with the programmed computer price.

(c) The deputy director shall establish a randomized store inspection procedure designed to eliminate any bias in selecting stores to be inspected for price auditing purposes. However, any retail store may be inspected at any time upon complaint or if the deputy director has sufficient cause to audit a particular store or stores to ensure pricing accuracy.

Section 329D.

(a) Every person, store, firm, partnership, corporation, or association which uses a computer-assisted checkout system and which would otherwise be required to item price as provided in section 329C of this chapter, sections 184B through 184E, inclusive, of chapter 94, or other applicable Massachusetts law, may make an application in writing to the deputy director for a waiver of said item pricing requirement. A separate application shall be required for each store. The deputy director, subject to the approval of the secretary of administration and finance, shall establish an annual registration fee, which must be submitted with the initial application and subsequent renewal. The deputy director shall approve or reject the application within 60 days from the date of receiving the application. If the application is rejected, the application fee shall be returned. The deputy director shall establish rules and regulations regarding the retail store's electronic pricing systems, signage, and other requirements, which all applicants must meet in order to become registered.

(b) The registration fee is based upon the number of cash registers in each store as set according to the following schedule:

Waiver Fee Per Cash Register:
1 to 3 cash registers \$500
3 to 5 cash registers \$750
3 to 7 cash registers \$1,000
7 or more cash registers \$2,000

(c) Waiver applications and the required fee must be received at the division by October 1, 2003, and annually thereafter. Stores that fail to comply with the required registration, will be subject to violations pursuant to sections 184B through 184E, inclusive, of chapter 94 or any other applicable law or regulation. New stores or establishments that did not previously hold waivers, may apply after the October 1, 2003 deadline.

(d) Systems approved by the deputy director must have means to provide an audit trail regarding item price changes that can be accessed by state enforcement agents upon request. All item prices once entered into the store's electronic pricing system shall remain unchanged for a minimum of 72 hours, unless the price is to be reduced or is the result of a gross pricing error.

(e) A waiver from item pricing shall be valid for a period of one year from the date of issuance. Stores must reapply annually for renewal of waiver at the rates established in subsection (a) of this section.

(f) Any registered retail store that fails to meet the state price accuracy standard of 98 per cent based on the price accuracy inspection procedure adopted by the division shall be re-inspected after thirty days of the initial inspection. If the store fails upon re-inspection to meet the price accuracy standard, the registration will be suspended for a period of six months. During the suspension period, the store will be required to individually item price every item offered for sale. After this period, the store can request the division, in writing, to re-inspect the store. If the store after re-inspection meets the price accuracy standard, the registration may be re-instated.

(g) As a condition of the waiver from item pricing pursuant to this section, each store which accepts a waiver must agree to meet the following requirements:

(i) The store shall designate and make available price check scanners to enable consumers to confirm the price of stock-keeping items. These price check scanners shall be in locations convenient to consumers with signs of sufficient sized lettering identifying these units to consumers. Stores will submit their proposed sign and device locations to the deputy director for approval.

(ii) Each registrant shall assign an employee to check all sale prices in the store's electronic pricing system prior to the start of any sale to ensure the sale prices in the system are accurate. Each registrant shall maintain a sale price log including the following: name of the store employee, date the employee performed the pre-sale price accuracy audit, and the signature of the employee. Failure to maintain the log or to make the log available upon request by any authorized agent of the deputy director will be cause for registration suspension.

(iii) The store shall not charge any customer a price for any stock-keeping item which exceeds the item, shelf, sale or advertised price, whichever is less.

(iv) The store shall make prompt payment to consumers who have been overcharged and shall correct all pricing errors identified by consumers, guaranteeing the consumer one item free if it costs less than \$10 or pay the consumer \$10 if the item costs more than \$10.

(v) Any item that rings up higher than the lowest advertised price shall be subject to a fine of \$200. Failure to post the required item price sign at the point of display will be subject to a fine of \$100. The fine will be increased to \$200 if the item rings up at a price higher than the lowest price charged for that item during the previous thirty days.

(h) The deputy director, in his discretion, may revoke a waiver from item pricing for any of the following reasons:

(i) Failure to comply with any provisions of this chapter;

(ii) Deliberate overcharging of any consumer;

(iii) Material misrepresentation in the application for a waiver.

Section 329E.

(a) The provisions of this chapter shall be enforced by the division. Upon representation of appropriate credentials, the division shall have the right to enter upon the premises of any retail store to make an inspection and to determine compliance with the provisions of this chapter.

(b) For the purpose of determining a store's compliance with the requirements of section 329B, an inspection shall be conducted of a sample of no less than 25 stock-keeping units.

(c) For the purpose of a violation of section 329B(a), no item shall be cited more than once in a 48 hour period.

(d) With respect to the item price of any exempt item, the deputy director, in his discretion, may direct a retail store to post a sign in a conspicuous and unobstructed location in the manner and form prescribed by him.

(e) For any inspection under section 329C, the store representative shall afford the inspector access to the test mode of the checkout system in use at that store or to a comparable function of said system and to the retail price information contained in a price look-up function.

(f) The inspector shall have the authority to issue a stop removal order with respect to any stock-keeping unit being used, handled, or offered for sale in violation of sections 329B and 329C. Any such order shall be in writing and direct that the stock-keeping item shall be removed for sale pending price correction.

(g) A hearing may be requested in writing on any fineable violation or registration suspension issued by the division. The hearing will be conducted by the division's designated hearing officer. The division's designated hearing officer shall make a written determination. Such determination may be appealed to the deputy director who, after due deliberation, shall issue an order accepting, modifying, or rejecting the hearing officer's determination. "

The amendment was *rejected*.

Messrs. Lees, Hedlund, Knapik and Brown and Mrs. Sprague moved that the bill be amended by inserting, after Section _____, the following new Section:-

"SECTION _____. Section 184E of chapter 94, as so appearing, is hereby amended in the first paragraph by striking the second and third sentences and inserting in place thereof the following:- Violations shall be punished for the first offense by a fine of \$200, for the second offense by a fine of \$500, and for a subsequent offense, by a fine of \$1,000. Notwithstanding the method for determining the amount of civil fines pursuant to section 29A of said chapter 98, a civil citation may be issued for \$200 for each violation, up to a maximum of \$5,000 per inspection."

The amendment was *rejected*.

Mr. Morrissey moved that the bill be amended after section 353 by inserting the following new section:-

SECTION _____. Section 335 of Chapter 164 of the Acts of 1997 is hereby amended by striking, in line 2, the following words "installed prior to July 1, 1997,".

The amendment was *rejected*.

Ms. Tucker moved that the bill be amend in section 2, in line item 7003-0702, by inserting at the end thereof the following words:-

";and provided further, that not less than \$50,000 be expended for Our House Family Learning and Workforce Development Center."

The amendment was *rejected*.

Mr. Tisei moved that the bill be amended in section 2, item 7003-0702, by adding at the end thereof the following new language:-
"; provided further, that not less than \$100,000 be expended for Hallmark Health for the purpose of a hospital based nursing and skills program."

The amendment was *rejected*.

Mr. Knapik moved that the bill be amend in section 2, in item 7003-0702, by inserting after the word "Gardner" the following:-
"provided further, that not less than \$300,000 shall be expended for a hospital skills training program operated by the Commonwealth Corporation"

The amendment was *rejected*.

Mr. Knapik moved that the bill be amended in section 2, in item 7003-0702, by inserting after the words "Hampden County " the following:-

"provided further, that not less than \$100,000 shall be expended for a finance training program to be administered by the Hispanic Chamber of Commerce in Holyoke;"

The amendment was *rejected*.

Ms. Wilkerson moved that the bill be amended in section 2, in item 7003-0702 by inserting after the words "center for women enterprise;" the following: -

"provided further, that not less than \$350,000 shall be expended for existing Boston youth service providers, as determined by the Boston Workforce Investment Board, who provide youth career exploration, academic support and remediation, and mentoring for at-risk youth in the city of Boston;"

In the same item by striking the figure "4,339,000" and inserting in pace thereof the following figure: -- "4,689,000"

The amendment was *rejected*.

Ms. Chandler moved that the bill be amend in section 2, in item 7003-0803, by inserting at the end the following wording:-

"; provided further, that not less than \$75,000 shall be expended for the one-stop career center in the City of Worcester".

The amendment was *rejected*.

Mr. Hart moved that the bill be amend by striking Section 71, and inserting in place thereof the following:-

"SECTION 71. Section 2RR of said chapter 29 of the General Laws, as appearing in the 200 2Official Edition, is hereby amended by striking section 2RR entirely and inserting in place thereof the following section 2RR: -

Section 2RR.

(a) There is hereby established and set up on the books of the commonwealth a separate fund to be known as the Workforce Training Trust Fund, in this section called the Fund. There shall be credited to the Fund the workforce training contributions required by section 14L of chapter 151A. The director of the department of workforce development shall ensure that the principal and interest of the Fund are used only for the purposes of this section. In each fiscal year, the director shall so expend not less than \$18,000,000 or whatever lesser total amount is credited to the Fund.

(b) Subject to appropriation, the director shall make expenditures from the Fund for the following purposes:

(1) To provide grants to employers, employer groups, labor organizations and training providers for projects to provide education and training to existing employees, out of school youth in federally designated youth opportunity zones and newly hired workers. In determining who shall receive grants, the director shall consider the following criteria:

- (i) whether the project will increase the skills of low-wage, low-skilled workers;
- (ii) whether the project will create or preserve jobs at wages sufficient to support a family;
- (iii) whether the project will have a positive economic impact on a region with high levels of unemployment or a high concentration of low-skilled workers;
- (iv) whether the employer has made a commitment to provide significant private investment in training during the duration of the grant and after the grant has expired;
- v) whether the project will supplement, rather than replace, private investments in training;
- (vi) whether the employer is a small business that lacks the capacity to provide adequate training without such assistance;
- (vii) whether the project will provide residents of the commonwealth with training for jobs that could otherwise be filled only by residents of other nations;
- (viii) whether the project is consistent with the workforce development blueprint prepared by the local workforce investment board; and
- (ix) whether the employer has recently or plans to locate its business in the commonwealth and employ residents of the commonwealth who will benefit from training.

(2) To provide technical assistance to increase training opportunities available to employees. The director may provide this direct technical assistance by using existing institutions such as local workforce investment boards, community colleges, labor organizations, administrative entities for service delivery areas under the federal Workforce Investment Act, or its successor statute, and other entities that have expertise in providing technical assistance regarding employee training or with employees of the departments of labor and workforce development or of the commonwealth corporation. Such expenditures shall not exceed \$3,000,000 each year and the director shall demonstrate that each dollar expended generates not less than \$5 in private investment in job training.

(c) The director, in consultation with the secretary of economic development, shall adopt regulations to carry out the purposes of this section, including the criteria set forth in paragraph (1) of subsection (b). The regulations shall provide for a rolling applications process and shall allow employers with plans to locate in the commonwealth and employ commonwealth residents to apply for grants. The director may contract with a private organization to carry out some or all of the director's duties provided in this section. The board may require a match or co-investment from participating organizations; provided, however, that in determining the amount of any match, the board shall establish different requirements for organizations based on the size of the organization, its profit or not-for-profit status and financial capacity.

(d) Not later than September 1 of each year, the director shall file a report in writing with the joint committee on commerce and labor and the house and senate committees on ways and means detailing the grants made in the fiscal year ending on the preceding June 30, including for each grant the employer or entity receiving the grant, the amount of the grant, the number of employees trained and the nature of the training provided, together with such recommendations and additional information as the commissioner considers appropriate.

(e) Documentary materials or data made or received by an employee of the department of workforce development, or previously by the division of employment and training, to the extent that such materials or data consist of trade secrets or commercial or financial information regarding the operation of a business conducted by an applicant for a grant from the fund established by this section, shall not be public records and shall not be subject to section 10 of chapter 66.

(f) The director shall, in accordance with section 328 of chapter 127 of the acts of 1999, prepare a performance evaluation of the workforce training grants awarded under this section. The evaluation shall assess the effectiveness of each grant awarded in terms of the

- 1) development of employee skills;
- 2) increase in employee wages;
- 3) improvement in employee retention rates;
- 4) improvement of employee productivity;
- 5) impact on employer's business and
- 6) impact on regional economy, including reduction of regional unemployment levels.

The director shall require, as a condition of receiving a grant under this section, employers to provide, within a time frame following the end of the grant period as established by the director, such information and data determined by the director to be necessary to complete the performance evaluation. g) The director shall make no grant under this section to any person or entity from the Fund, nor shall any technical assistance be provided by the department out of the proceeds of the Fund, to any person or entity unless the person or entity applies for and receives a certificate of tax in good standing with the department of revenue with respect to all tax types for which it should be registered and for which it is obligated to file reports or returns. A certified copy of

the certificate shall be presented to the director before the issuance of any grant under this section before the department's providing any technical assistance to the person or entity.

(h) There is hereby established a board to be known to the proposed section 35 of chapter 10 of the General Laws, as the Workforce Training Fund Advisory Board of consisting of 9 members, who are citizens of the commonwealth, to be appointed by the governor. Three members shall be persons representing businesses or employers; 3 shall be persons representing employees or employee of labor organizations, 2 of whom shall be selected from a list of 5 recommended by the President of the Massachusetts AFL-CIO; and 3 shall be persons representative of the public, 2 of whom shall have expertise or experience in workforce training and 1 of whom shall represent a non-profit workforce training provider. The governor shall designate as chairman of the advisory board 1 of the members appointed as representative of the public. Members shall serve for a term of 6 years. Of the members originally appointed, 1 employer representative and 1 employee representative shall serve for a term of 4 years, and 1 employer representative and 1 employee representative shall serve for a term of 6 years; and thereafter, as their terms expire, the governor shall appoint members for terms of 6 years. Vacancies shall be filled by appointment by the governor for the remainder of the unexpired term. All members shall serve until the qualification of their respective successors. Members shall serve without compensation. The advisory board shall advise the director of the department of workforce development on the administration of the workforce training fund grant program, including but not limited to reviewing and making recommendations on grant requirements and selection criteria and reviewing grant applications and making recommendations about grant awards. The advisory board shall, from time to time, submit recommendations to the legislature on any legislative changes it deems necessary for the successful operation of the program."

The amendment was *rejected*.

Messrs. O'Leary and Nuciforo moved that the bill be amended in Section 71 by adding in clause (b) subclause (2) after the words "job training" the following:-

"; provided that of the \$3,000,00, not less than \$75,000 shall be provided annually to the Workforce Investment Board Association to support the activities of business, labor, education, youth councils and community members in leading regional workforce development systems; each of the 16 workforce investment boards shall receive \$75,000 annually; and each of the 16 workforce investment boards shall receive \$20,000 annually for youth councils".

The amendment was *rejected*.

Ms. Chandler and Mr. Nuciforo moved that the bill be amended in section 2, in item 7006-0040, by adding at the end the following wording:-

"; provided further, that not less than \$1,100 shall be expended to increase the number of Land Surveyors from 1 to 3 on the Board of Registration of Professional Engineers and Professional Land Surveyors".

The amendment was *rejected*.

Ms. Chandler moved that the bill be further amended in section 2, in item 7006-0040, by striking the figure "\$3,025, 423" and inserting in place thereof the following figure:- "\$3,026,523".

The amendment was *rejected*.

Mr. Morrissey moved that the bill be amended by inserting after section 353 thereof the following new sections:

SECTION _____. Chapter 13 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by inserting after section 97 the following new section: -

Section 98. There shall be a board of registration for interior design, consisting of five members to be appointed by the governor. Of the five members appointed by the governor four members shall hold valid registrations pursuant to sections 228 to 233 of chapter 112, with the exception of the initial four members appointed who are not required to have previously passed the National Council for Interior Design Qualification examination, and said members shall represent the profession of interior design on a diverse specialty and geographic basis within the commonwealth; provided, that at least one of the above four members shall be a professional educator, who teaches in a professional interior design college or university level Foundation for Interior Design Education and Research or National Association of Schools of Art and Design accredited interior design program or its equivalent as determined by the Board, and one member shall represent the general public, who shall not be a current client or potential client of any current board members.

With the exception of the initial board, the term of each appointment shall be for four years on a staggered basis. The initial board appointments shall be as follows: one member shall be appointed for one year, one member shall be appointed for two years, one member shall be appointed for three years, two members, including the public member, shall be appointed for four years. After the initial appointments, no board member, except the representative of the general public, may be exempted of any requirements of registration. Upon expiration of a board member's term and there is not appointed successor, the member shall continue to hold office until the appointment of his or her successor by the governor. In the event of a vacancy, the governor shall appoint a member to serve the unexpired term of the vacant seat.

The board shall hold at least two regular meetings each year for the purposes of performing its duties pursuant to this chapter, and

may hold additional meetings as required. Time, place and notice of all meetings shall be as required by rules or by-laws determined by the board. At the first regular meeting each year, the board shall organize and choose from their own members, a chairman, a vice-chairman and a secretary and National Council for Interior Design Qualification delegate. In the absence or disability of the chairman, the vice-chairman shall be authorized to act on his behalf. The secretary shall be responsible for keeping a true and complete record of all proceedings. A quorum shall consist of three members.

The governor may remove any member with cause, which shall include but not limited to remove any member of said board for incapacity, neglect of duty, or malfeasance in office. The failure of a board member to attend at least one-half of the regular, scheduled meetings of said board within a twelve-month period shall constitute neglect of duty for purposes of this decisions made in good faith while serving as a member of said board.

The members shall serve without compensation; provided, however, that each member shall be reimbursed for actual expenses reasonably incurred in the performance of duties as members on or behalf of the board.

Section 99. The chair of said board may appoint, subject to the consent of the majority of the members of the board, a full-time or part-time executive director to the board. The executive director shall serve at the pleasure of the board and may be suspended or removed by the board at anytime. The board shall set the executive director's salary, and he shall be the executive officer of the board, but may not be a member of the board. The board, by majority vote of its members, may employ additional persons, who shall serve at the pleasure of the board, to assist the board and the executive director in the keeping of the records and in the performance of its duties, subject to available funding.

The board may adopt rules or regulations that are consistent with the General Laws, which shall include administering and enforcing provisions of this section, section 98 of chapter 13, and sections 228 to 233 of the chapter 112, adopting regulations to carry out policies, setting registration fees, establishing continuing education requirements for registration renewal, adopting a common seal, adopting requirements for monitored internship, adopting a code of ethics, adopting administrative penalties, including suspensions, revocations and fine for violations of rules and regulations as established by the board.

The board shall provide access to persons with physical, mental or developmental disability to the board's programs and activities.

Said board shall maintain an official roster showing the names, license numbers and the address of all interior designers in good standing and roster shall be open to the public for inspection and information.

Except as otherwise provided in this section, section 98 of chapter 13, and sections 228 to 233 of chapter 112, each applicant for certificate of registration as an interior designer shall apply to the board on such forms and in such manner as said board may prescribe.

An original certificate of registration issued by the board shall be valid from the date of issuance until the last day of December to the next succeeding the date upon which said certificate of registration was issued, unless said certificate of registration shall have been revoked or suspended for cause as provided.

The board shall file a complaint to the Attorney General all unregistered and/or unlicensed persons who are practicing as a registered interior designer or holding themselves out as a registered interior designer. The board shall make available to the public information of persons who are convicted of practicing without a license.

SECTION ____ .Chapter 112 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by inserting after section 226 the following new sections: -

Section 227. The following words shall, unless the content clearly requires otherwise, have the following meanings as used under the section 227 to section 233 of the General Laws.

- (a) "Board" is defined as the board of registration of interior designers established under sections 98 and 99 of chapter 13 of the General Laws.
- (b) "Direct supervisory control" means the direct responsibility for supervision of the work and the decision making process, which includes but not limited to review, enforce and control compliance with all design criteria and life safety requirements
- (c) "FIDER" is defined as the Foundation for Interior Design Education and Research.
- (d) "Interior Construction Document" is defined as a document that has one or more the designs, drawings, and specifications that establish the scope of the interior work to be constructed, the standard of quality of materials, workmanship, equipment, construction systems and construction methods, and the studies and other technical reports prepared in the course of interior design. All construction documents intended for the use in interior construction in the Commonwealth shall be prepared and administered in accordance with the General Laws, the Massachusetts State Building Code, the Massachusetts Architectural Access Board, the American's with

Disabilities Act, and standards and regulations of the municipal building department jurisdictions where the work is undertaken. Documentation for interior design projects, as defined under this act, and requiring a building permit, as defined under General Law are to be clearly labeled as "Interior Design Projects", and will be stamped by a registered interior designer, registered architect or registered professional engineer.

(e) "Interior Design" is defined as the provision of professional services for the purpose of creating an interior space that satisfies the wellbeing, life safety, functional and aesthetic requirements of a client, end-user, or member of the general public within that interior space. These services shall include but not be limited to elements of programming, space planning, pre-design analysis, conceptual design, consultations, studies, drawings, creation of budgets and schedules of time and values, selection and specification of finishes, materials, furnishings, furniture and equipment, design of non-load-bearing interior partitions, assembly of interior construction documentation, specifications and location of lighting fixtures and ceiling systems, designs consistent with American's with Disabilities Act, life safety and building code review, analysis and interpretation of building system parameters, project management, administration of contracts for fabrication, construction, procurement, installation, and implementation of interior design projects within a proposed or given structure, building, addition, alteration, restoration thereof. Interior Design shall include the collaboration in the completion of a project for the alteration or construction of an interior area of a structure designed for human habitation or occupancy with professional engineers or architects who are registered pursuant to the provisions of General Law but specifically excludes the provision of any services related to the modification, alterations, design, specification, or implementation of mechanical, electrical, structural, plumbing engineering and fire protection engineering, alterations to the exterior envelope that may affect its structural or thermal integrity, alterations to core enclosures that may affect a structure's fire rating, alteration to building exterior entry ingress/egress conditions, areas of refuge, public entry doors or gates and their associated hardware: but specifically not excluding ingress/egress analysis and resolution within the interior space of the building.

(f) "IDCEC" is defined as the Interior Design Continuing Education Council.

(g) "IDEP" is defined as the Interior Design Experience Program.

(h) "Interior Space" is defined as space within the building envelope, not including core enclosures and elements of mechanical, electrical, fire protection, structural systems, building egress, exitways, and areas of refuge, but may include bathrooms and other habitable spaces within a building core enclosure.

(i) "Life Safety" is defined as it pertains to an interior design project is defined as the analysis, development, interpretation and review of space plans, interior construction systems or assemblies, materials, finishes, and furnishings, furniture and equipment selections for compliance with regulatory building code provisions which when applied collectively, provide comprehensive safety features to eliminate, reduce, or control life or health threatening situations in the interior environments of a proposed or given structure or building.

(j) "NASAD" is defined as the National Association of Schools of Art and Design.

(k) "NCIDQ" is defined as the National Council for Interior Design Qualification.

(l) "Provisional registration" is a temporary license provided under paragraph (f) of section 228 of chapter 112.

(m) "Registered interior designer" is a design professional who is registered and licensed to practice as a designer in the Commonwealth under section 38A 1/2 of Chapter 7 of the General Laws, and meets the criteria set forth by this section, sections 228 to 233 of this chapter and any other rules and regulations established by the board under sections 98 and 99 of chapter 13.

(n) "Space planning" is defined as the translation of project or client requirements into a physical plan of space within the interior of a proposed or given structure or building, organizing major rooms, areas, furniture, fixtures and equipment, determining internal circulation systems/patterns, and the location of internal exit requirements; based on occupancy loads, assessments of life safety factors, universal access and the analysis of and for compliance with state and local building codes.

Section 228. An applicant for a registered interior designer license shall be of good moral character and able to discharge the duties of an interior designer to that person's client and to the public in a manner that protects health, safety and welfare. In addition, the board may take into consideration any felony conviction of the applicant, but such a conviction shall not operate as an absolute bar to qualification for examination for licensure or registration. The board may take into consideration whether the applicant represented himself or herself to be a registered interior designer prior to the time of issuance of the registration "The board may take into consideration whether the applicant was found to have aided and abetted any person not registered as an interior designer in violating or who has failed to report any unlicensed person of violating section 227 to 233 of this chapter or the rules and regulations of the Board. Said applicant shall meet at minimum the following requirements in addition to any rules and regulations established by the board unless otherwise provided.

(a) Applicant shall provide to the board that the applicant is a graduate of a professional degree interior design education from an institution accredited by the FIDER, NASAD or equivalent as determined by the Board, and

(b) Applicant shall provide to the board that the applicant has completed the IDEP as administered by the NCIDQ, or its equivalent as determined by the board, and

(c) Applicant shall provide to the board that he or she has successfully completed the examination administered

by the NCIDQ or its equivalent, as determined by the board.

(d) An applicant who has successfully completed the NCIDQ examination prior to the effective date of this Act and provide said information to the board shall be eligible for registration without having to fulfill the stipulations of paragraphs (b) and (c).

(e) An applicant who is a registered architect or architectural intern, and has completed the NCIDQ examination, shall be eligible for registration without having to fulfill the stipulations of Paragraphs (b) and (c).

(f) Within twelve months after the first meeting of the board, an applicant may apply for registration without having to fulfill the stipulations of Paragraphs (a), (b), (c), (d) and (e) if he has completed at least 10 years of full-time, diversified, verifiable professional experience in interior design service as defined in this act. Said applicant, upon review and consent of the board, may be issued a provisional license and be registered as such. The provisional licensee shall be given three calendar years from the first meeting of the board to provide to the board information of successful passage of section I of the NCIDQ examination, at which time full registration will be granted. If the information is not provided to the board within the allotted time period, said applicant's provisional license will be revoked and become null and void. Re-application, including satisfaction of all requirements at the time of re-application, shall be required for registration. The provisional licensee is required to meet all licensure requirements and regulations under the law as if said provisional licensee is a registered interior designer.

An applicant may apply for registration if he or she is registered and/or licensed as an interior designer in any other state or country whose requirements for registration and/or licensing are equivalent or greater to the requirements of the Commonwealth. The board may register and license said applicant upon the board's review and consent.

The board shall issue a license to any applicant for interior design registration that complies with the requirements in this section and sections 230 to 233 of this chapter and any other rule or regulation that the board may require. Persons licensed by the board shall be entered on the official roster pursuant to section 99 of chapter 13. Said registration shall authorize such person to use the title of and be known as a registered interior designer. Each registered interior designer shall secure a seal that identifies such person as a registered interior designer in the commonwealth; provided, however, the registered interior designer's contract documents shall contain a statement that the documents are interior construction drawings, specifications or designs and are not to be used for construction of any load-bearing columns, load-bearing framing, or load bearing walls or structures. Drawings, renderings, or specifications prepared by said registered interior designer or under supervision thereof shall be imprinted with said seal.

Every registered interior designer shall display his certificate of registration in a conspicuous place at the registered interior designer's principle office. Every registered interior designer shall have a reproducible seal, or facsimile, the print of which shall contain the name of the interior designer, the license number, and the words "Registered Interior Designer Commonwealth of Massachusetts." The registered interior designer shall affix the signature, current date, date of license expiration and seal to all sheets of any bound set or loose sheets or to the cover of any bound project specifications of interior construction documents prepared by the registered interior designer or under that registered interior designer's direct supervision and control to be filed for public record with the individual state municipal building departments for the purposes of obtaining a building permit. A registered interior designer shall not sign or seal drawings, specifications, reports or other professional work for which he does not have direct professional knowledge and direct supervisory control; provided, however, that in the case of portions of such professional work prepared by the registered interior designer's consultants, registered under this or another portion of the professional registration laws of this jurisdiction, the registered interior designer may sign or seal that portion of the professional work if the registered interior designer has reviewed such portion, has coordinated its preparation, and intends to be responsible for its adequacy. Only registered interior designers shall be permitted to use a registered interior designer's seal.

When a registered interior designer's certificate of registration has been revoked or suspended by the board, the registered interior designer shall surrender his seal to the secretary of the board within a period of ten days after the revocation or suspension has become effective. If the registration of the registered interior designer has been suspended for a period of time, his seal shall be returned upon expiration of the suspension period.

Certificates of registration shall be renewed during the month of December and shall be valid for two years upon the submission of a renewal application on a form prescribed by the board and accompanied by the fee established by the board.

The board shall renew no registration until a person submits information to the board's satisfaction that said person participated in not less than five hours per year of continuing education for each year an expiring registration was valid. The board shall approve only continuing education for each year an expiring registration was valid. The board shall approve only those continuing education programs that build upon the basic knowledge of interior design as defined and approved by IDCEC or its equivalent as determined by the board. Furthermore, of the 5 hours per year of continuing education, a minimum of 1.5 hours shall be related to the protection of the health and safety of the public as determined by IDEC or its equivalent as determined by the board. The board may make exceptions to the requirements for continuing education in emergency or hardship cases. The board may from time to time reexamine the number of hours of continuing education per year required for registration renewal.

A person whose registration has expired through failure to be renewed pursuant to this section may obtain a renewal of such registration at any time within one year from the date of expiration upon application to and approval of the board. The time for renewal of such expired registration may be extended up to 90 days at the discretion of the board, and the board may approve an application for reactivation of an expired registration. The continuing education requirement for reactivating an expired registration pursuant to this paragraph shall not exceed five hours for each year the registration was inactive.

A registration which has been inactive for more than four years shall automatically expire and become null and void without any further action by the board if a person has not made application for reactivation of said registration. One year prior to such automatic expiration the board shall give notice to such person at the registrant's last address of record.

An application for reactivation of a registration shall be in a form prescribed by said board and accompanied by a fee established under section 230 of this chapter.

The board shall have disciplinary power to revoke, suspend for a period of time, refuse to issue or renew, issue a private or public reprimand, a fine for each violation, or all of the above by a registered interior designer. The board shall consider, but is not limited to, the following information when determining a disciplinary action:

- (1) A registered interior designer has committed acts of fraud or deceit in their professional conduct, or has been convicted of a felony by a court of law.
- (2) A registered interior designer has been found by the board to have performed interior design services in a manner which constituted gross negligence, incompetence or misconduct.
- (3) A registered interior designer has been found by the board to have aided and abetted any person not registered interior designer and failed to report unlicensed persons violating sections 227 to 233 of this chapter or the rules and regulations of the board.

The board shall not revoke, suspend or refuse to issue or renew any registration under the provisions of this section without first giving the applicant or the holder of such registration an opportunity to appear and be heard by the board before any action is taken except as otherwise may be provided by law.

Nothing in sections 227 to 233 of this chapter shall prevent the draftspersons, students, project representatives and the employees of those lawfully practicing as registered interior designers, registered architects or registered professional engineers under the provisions of this section, from acting under the direct supervision and control of their employers, or to prevent the employment of project representatives for modification, enlargement, or alteration of the interior space of building or any parts thereof, or prevent such project representatives from acting under the direct supervision and control of the registered interior designer, registered architect or registered professional engineer by whom the interior construction documents of any such interior space of a building, modification or alteration thereof were prepared.

No individual shall, without registration as an interior designer issued by the board, in any manner practice interior design unless specifically noted in this act, or hold himself out to the public as a registered interior designer or attach the title "registered interior designer", or any other name or designation which would in any way imply that he is able to use the title "registered interior designer" as defined by this section.

Section 227 to section 233 of this chapter does not apply to any individual, partnership, or corporation that performs retail installation or delivery services pursuant to selling, selecting, or assisting in selecting personal property used in connection with furnishing of interior spaces or fixtures such as, but not limited to, furnishings, decorative accessories, furniture, paint, wall coverings, window treatments, floor coverings, surface mounted lighting, or decorative materials; or an individual, partnership, or corporation that installs or coordinates installations as a part of the prospective retail sale, or provides computer-aided or other drawing for the purpose of retail sale, provided those drawings are used for material lists for a person who designs such personal property or fixtures within a showroom.

Nothing in this section 227 to section 233 of this chapter shall be construed to prevent an individual, partnership or corporation from entering into agreements to perform or holding itself out as able to perform any of the services involved in the practice of interior design; provided, that any agreement to perform such services shall be executed on behalf of the individual, partnership or corporation by the partner or partners or by the officer or officers who shall be the registered interior designer, registered architect, or registered professional engineer exercising professional and supervisory control over the particular services contracted for by the individual, partnership or corporation, and provided, further, that any partnership or corporation holding itself out, as able to perform any of the services involved in the practice of interior design and having a place of business in the Commonwealth, and of which a majority of the partners of such partnership or officers of such corporation are registered interior designers or registered architects, may execute any such agreement by any duly authorized partner of such partnership or by any duly authorized officer of such corporation whether such duly authorized partner or officer is, or is not a registered interior designer or a registered architect, provided that a registered interior designer or registered architect who is such a partner or such an officer shall exercise professional and supervisory control over the particular services contracted for by the partnership or

corporation.

Nothing in Section 227 to Section 233 of the chapter shall prevent a person who is registered to practice architecture in the Commonwealth from practicing or performing interior design.

Section 229. The board shall determine a fee to be paid by an applicant or licensee to the board for a certificate of registration, the renewal of a certificate of registration, certificate of registration activation, provisional license, and examinations conducted by the board.

Section 230. The use of the title "registered interior designer" is reserved for those who are registered within the commonwealth. Any use of the term "registered interior designer" by any persons within the title of a profession or business or any preparation of plans and specifications or execution of tasks identified as interior design services for a fee or other direct compensation is prohibited without first having complied with the provisions of this section 98 and 99 of chapter 13 and sections 227 to 231 of chapter 112.

Section 231. Whoever practices as an registered interior designer or holds oneself out as a registered interior designer, but is not licensed as such, shall be punished by imprisonment in the house of correction for not more than one year, or by a fine of not more than fifteen thousand dollars, or by both for each offense, and each and every day of violation of this Section as set forth shall constitute a separate offense.

Section 232. Nothing in sections 98 and 99 of chapter 13 or sections 227 to 233 of this chapter shall permit a registered interior designer as defined under this section to practice architecture under General Laws unless said individual meets the requirements of the architectural provisions of General Laws.

Section 233. Nothing in sections 98 and 99 of chapter 13 or sections 229 to 233 of this chapter shall be construed as requiring the services of a registered interior designer for the interior design of a single or two family residence whether detached or part of a multiple residence.

SECTION ____ .Said sections shall take effect 90 days after its passage.
The amendment was *rejected*.

Messrs. Lees, Tisei, Tarr, Knapik and Brown and Mrs. Sprague moved that the bill be amended in item 7006-0000 by deleting the figure "\$1,439,583" and inserting in place thereof the figure "\$1,893,025".
The amendment was *rejected*.

Messrs. Lees, Knapik and Mrs. Sprague moved that the bill be amended in section 2, in line item 7002-0010, by striking out the figures "\$252,676" and inserting in place thereof the figures "\$375,000".
The amendment was *rejected*.

Mr. Hart moved that the bill be amended in section 2, in item 7007-0515, by striking out the figures "\$650,000" and inserting in place thereof the figures "\$1,200,000" and in said item by adding at the end thereof the following: "provided further, that not less than \$550,000 shall be made available for grants to partnerships of community-based organizations, community development corporations or community development financial institutions for the purpose of providing technical assistance or training to small businesses employing fewer than twenty people. Grants shall be awarded to those organizations, community development corporations, community development financial institutions, and partnerships with a track record of success in providing technical assistance or training to businesses employing fewer than 20 people. Of the \$550,000, not more than \$50,000 may be expended for the administration of this program;"
The amendment was *rejected*.

Mr. Joyce moved that the bill be amended in section 2, by striking out item 7007-0515 and inserting in place thereof the following item:-
"7007-0515

For economic development grants to be administered by the department of business and technology; provided, that not less than \$150,000 be expended on the Cape Cod Regional Incubator Project to be operated by the Cape Cod Chamber of Commerce; provided further, that not less than \$200,000 shall be expended on the operation of the Massachusetts Fisheries Recovery

Commission; provided, that not less than \$100,000 shall be expended by the Buzzards Bay Village Association for the Buzzards Bay Main Street design study; provided, that not less than \$200,000 be awarded to the Town of Milton for the Central Avenue/Milton Village Business District Revitalization; and provided further, that not less than \$200,000 shall be expended for a grant to the South Shore Tri-Town Development Corporation established in chapter 301 of the acts of 1998..... \$850,000".

The amendment was *rejected*.

Mr. Baddour moved that the bill be amended in section 2, by inserting in line item 7007-0900 after the words "and provided further that the office shall make every effort to develop tourism in under-visited regions of the commonwealth" the following:-
"; provided further, that funds shall be expended for an economic development project on Rt. 110 in Amesbury".
The amendment was *rejected*.

Mr. Rosenberg moved that the bill be amended in Section 2, in line item 7007-0900, by inserting after the words "travel and tourism;" the following:-
"provided further, that not less than \$100,000 shall be expended for the U.S. Women's Open;"
The amendment was *rejected*.

Ms. Chandler moved that the bill be amended in section 2, in item 7007-0900, by adding at the end the following wording:-
"; provided further, that not less than \$125,000 shall be expended for a historic development project at the Worcester Center for the Performing Arts".
The amendment was *rejected*.

Mr. Brewer moved that the bill be amended in section 2, in item 7007-0950, by adding at the end thereof the following:-
"provided further, that not less than \$50,000 shall be expended for the Central Quabbin Area Tourism Association"
The amendment was *rejected*.

Mr. Montigny moved that the bill be amended in Section 2, by inserting in line item 7007-0950 after the words "Fall River" the following:-
"provided further, that not less than \$200,000 shall be provided for an economic development project at the Elco Dress Factory in New Bedford."
The amendment was *rejected*.

Mr. Brown and Mrs. Sprague moved that the bill be amended in section 2, in item 7007-0950 by inserting after the words "Russian Community Association;" the following wording:-
"provided further, that not less than \$75,000 shall be expended for an economic development project in North Attleboro;" and further moves to amend the bill in section 2, item 7007-0950, by striking the figure "\$3,440,508" and inserting in place thereof the figure "3,465,508"

The amendment was *rejected*.

Messrs. Lees, Tisei, Tarr, Knapik, Brown and Nuciforo and Mrs. Sprague moved that the bill be amended in section 2, in item 7007-0950, by inserting the following wording:-
"provided further, that \$5,000 shall be expended for the Massachusetts Film Bureau and said agency shall be the primary service provider for film production and development in the Commonwealth"
The amendment was *rejected*.

Mr. Morrissey moved that the bill be amended in section 2, in line item 7007-0950 by inserting after the words "Salisbury Chamber of Commerce" the following:- "provided further, that no less then \$100,000 be expended for an economic development project for the Town of Braintree."
The amendment was *rejected*.

Mr. Nuciforo moved that the bill be amended in section 2, by striking out item 7007-1200 and inserting in place thereof the following:-
7007-1200 For a program to create and maintain a more favorable and responsive environment for the attraction and retention of technology-intensive clusters for the commonwealth; provided, that such clusters may be characterized by technological or market focus, geographic proximity or other shared interests; provided further, that cluster activities shall be deemed to be the

- (1) foster increased exercise of an essential governmental function intended to: collaboration among cluster organizations;
- (2) facilitate improved communications between the commonwealth and cluster organizations;
- (3) identify and respond to challenges and opportunities related to cluster organizations;
- (4) enhance the competitive position of cluster firms;
- (5) reduce the costs of doing business in the commonwealth through 1 or more purchasing cooperatives; and
- (6) generally improve the perception of the value and benefits of doing business in the commonwealth;

provided further, that not less than \$1,750,000 shall be expended on one-time grants-in-aid and related activities in support of the creation, operation, and evaluation of a pilot wireless learning initiative; provided further, that said grants shall be matched by contributions from public, private and other qualified investments equal to two times the expenditures on said pilot from this line item; provided further, said grants shall fulfill the commonwealth's entire obligation to said initiative; provided further, that

amounts appropriated in this item shall be expended to the Massachusetts Technology Park Corporation to be held, applied and administered through its Massachusetts Technology Collaborative; provided further, that said corporation shall establish an independent advisory panel to advise said corporation relative to the most effective application of funds appropriated in this item; and provided further, that the executive director shall file a report with the house and senate committees on science and technology and the house and senate committees on ways and means detailing the activities undertaken with the funds appropriated herein by January 15, 2005\$2,250,000
The amendment was *rejected*.

Mr. Shannon moved that the bill be amended in Section 14 by inserting in Chapter 6A Section 18H (a) as referenced in said Section in the first sentence after the word "by" the following words:- "wireline local exchange";

In the second sentence by inserting after the phrase "incurred by the" the following words:- "wireline local exchange";
In the third sentence by inserting after the word "grade" the following words:- "wireline local";
In the fourth sentence after the word "all" the following words:- "wireline local exchange"; and
In Chapter 6A Section 18H (b) as referenced in said amendment by inserting in the first sentence after the word "each" the following words:- "wireline local exchange".
The amendment was *rejected*.

Messrs. Creedon and Pacheco moved that the bill be amended by inserting a new section at the end of the bill.

SECTION __. Chapter 128C of the General Laws is hereby amended by striking out the language in Section 2(2)(b) in its entirety and inserting in place thereof the following language:

(b) on any day of the calendar year/ unlimited running horse racing from and after 6:00 p.m., plus the entire racing cards from any 4 running horse racing meetings from any state in the Pacific and Mountain time zones; and simulcasts of the Suffolk county running horse racing meeting licensee's live races during its racing season and 4 so-called companion cards; and 5 interstate running horse simulcasts prior to 3: 30 p.m. on any day during the dark season of the Suffolk county running horse racing meeting; and

By adding at the end thereof the following new section:-

SECTION __. Chapter 128C of the General Laws is hereby amended by striking out the first and second paragraphs of Section 2A in their entirety and inserting in place thereof the following language;

Notwithstanding section 2, the running horse racing meeting licensee in Plymouth county, which is conducting running horse racing meetings in connection with a state or county fair, may, with the permission of the commission, and following a demonstration by the licensee of its ability to complete not less than 50 percent of the live racing performances approved by the commission, simulcast: unlimited interstate thoroughbred horse races; but, if the commission determines that a licensee cannot conduct 50 per cent of live racing performances due to weather conditions, race track conditions/ strikes, work stoppages, sickness or quarantine not within the control of the licensee, the commission may permit the licensee to continue simulcasting on that day despite the stoppage of the performances for said reasons. The total number of days of simulcast at the state or county fair, which is licensed for live running horse racing meetings, shall not exceed the licensee's racing season. The licensee in Plymouth county shall simulcast its live racing performances to the greyhound racing meeting licensee located in Bristol county, the greyhound racing meeting licensee located in Suffolk county, the running horse racing meeting licensee located in Suffolk county, and the harness horse racing meeting licensee located in Norfolk county and receive a fee therefor of 11 per cent; the simulcast shall not be considered a live in-state racing performance for purposes of the sixth paragraph of section 2.

Notwithstanding section 2, a running horse racing meeting licensee, excluding the licensees in Plymouth county and Berkshire county, which is conducting running horse racing meetings in connection with a state or county fair, may, with the permission of the commission, and following a demonstration by said licensee of its ability to complete no less than 50 per cent: of the live races performances approved by the commission, simulcast unlimited thoroughbred horse races and the intrastate live races of the racing meeting licensees in the commonwealth on any day if such simulcast is conducted in connection with a state or county fair/ for wagering purposes or otherwise, from pari-mutuel wagering facilities located within the commonwealth except in Berkshire county; but, if the commission determines that a licensee cannot conduct 50 per cent of live racing performances due to weather conditions, race track conditions, strikes, work stoppages, sickness or quarantine not within the control of the licensee, the commission may permit the licensee to continue simulcasting on that day despite the stoppage of the performances for said reasons. The total number of days of simulcast at the state or county fair, which is licensed by the commission for live running horse racing meetings, shall not exceed the total number of days of the licensee's racing season. The licensee shall simulcast its live racing performances to the greyhound racing meeting licensee located in Bristol county/ the greyhound racing meeting licensee located in Suffolk county, the running horse racing meeting licensee located in Suffolk county, and the harness horse racing meeting licensee located in Norfolk county and receive a fee therefor of 11 per cent/ provided/ however-/ that said simulcast shall not be considered a live-in state racing performance for purposes of the sixth paragraph of section 2.; and

By adding at the end thereof the following new section:-

SECTION __. Chapter 128C of the General Laws is hereby amended by striking out the third paragraph of Section 2A in its entirety.

The amendment was *rejected*.

Mr. Hart moved that the bill be amended by inserting, after Section __, the following new Section: -

"SECTION __. Section 571 of Chapter 26 of the Acts of 2003 is amended in section 7 (d) (i) by adding in after the words "...can be classified as employees" the following "one of whom shall be the President of the Massachusetts AFL-CIO or their designee"; and

By adding after the words "...shall be classified as employers" the following "one of whom shall be the chair of a local workforce investment board"

The amendment was *rejected*.

Ms. Fargo and Mr. Tolman moved that the bill be amended in section 2, in line item 5911-1000, by adding at the end thereof the following: -

"provided further, that \$99,000 be expended for the hiring of a consultant by the majority vote of the Fernald Re-Use Committee established in Section 678 of the acts of 2003 for the purposes of asset assessment and re-use development proposal."

The amendment was *rejected*.

Mr. Hedlund moved that the bill be amended in section 2, in item 5920-3000, by adding at the end thereof the following:-
"; and provided further that not more than \$50,000 be expended for the Friendship Home project in Norwell."

Mr. Brown moved that the bill be amended by inserting, after Section __, the following new Section:-

"SECTION ____. Notwithstanding any general or special law to the contrary, the department of mental retardation may lease 2 acres of land located on the grounds of the Wrentham Developmental Center to Tia's Rescue Haven for the purpose of constructing and maintaining a regional animal shelter."

The amendment was *rejected*.

Mr. Barrios and Ms. Chandler move to amend the bill by inserting the following new section:-

Notwithstanding any general or special law to the contrary, any member of the teachers' retirement system or any teacher who is a member of the State-Boston retirement system who filed an election form to participate in the alternative superannuation retirement benefit program under subsection (4)(i) of section 5 of chapter 32 of the general laws prior to July 1, 2001 with an officer of the city, town or school district in which such teacher was employed may elect to participate in the alternative superannuation retirement benefit program by filing an application with the state teachers' retirement board or the State-Boston retirement board shall prescribe, with a certificate of said officer of the city, town or school district confirming that the member had filed an election form under said subsection (4)(i) of section 5 of chapter 32, prior to July 1, 2001. The election to participate in the alternative superannuation retirement benefit program shall be irrevocable and shall be subject to said subsection (4)(i) of section 5 chapter 32.

The amendment was *rejected*.

Messrs. Tarr, Tisei and Knapik, Ms. Sprague, Messrs. Hedlund and Brown moved that the bill be amended by adding, in Section 2, item 4510-0600 at the end thereof the following: -

"Provided further, that \$75,000 shall be expended for the ALS registry created by section 26 of chapter 140 of the acts of 2003."

The amendment was *rejected*.

Mr. Knapik moved that the bill be amended to amend the bill, in section 2, in line item 4510-0600, by inserting after the words "Franklin county" the following:- "provided, that \$150,000 shall be expended for the purpose of studying the public health impacts of TCE, benzene and other contaminants found in the Barnes and Southampton aquifers located within the towns of Southampton and Easthampton and the cities of Holyoke and Westfield."

The amendment was *rejected*.

Messrs. Knapik and Mr. Barrios moved that the bill be amended in section 2, in item 4510-0712, by striking out the words, "provided, that the department may expend an amount not to exceed \$800,000 from revenues collected from individuals applying for emergency medical technician licensure and recertification", and inserting in place thereof the following:-

"provided, that the department may expend an amount not to exceed \$1,100,000 from revenues collected from individuals applying for emergency medical technician licensure and recertification".

The amendment was *rejected*.

Messrs. Moore, Montigny, and O'Leary, Ms. Wilkerson, Messrs. Tisei and Barrios moved that the bill be amended in section 2, in line item 4512-0106, by striking out, in line 1, the words "\$1,200,000" and inserting in place thereof the words "\$1,900,000"; and

by striking out, in said item, the figures "\$1,200,000" and inserting in place thereof the figures "\$1,900,000".
The amendment was *rejected*.

Mr. Lees moved that the bill be amended in section 2, in item 4512-0200 by striking out the figures "36,227,349" and inserting in place thereof the figures "47,191,543".
The amendment was *rejected*.

Mr. Hedlund moved that the bill be amended in section 2, in item 4512-2000, by adding at the end thereof the following :-
"; and provided further that not less than \$54,000 shall be expended for the Hingham district court for a total immersion program".
The amendment was *rejected*.

Mr. McGee moved that the bill be amended in section 2, by inserting after item 4513-1112 the following item:-
"4513-1113.
For the Colorectal Cancer Awareness Program.....\$185,000"
The amendment was *rejected*.

Mr. Moore moved that the bill be amended in section 2, in line item 4516-1000, by striking the figure \$9,701,774 and inserting in place the following:-
\$10,299,975
The amendment was *rejected*.

Mr. Creedon moved that the bill be amended in item 4530-9000, by inserting at the end of the section the following:-
"and provided further, that not less than \$200,000 shall be expended to the teen pregnancy program for the city of Brockton".
The amendment was *rejected*.

Mr. Creedon moved that the bill be further amended in item 4530-9000, by striking the figure "990,000" and inserting in place thereof the figure "1,199,000".
The amendment was *rejected*.

Mr. Moore and Ms. Walsh moved that the bill be amended by striking out item 4590-0300 and inserting in place thereof the following line item:
4590-0300 For youth smoking prevention and tobacco control programs, including enforcement of illegal sales to children laws by local boards of health and coordinated treatment resources, including the Tobacco Free Helpline and QuitWorks; provided that no funds shall be expended in the AA subsidiary, so-called, for any personnel-related costs, and provided further that, notwithstanding the provisions of Ch. 29D of the general laws or the provisions of any other general or special law to the contrary, funds may be expended from the Health Care Security Trust for the purposes of this item\$8,000,000
Health Care Security Trust.....100%
The amendment was *rejected*.

Mr. Brewer, Ms. Resor, Messrs. Lees and Tarr moved that the bill be amended in section 2, by inserting after item 4590-0300 the following item:-
"4590-0302 For a discretionary grant program for city and town student awareness of fire education programs, to be known as S.A.F.E programs..... \$1,000,000"
The amendment was *rejected*.

Mr. Creedon moved that the bill be amended by striking section 341 in its entirety.
The amendment was *rejected*.

Mr. Moore moved that the bill be amended by inserting a new section.
SECTION __. Section 16 of chapter 6A of the general laws, as appearing in the 2002 official edition, as amended by section 15 of chapter 26 of the Acts of 2003, is hereby amended by inserting in subsection (m) of the fourth paragraph thereof the following after the

word "except" the following:- "the commissioner of public health, and except"
The amendment was *rejected*.

Mr. Tarr moved that the bill be amended by adding, at the end thereof, the following new section: -

"SECTION __. Section 51G of Chapter 111 of the General Laws is hereby amended in Subsection (4) by adding, after the first sentence, the following: -
Any such notification shall include, but not be limited to, the following:

1. The reasons for which the closing or discontinuance is being proposed.
2. An analysis of the economic feasibility of retaining the essential health service or hospital and the economic impacts of the proposed closing or discontinuance
3. An analysis of the clinical safety of retaining the essential health service or hospital and any threats to public health and safety that would be caused by the proposed closing or discontinuance

SECTION 2. Section 51G of Chapter 111 of the General Laws is hereby amended in Subsection (4) by adding, after the word "hospital" in the fourth sentence thereof the following:

The department shall consult as to economic issues contained in the notification with the Division of Health Care Finance and Policy and may, if it determines that an essential health service can be retained in a clinically safe manner without depriving the hospital of a fair net operating income, deny the proposed discontinuance and require the retention of the essential health service either in its original condition or any modification which the department deems to be satisfactory.

In the event that a hospital proposed for closure is owned or controlled by an entity which holds a license for facilities other than the hospital proposed for closure, and the department determines that the hospital can be retained in a clinically safe manner and without depriving that entity of a fair net operating income, the department may require the retention of said hospital either in its original configuration or any modification which the department deems to be satisfactory.

The amendment was *rejected*.

Mr. O'Leary, Ms. Wilkerson, Mr. Montigny and Ms. Fargo moved that the bill be amended by inserting, after Section 362, the following new Section:-

"SECTION _____. Section 1 of chapter 94C of the General Laws, as appearing in the 1998 Official Edition, is hereby amended by striking out in line 68 the word "injecting".

Section 2. Section 1 of chapter 94C of the General Laws, as appearing in the 1998 Official Edition, is hereby amended by striking out subsection (11), lines 100 to 102 inclusive.

Section 3. Chapter 94 C of the General Laws is hereby amended by striking out section 27 and inserting in place thereof the following section:--

Section 27. (a) Hypodermic syringes, hypodermic needles and any other instrument adapted for the administration of controlled substances by injection may be sold in the commonwealth only to persons who have attained the age of 18 years and only by a pharmacist or wholesale druggist, who is licensed under the provisions of chapter 112, a manufacturer of or dealer in surgical supplies, or a manufacturer of or dealer in embalming supplies. No more than 10 such syringes, needles or instruments may be purchased by one person at one time.

(b) All manufacturers of hypodermic needles and syringes to be sold in the Commonwealth shall develop an educational insert, which must be approved by the department of public health, to accompany the sale of hypodermic syringes and needles. Such educational insert shall include, but not be limited to, (1) information on the proper use of hypodermic syringes and needles, (2) the risk of blood borne diseases that may result from the use of hypodermic syringes and needles and methods for preventing the contraction or transmission of such diseases, (3) proper hypodermic syringe and needle disposal practices, (4) the toll-free telephone number of the Commonwealths AIDS hotline, and (5) the toll-free number of the Massachusetts Substance Abuse Information and Education Helpline. Such educational insert shall be provided to purchasers of hypodermic syringes and needles at the point of sale.

Section 4. Section 32I of Chapter 94C of the General Laws is hereby amended by striking out in line 6 the word "inject".

Section 5. Section 32I of Chapter 94C of the General Laws is hereby amended by adding at the end thereof the following paragraph:--

(d) The provisions of this section shall not apply to the sale of hypodermic syringes, hypodermic needles or any other instrument adapted for the administration of controlled substances by injection to persons over the age of 18 pursuant to section 27.

Section 6. Chapter 175 of the General Laws, as most recently amended by Chapter 141 of the Acts of 2000, is hereby amended by inserting after section 47U, the following section:--

Section 47V. No individual policy of accident and sickness insurance issued or renewed pursuant to section 110, shall restrict or discontinue coverage for medically necessary hypodermic syringes and needles, notwithstanding any changes made to section 27 of Chapter 94C of the General Laws.

contract between a subscriber and the corporation under an individual or group hospital service plan which is delivered, issued, or renewed in the commonwealth shall restrict or discontinue coverage for medically necessary hypodermic syringes and needles to

any individual subscribers and members within the commonwealth and to any group members having a principal place of employment within the commonwealth, notwithstanding any changes made to section 27 of Chapter 94C of the General Laws.

Section 7. Chapter 176A of the General Laws, as most recently amended by Chapter 141 of the Acts of 2000, is hereby amended by inserting after section 8U, the following section:--
Section 8V. No

Section 8. Chapter 176B of the General Laws, as most recently amended by Chapter 141 of the Acts of 2000, is hereby amended by inserting after section 4U, the following section:--

Section 4S. No subscription certificate, under an individual or group medical service agreement, delivered, issued or renewed in the commonwealth shall restrict or discontinue coverage for medically necessary hypodermic syringes and needles to any individual subscribers and members within the commonwealth and to any group members having a principal place of employment within the commonwealth, notwithstanding any changes made to section 27 of Chapter 94C of the General Laws.

Section 9. Chapter 176G of the General Laws, as most recently amended by Chapter 141 of the Acts of 2000, is hereby amended by inserting after section 4M, the following section:--

Section 4N. No individual or group health maintenance contract shall restrict or discontinue coverage for medically necessary hypodermic syringes and needles, notwithstanding any changes made to section 27 of Chapter 94C of the General Laws.

Section 10. Section 79 of chapter 277 of the General Laws, as appearing in the 1998 Official Edition, is hereby amended by striking out, in lines 463 to 466, inclusive, the words:--

Possession of hypodermic instrument. That A.B. did have in his possession unlawfully a hypodermic syringe and needle.

Sale and delivery of hypodermic instrument C That A.B. did unlawfully sell (or deliver) a hypodermic syringe (or needle)."

Mr. Hedlund moved that the bill be amended by inserting after Section __, the following new Section:-

"SECTION __. Notwithstanding any general or special law to the contrary the Department of Public Health shall, subject to the following requirements, approve the development and operation of elective cardiac angioplasty pilot programs in hospitals currently operating primary cardiac angioplasty under Department of Public Health special project authorization. In order to obtain approval, each hospital must have participated in the primary angioplasty special project for at least one year and has performed the required thirty-six angioplasties; meet American College of Cardiology/American Heart Association guidelines for proficiency in physician operator volumes; agree to submit patient specific outcome data as requires by the Cardiac Quality Advisory Commission. The Department shall conduct an annual evaluation of all elective angioplasty pilot programs and shall submit a report to the house and senate committee on ways and means and the joint committee on health care."

The amendment was *rejected*.

Ms. Wilkerson moved that the bill be amended in section 2, line item 4800-0038, by inserting at the end thereof the following: -
"; and provided further, that not less than \$140,000 shall be expended for the Comprehensive School Age Parenting Program, Inc. for a year-round school based program in Boston high schools and middle schools for pregnant teens, young mothers and fathers, and other youth at risk for school drop out"

The amendment was *rejected*.

Mr. Tisei moved that the bill be amended in section 2, by striking out item 4800-0092, and further amends the bill, in section 2, item 4800-1100, by striking the figure "\$132,888,750" and inserting the following new figure :- "\$133,888,750."

The amendment was *rejected*.

Mr. Moore moved that the bill be amended in section 2, in line item 4800-1100, by inserting after the words "ratio by region" the following:-

"provided further that the department shall develop and implement a management plan so that no social worker shall be over the 18 to 1 caseload standard for more than two consecutive months; provided further, that the department shall implement such plan by November 15, 2004 and report on said management plan to House Ways and Means and Senate Ways and Means by January 15, 2005;"

The amendment was *rejected*.

Mr. Tarr moved that the bill be amended by adding, in section 2, in item 4800-1400, at the end thereof the following:-

"Provided further, that not less than \$10,000 shall be expended for the purposes of the domestic abuse response team which serves the Ipswich District Court."

The amendment was *rejected*.

Ms. Tucker moved that the bill be amended in section 2, in item 4200-0100, by striking out the figure "\$20,141,916" and inserting in place thereof the following figure:- "\$20,450,552".

The amendment was *rejected*.

Mr. Hart moved that the bill be amended in section 2, in item 4200-0100, in line 2, by inserting after the word "department" the following:-

"provided further, that not more than \$50,000 shall be expended for mentoring services provided by the Ella J. Baker House for high-risk youth;"

The amendment was *rejected*.

Ms. Tucker moved that the bill be amended in section 2, in item 4200-0200, by striking out the figure "\$18,907,464" and inserting in place thereof the following figure:- "\$19,183,261".

The amendment was *rejected*.

Mr. Moore moved that the bill be amended in section 2, in item 4000-0112, by striking out the wording and inserting in place thereof the following:-

"For matching grants to boys' and girls' clubs, YMCA and YWCA organizations and non-profit community centers; provided, that the secretary of health and human services shall award the full amount of each grant to each organization upon commitment of matching funds from the organization; provided further, that the secretary shall report to the house and senate committees on ways and means on the exact amounts distributed in fiscal year 2005 by March 1, 2005; provided further, that not less than \$920,000 shall be expended for the Massachusetts Alliance of Boys & Girls Clubs to provide grants to boys and girls clubs of Massachusetts; provided further, that not less than \$10,000 shall be expended for the Scantic Valley YMCA; provided further, that not less than \$500,000 shall be expended for the YMCA of greater Boston to facilitate capital projects approved by the board of directors of the YMCA; provided further, that not less than \$40,000 shall be expended for the public partnership program between the greater Lynn YMCA and YWCA and the public partnership program between the town of Saugus and the Saugus YMCA and YWCA; provided further, that not less than \$80,000 shall be expended for the young parents program of the Newton Community Service Centers:.....\$1,550,000"

The amendment was *rejected*.

Mr. O'Leary moved that the bill be amended in section 2, by striking out item 4000-0112 and inserting in place thereof the following item:-

"4000-0112

For matching grants to boys' and girls' clubs, YMCA and YWCA organizations and non-profit community centers; provided, that the secretary of health and human services shall award the full amount of each grant to each organization upon commitment of matching funds from the organization; provided further, that the secretary shall report to the house and senate committees on ways and means on the exact amounts distributed in fiscal year 2005 by March 1, 2005; provided further, that not less than \$920,000 shall be expended for the Massachusetts Alliance of Boys & Girls Clubs to provide grants to boys and girls clubs of Massachusetts; provided further, that not less than \$10,000 shall be expended for the Scantic Valley YMCA; provided further, that not less than \$500,000 shall be expended for the YMCA of greater Boston to facilitate capital projects approved by the board of directors of the YMCA; provided further, that not less than \$40,000 shall be expended for the public partnership program between the greater Lynn YMCA and YWCA and the public partnership program between the town of Saugus and the Saugus YMCA and YWCA; provided further, that not less than \$80,000 shall be expended for the young parents program of the Newton Community Service Centers:.....\$1,550,000"

The amendment was *rejected*.

Ms. Fargo moved that the bill be amended in section 2, in line item 4000-0112, by inserting at the end thereof the following:-

"provided further, that not less than \$50,000 shall be expended for the Waltham Boys and Girls Club."

The amendment was *rejected*.

Mr. Hart moved that the bill be amended in section 2, in item 4000-0112, in line 8, by inserting after the word "club" the following: -

"provided further, that not more than \$150,000 shall be expended for the Martin Luther King Jr. after school computer and cultural literacy program operated by the Ella J. Baker House;"

The amendment was *rejected*.

Mr. Tolman moved that the bill be amended in section 2, in item 4000-0112, by striking out the wording and inserting in place thereof the following wording:-

"For matching grants to boys' and girls' clubs, YMCA and YWCA organizations and non-profit community centers; provided, that the secretary of health and human services shall award the full amount of each grant to each organization upon commitment of matching funds from the organization; provided further, that the secretary shall report to the house and senate committees on ways and means on the exact amounts distributed in fiscal year 2005 by March 1, 2005; provided further, that not less than \$920,000 shall be expended for the Massachusetts Alliance of Boys and Girls Clubs to provide grants to boys and girls clubs of

Massachusetts;

provided further, that not less than \$10,000 shall be expended for the Scantic Valley YMCA; provided further, that not less than \$500,000 shall be expended for the YMCA of greater Boston to facilitate capital projects approved by the board of directors of the YMCA; provided further, that not less than \$40,000 shall be expended for the public partnership program between the greater Lynn YMCA and YWCA and the public partnership program between the town of Saugus and the Saugus YMCA and YWCA; provided further, that not less than \$80,000 shall be expended for the young parents program of the Newton Community Service Centers;.....\$1,550,000"

The amendment was *rejected*.

Mr. Creedon moved that the bill be amended in section 2, in item 4000-0112, by striking out the wording and inserting in place thereof the following wording:-

"For matching grants to boys' and girls' clubs, YMCA and YWCA organizations and non-profit community centers; provided, that the secretary of health and human services shall award the full amount of each grant to each organization upon commitment of matching funds from the organization; provided further, that the secretary shall report to the house and senate committees on ways and means on the exact amounts distributed in fiscal year 2005 by March 1, 2005; provided further, that not less than \$920,000 shall be expended for the Massachusetts Alliance of Boys & Girls Clubs to provide grants to boys and girls clubs of Massachusetts;

provided further, that not less than \$10,000 shall be expended for the Scantic Valley YMCA; provided further, that not less than \$500,000 shall be expended for the YMCA of greater Boston to facilitate capital projects approved by the board of directors of the YMCA; provided further, that not less than \$40,000 shall be expended for the public partnership program between the greater Lynn YMCA and YWCA and the public partnership program between the town of Saugus and the Saugus YMCA and YWCA; provided further, that not less than \$80,000 shall be expended for the young parents program of the Newton Community Service Centers: \$1,550,000"

The amendment was *rejected*.

Mr. Lees moved that the bill be amended in section 2, in item 4000-0112, by striking out the wording and inserting in place thereof the following wording:-

"For matching grants to boys' and girls' clubs, YMCA and YWCA organizations and non-profit community centers; provided, that the secretary of health and human services shall award the full amount of each grant to each organization upon commitment of matching funds from the organization; provided further, that the secretary shall report to the house and senate committees on ways and means on the exact amounts distributed in fiscal year 2005 by March 1, 2005; provided further, that not less than \$920,000 shall be expended for the Massachusetts Alliance of Boys and Girls Clubs to provide grants to boys and girls clubs of Massachusetts; provided further, that not less than \$10,000 shall be expended for the Scantic Valley YMCA; provided further, that not less than \$500,000 shall be expended for the YMCA of greater Boston to facilitate capital projects approved by the board of directors of the YMCA; provided further, that not less than \$40,000 shall be expended for the public partnership program between the greater Lynn YMCA and YWCA and the public partnership program between the town of Saugus and the Saugus YMCA and YWCA; provided further, that not less than \$80,000 shall be expended for the young parents program of the Newton Community Service Centers.....\$1,550,000"

The amendment was *rejected*.

Mr. McGee moved that the bill be amended in section 2, by striking out item 4000-0112 and inserting in place thereof the following item:- "For matching grants to boys' and girls' clubs, YMCA and YWCA organizations and non-profit community centers; provided, that the secretary of health and human services shall award

the full amount of each grant to each organization upon commitment of matching funds from the organization; provided further, that the secretary shall report to the house and senate committees on ways and means on the exact amounts distributed in fiscal year 2005 by March 1, 2005; provided further, that not less than \$920,000 shall be expended for the Massachusetts Alliance of Boys & Girls Clubs to provide grants to boys and girls clubs of Massachusetts; provided further, that not less than \$10,000 shall be expended for the Scantic Valley YMCA; provided further, that not less than \$500,000 shall be expended for the YMCA of greater Boston to facilitate capital projects approved by the board of directors of the YMCA; provided further, that not less than \$40,000 shall be expended for the public partnership program between the greater Lynn YMCA and YWCA and the public partnership program between the town of Saugus and the Saugus YMCA and YWCA; provided further, that not less than \$80,000 shall be expended for the young parents program of the Newton Community Service Centers:.....\$1,550,000"

The amendment was *rejected*.

Ms. Resor moved that the bill be amended in section 2, in line item 4000-0112, by striking out the wording, and inserting in place thereof the following wording:- "For matching grants to boys' and girls' clubs, YMCA and YWCA organizations and non-profit community centers; provided, that the secretary of health and human services shall award the full amount of each grant to each organization upon commitment of matching funds from the organization; provided further, that the secretary shall report to the house and senate committees on ways and means on the exact amounts distributed in fiscal year 2005 by March 1, 2005; provided further, that not less than \$920,000 shall be expended for the Massachusetts Alliance of Boys & Girls Clubs to provide

grants to boy and girls clubs of Massachusetts; provided further, that not less than \$10,000 shall be expended for the Scantic Valley YMCA; provided further, that not less than \$500,000 shall be expended for the YMCA of greater Boston to facilitate capital projects approved by the board of directors of the YMCA; provided further, that not less than \$40,000 shall be expended for the public partnership program between the town of Saugus and the Saugus YMCA and YWCA; provided further, that not less than \$80,000 shall be expended for the young parents program of the Newton Community Service Centers:....."\$1,550,000"
The amendment was *rejected*.

Mr. Lees moved that the bill be amended in section 2 in item 4200-0010 by striking the figure "\$4,526,404" and inserting in place thereof the figure: "\$4,613,663";
In said section 2 in item 4400-1000 by striking the figure "\$117,806,865" and inserting in place thereof the figure: "\$118,743,340";
In said section 2 in item 4510-0100 by striking the figure "\$18,302,427" and inserting in place thereof the figure: "\$18,807,843";
In said section 2 in item 4800-0015 by striking the figure "\$64,488,643" and inserting in place thereof the figure: "\$66,679,223";
In said section 2 in item 5011-0100 by striking the figure "\$35,376,100" and inserting in place thereof the figure: "\$35,781,161";
In said section 2 in item 5911-1000 by striking the figure "\$12,536,658" and inserting in place thereof the figure: "\$13,306,658";
In said section 2 in item 9110-0100 by striking the figure "\$1,665,860" and inserting in place thereof the figure: "\$1,710,208";
In said section 2 in item 4130-0001 by striking the figure \$1,368,287 and inserting in place thereof the figure: \$1,413,164; and
In said section 2, in item 4510-0723, by striking out the figure "\$1,639,554" and inserting in place thereof the figure "2,128,072".
The amendment was *rejected*.

Mr. Knapik moved that the bill be amended in section 2, in item 4000-0112, by inserting after the word "MetroWest" the following:-
"provided further, that not less than \$40,000 shall be allocated to the YMCA in Westfield."
The amendment was *rejected*.

Mr. Moore moved that the bill be amended the bill by inserting at the end thereof the following new section:-

SECTION __. Notwithstanding the provisions of any general or special law to the contrary, there shall be established a special commission for the purpose of conducting a study into the impact of concierge medical practices on citizens of the commonwealth. Said commission shall consist of the commissioner of the division of insurance or his designee, the Attorney General or his designee, the chairs of the joint committee on health care or their designees, the chairs of the joint committee on insurance or their designees, the commissioner of public health or his designee, the executive director of the board of registration in medicine or his designee, one representative from the Massachusetts Association of Health Plans, one representative from Blue Cross Blue Shield, one representative from the Massachusetts Medical Society, one representative from Health Care for All, and 2 physicians engaged in the practice of concierge medicine, one of whom is to be appointed by the speaker of the house of representatives and one of whom is to be appointed by the president of the senate. The study shall include, but shall not be limited to, the impact of concierge medical practices on the state's health care system particularly as it relates to patient access. The commission shall examine the number of physicians engaging in the practice of concierge medicine and the number of concierge practices operating in Massachusetts, the number of consumers enrolled in concierge practices and an assessment of the impact on patients displaced due to physicians engaging in these types of practices. The commission shall review the fees charged by concierge physicians and ascertain whether these fees are being charged for services that are already part of the patient's coverage with the health insurance carrier. The commission shall examine whether concierge practices violate state insurance and consumer protection statutes. The commission shall convene on or before September 1, 2004 and shall file a report not later than August 31, 2005 with the clerks of the house and senate and the joint committee on health care with recommendations relative to further regulation of concierge medical practices.
The amendment was *rejected*.

Messrs. Moore and Brewer moved that the bill be amended by adding at the end thereof the following new Section:-

SECTION ____.

SECTION XX:

Short Title

This act shall be known and may be cited as the Health Care Cost Containment Act.

SECTION 2.

Declaration

The Commonwealth finds that there exists in this State a major crisis because of the continuing escalation of costs for health care services. Because of the continuing escalation of costs, an increasingly large number of Massachusetts citizens have severely limited access to appropriate and timely health care. Increasing costs are also undermining the quality of health care services currently being provided. Further, the continuing escalation is negatively affecting the economy of this Commonwealth, is restricting new economic growth and is impeding the creation of new job opportunities in this Commonwealth. The continuing escalation of health care costs is attributable to a number of interrelated causes, including: (1) inefficiency in the present configuration of health care service systems and in their operation; (2) the present system of health care cost payments by third parties; (3) the increasing burden of indigent care which encourages cost shifting; and (4) the absence of a concentrated and continuous effort in all segments of the health care industry to contain health care costs. Therefore, it is hereby declared to be the policy of the Commonwealth of Massachusetts to promote health care cost containment by creating an independent council to be known as the Health Care Cost Containment Council. It is the purpose of this legislation to promote the public interest by encouraging the development of competitive health care services, in which health care costs are contained and to assure that all citizens have reasonable access to quality health care. It is further the intent of this act to facilitate the continuing provision of quality, cost-effective health services throughout the Commonwealth by providing data and information to the purchasers and consumers of health care on both cost and quality of health care services, and to assure access to health care services. Nothing in this act shall prohibit a purchaser from obtaining from its third-party insurer, carrier or administrator, nor relieve said third-party insurer, carrier or administrator from the obligation of providing, on terms consistent with past practices, data previously provided to a purchaser pursuant to any existing or future arrangement, agreement or understanding.

SECTION 3.

Creation

Chapter 118G of the General Laws as appearing in the 2000 Official Edition is hereby amended by striking out sections one through twenty-four and inserting in place the following sections:-

Section 1.

Definitions

As used in this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

"Actual costs", all direct and indirect costs incurred by a hospital or a community health center in providing medically necessary care and treatment to its patients, determined in accordance with generally accepted accounting principles.

"Acute hospital", the teaching hospital of the University of Massachusetts Medical School and any hospital licensed under section fifty-one of chapter one hundred and eleven and which contains a majority of medical-surgical, pediatric, obstetric, and maternity beds, as defined by the department of public health.

"Ambulatory service facility." A facility licensed in this Commonwealth, not part of a hospital, which provides medical, diagnostic or surgical treatment to patients not requiring hospitalization, including ambulatory surgical facilities, ambulatory imaging or diagnostic centers, birthing centers, freestanding emergency rooms and any other facilities providing ambulatory care which charge a separate facility charge. This term does not include the offices of private physicians or dentists, whether for individual or group practices.

"Bad debt", an account receivable based on services furnished to any patient which (i) is regarded as uncollectable, following reasonable collection efforts consistent with regulations of the division, which regulations shall allow third party payers to negotiate with hospitals to collect the bad debt of its enrollees, (ii) is charged as a credit loss, (iii) is not the obligation of any governmental unit or of the federal government or any agency thereof, and (iv) is not free care.

"Carrier", an insurer licensed or otherwise authorized to transact accident or health insurance under chapter 175; a nonprofit hospital service corporation organized under chapter 176A; a nonprofit medical service corporation organized under chapter 176B;

"Case mix", the description and categorization of a hospital's patient population according to criteria approved by the division including, but not limited to, primary and secondary diagnoses, primary and secondary procedures, illness severity, patient age and source of payment.

"Charge" or "rate." The amount billed by a provider for specific goods or services provided to a patient, prior to any adjustment for contractual allowances.

"Child", a person who is under eighteen years of age.

"Community health centers", health centers operating in conformance with the requirements of Section 330 of United States Public Law 95-626 and shall include all community health centers which file cost reports as requested by the division.

"Comprehensive cancer center", the hospital of any institution so designated by the national cancer institute under the authority of 42 USC sections 408(a) and 408(b) organized solely for the treatment of cancer, and offered exemption from the medicare diagnosis related group payment system under 42 C.F.R. 405.475(f).

"Council." The Health Care Cost Containment Council.

"Covered services." Any health care services or procedures connected with episodes of illness that require either inpatient hospital care or major ambulatory service such as surgical, medical or major radiological procedures, including any initial and follow-up outpatient services associated with the episode of illness before, during or after inpatient hospital care or major ambulatory service. The term does not include routine outpatient services connected with episodes of illness that do not require hospitalization or major ambulatory service.

"Data source." A hospital; ambulatory service facility; physician; health maintenance organization, professional health services corporation; commercial insurer providing health or accident insurance; self-insured employer providing health or accident coverage or benefits for employees employed in the Commonwealth; administrator of a self-insured or partially self-insured health or accident plan providing covered services in the Commonwealth; any health and welfare fund that provides health or accident benefits or insurance pertaining to covered service in the Commonwealth; the Department of Medical Assistance for those covered services it purchases or provides through the medical assistance program and any other payor for covered services in the Commonwealth other than an individual.

"Dependent", the spouse and children of any employee if such persons would qualify for dependent status under the Internal Revenue Code or for whom a support order could be granted under chapters two hundred and eight, two hundred and nine or two hundred and nine C.

"Disproportionate share hospital", any acute hospital that exhibits a payer mix where a minimum of sixty-three per cent of the acute hospital's gross patient service revenue is attributable to Title XVIII and Title XIX of the federal Social Security Act other government payors and free care.

"DRG", a patient classification scheme which provides a means of relating the type of patients a hospital treats, such as its case mix, to the cost incurred by the hospital.

"Eligible person", a person who qualifies for financial assistance from a governmental unit in meeting all or part of the cost of general health supplies, care or rehabilitative services and accommodations.

"Employee", a person who performs services primarily in the commonwealth for remuneration for a commonwealth employer. A person who is self-employed shall not be deemed to be an employee.

"Employer", an employer as defined in section one of chapter one hundred and fifty-one A.

"Enrollee", a person who becomes a member of an insurance program of the division either individually or as a member of a family.

"Financial requirements", a hospital's requirement for revenue which shall include, but not be limited to, reasonable operating, capital and working capital costs, the reasonable costs of depreciation of plant and equipment and the reasonable costs associated with changes in medical practice and technology.

"Fiscal year", the twelve month period during which a hospital keeps its accounts and which ends in the calendar year by which it is identified.

"Free care", unpaid hospital charges of medically necessary services to (1) patients deemed financially unable to pay, in whole or in part, for their care, pursuant to regulations of the division; (2) uninsured patients who receive emergency care in a hospital emergency room or who receive other hospital care associated with such emergency care services, for which the costs have not been collected after despite reasonable efforts in accordance with regulations of the division; or (3) patients in situations of medical hardship in which major expenditures for health care have depleted or can reasonably be expected to deplete the financial resources of the individual to the extent that medical services cannot be paid, as determined by regulations of the division. For purposes of this section, "emergency care" shall include, but not be limited to: hospital services provided after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity which include, but not be limited to, severe pain which pain reasonably appears may result in jeopardizing the patients' health if immediate medical attention is withheld; serious impairment to bodily functions or serious dysfunction of any bodily organ or part, examination or treatment for

emergency medical condition; active labor in women; or any such other service rendered to the extent required pursuant to 42 USC 1395(dd).

"General health supplies, care or rehabilitative services and accommodations", all supplies, care and services of medical, optometric, dental, surgical, podiatric, psychiatric, therapeutic, diagnostic, rehabilitative, supportive or geriatric nature, including inpatient and outpatient hospital care and services, and accommodations in hospitals, sanatoria, infirmaries, convalescent and nursing homes, retirement homes, facilities established, licensed or approved pursuant to the provisions of chapter one hundred and eleven B and providing services of a medical or health-related nature, and similar institutions including those providing treatment, training, instruction and care of children and adults; provided, however, that rehabilitative service shall include only rehabilitative services of a medical or health-related nature which are eligible for reimbursement under the provisions of Title XIX of the Social Security Act.

"Governmental unit", the commonwealth, any department, agency board or commission of the commonwealth, and any political subdivision of the commonwealth.

"Gross inpatient service revenue", the total dollar amount of a hospital's charges for inpatient services rendered in a fiscal year.

"Gross patient service revenue", the total dollar amount of a hospital's charges for services rendered in a fiscal year.

"Health care services", supplies, care and services of medical, surgical, optometric, dental, podiatric, chiropractic, psychiatric, therapeutic, diagnostic, preventative, rehabilitative, supportive or geriatric nature including, but not limited to, inpatient and outpatient acute hospital care and services; services provided by a community health center or by a sanatorium, as included in the definition of "hospital" in Title XVIII of the federal Social Security Act, and treatment and care compatible with such services or by a health maintenance organization.

"Health care facility." A general or special hospital, including tuberculosis and psychiatric hospitals, kidney disease treatment centers, including freestanding hemodialysis units, and ambulatory service facilities as defined in this section, and hospices, both profit and nonprofit, and including those operated by an agency of State or local government.

"Health care insurer." Any person, corporation or other entity that offers administrative, indemnity or payment services for health care in exchange for a premium or service charge under a program of health care benefits, including, but not limited to, an insurance company, association or exchange issuing health insurance policies in this Commonwealth; hospital plan corporation; professional health services plan; health maintenance organization; preferred provider organization; fraternal benefit societies; beneficial societies; and third-party administrators; but excluding employers, labor unions or health and welfare funds jointly or separately administered by employers or labor unions that purchase or self-fund a program of health care benefits for their employees or members and their dependents.

"Health maintenance organization." An organized system licensed pursuant to chapter 176G.

"Hospital." An institution, licensed in this Commonwealth, which is a general, tuberculosis, mental, chronic disease or other type of hospital, or kidney disease treatment center, whether profit or nonprofit, and including those operated by an agency of State or local government.

"Health insurance company", a company as defined in section one of chapter one hundred and seventy-five which engages in the business of health insurance.

"Health insurance plan", the medicare program or an individual or group contract or other plan providing coverage of health care services and which is issued by a health insurance company, a hospital service corporation, a medical service corporation or a health maintenance organization.

"Health maintenance organization", a company which provides or arranges for the provision of health care services to enrolled members in exchange primarily for a prepaid per capita or aggregate fixed sum as further defined in section one of chapter one hundred and seventy-six G.

"Hospital", any hospital licensed under section fifty-one of chapter one hundred and eleven, the teaching hospital of the University of Massachusetts Medical School and any psychiatric facility licensed under section nineteen of chapter nineteen.

"Hospital agreement", an agreement between a nonprofit hospital service corporation and the hospital signatory thereto approved by the division under section five of chapter one hundred and seventy-six A.

"Hospital service corporation", a corporation established for the purpose of operating a nonprofit hospital service plan as provided in chapter one hundred and seventy-six A.

"Indigent care." The actual costs, as determined by the council, for the provision of appropriate health care, on an inpatient or outpatient basis, given to individuals who cannot pay for their care because they are above the medical assistance eligibility levels and have no health insurance or other financial resources which can cover their health care.

"Major ambulatory service." Surgical or medical procedures, including diagnostic and therapeutic radiological procedures, commonly performed in hospitals or ambulatory service facilities, which are not of a type commonly performed or which cannot be safely performed in physicians' offices and which require special facilities such as operating rooms or suites or special equipment such as fluoroscopic equipment or computed tomographic scanners, or a postprocedure recovery room or short-term convalescent room.

"Managed health care plan", a health insurance plan which provides or arranges for, supervises and coordinates health care services to enrolled participants, including plans administered by health maintenance organizations and preferred provider organizations.

"Medical procedure incidence variations." The variation in the incidence in the population of specific medical, surgical and radiological procedures in any given year, expressed as a deviation from the norm, as these terms are defined in the classical statistical definition of "variation," "incidence," "deviation" and "norm."

"Medically indigent" or "indigent." The status of a person as described in the definition of indigent care.

"Medicaid program", the medical assistance program administered by the division of medical assistance pursuant to chapter one hundred and eighteen E and in accordance with Title XIX of the Federal Social Security Act or any successor statute.

"Medical assistance program", the medicaid program, the Veterans Administration health and hospital programs and any other medical assistance program operated by a governmental unit for persons categorically eligible for such program.

"Medically necessary services", medically necessary inpatient and outpatient services as mandated under Title XIX of the Federal Social Security Act. Medically necessary services shall not include:

- (1) non-medical services, such as social, educational and vocational services;
- (2) cosmetic surgery;
- (3) canceled or missed appointments;
- (4) telephone conversations and consultations;
- (5) court testimony;
- (6) research or the provision of experimental or unproven procedures including, but not limited to, treatment related to sex-reassignment surgery, and pre-surgery hormone therapy; and
- (7) the provision of whole blood; and provided, however, that administrative and processing costs associated with the provision of blood and its derivatives shall be payable.

"Medical service corporation", a corporation established for the purpose of operating a nonprofit medical service plan as provided in chapter one hundred and seventy-six B.

"Medicare program", the medical insurance program established by Title XVIII of the Social Security Act.

"Non-acute hospital", any hospital which is not an acute hospital.

"Patient", any natural person receiving health care services from a hospital.

"Payment." The payments that providers actually accept for their services, exclusive of charity care, rather than the charges they bill.

"Payor." Any person or entity, including, but not limited to, health care insurers and purchasers, that make direct payments to providers for covered services.

"Physician." An individual licensed under the laws of this Commonwealth to practice medicine and surgery

"Pool", the uncompensated care pool established pursuant to section 18.

"Payments subject to surcharge", all amounts paid, directly or indirectly, by surcharge payors to acute hospitals for health services and ambulatory surgical centers for ambulatory surgical center services on or after the effective date of this section; provided, however, that ""payments subject to surcharge" shall not include

(i) payments, settlements, and judgments arising out of third party liability claims for bodily injury which are paid under the

terms of property or casualty insurance policies,

(ii) payments made on behalf of Medicaid recipients, Medicare beneficiaries, or persons enrolled in policies issued pursuant to chapter 176K or similar policies issued on a group basis; and provided further, that ""payments subject to surcharge" may exclude amounts established in regulations promulgated by the division for which the costs and efficiency of billing a surcharge payor or enforcing collection of the surcharge from a surcharge payor would not be cost effective.

"Private sector charges", gross patient service revenue attributable to all patients less gross patient service revenue attributable to Titles XVIII and XIX, other publicly aided patients, free care and bad debt.

"Preferred provider organization." Any arrangement between a health care insurer and providers of health care services which specifies rates of payment to such providers which differ from their usual and customary charges to the general public and which encourage enrollees to receive health services from such providers.

"Provider." A hospital, an ambulatory service facility or a physician.

"Provider quality." The extent to which a provider renders care that, within the capabilities of modern medicine, obtains for patients medically acceptable health outcomes and prognoses, adjusted for patient severity, and treats patients compassionately and responsively.

"Provider service effectiveness." The effectiveness of services rendered by a provider, determined by measurement of the medical outcome of patients grouped by severity receiving those services.

"Publicly aided patient", a person who receives hospital care and services for which a governmental unit is liable, in whole or in part, under a statutory program of public assistance.

"Public payer-dependent non-acute hospital", any non-acute hospital that

- (1) was certified by the Secretary of the United States Department of Health and Human Services as participating in the federal medicare program pursuant to clause (iv) of 42 USC section 1395ww (d)(1)(B) on January first, nineteen hundred and ninety-six;
- (2) is not owned by the commonwealth; and
- (3) exhibits a payor mix in which a minimum of fifteen per cent of such hospital's gross patient service revenue, as reported on the RSC-403 for hospital fiscal year nineteen hundred and ninety-four, was attributable to Title XIX of the federal Social Security Act. Such term does not include a hospital that was reimbursed for services provided to individuals entitled to medical assistance under chapter one hundred and eighteen E for fiscal year nineteen hundred and ninety-six pursuant to a contract between the hospital and the division of medical assistance.

"Purchaser." All corporations, labor organizations and other entities that purchase benefits which provide covered services for their employees or members, either through a health care insurer or by means of a self-funded program of benefits, and a certified bargaining representative that represents a group or groups of employees for whom employers purchase a program of benefits which provide covered services, but excluding entities defined in this section as "health care insurers."

"Raw data" or "data." Data collected by the council under section 6 in the form initially received. No data shall be released by the council except as provided for in section 11.

"Revenue center", a functioning unit of a hospital which provides distinctive services to a patient for a charge.

"Resident", a person living in the commonwealth, as defined by the division by regulation; provided, however, that such regulation shall not define a resident as a person who moved into the commonwealth for the sole purpose of securing health insurance under this chapter. Confinement of a person in a nursing home, hospital or other medical institution shall not in and of itself, suffice to qualify such person as a resident.

"Self-employed", a person who, at common law, is not considered to be an employee and whose primary source of income is derived from the pursuit of a bona fide business.

"Self-insurance health plan", a plan which provides health benefits to the employees of a business, which is not a health insurance plan, and in which the business is liable for the actual costs of the health care services provided by the plan and administrative costs.

"Severity." In any patient, the measureable degree of the potential for failure of one or more vital organs.

"Small business", a business in which the total number of full-time employees, when averaged on an annual basis, does not exceed fifty, including only of the self-employed.

"Sole community provider", any acute hospital which qualifies as a sole community provider under medicare regulations or under regulations promulgated by the division, which regulations shall consider factors including, but not limited to, such as isolated location, weather conditions, travel conditions, percentage of Medicare, Medicaid and free care provided and the absence of other reasonably accessible hospitals in the area. Such hospitals shall include those which are located more than twenty-five miles from other such hospitals in the commonwealth and which provide services for at least sixty percent of their primary service area.

"Specialty hospital", an acute hospital which qualifies for an exemption from the medicare prospective payment system regulations or any acute hospital which limits its admissions to patients under active diagnosis and treatment of eyes, ears, nose and throat or to children or patients under obstetrical care.

"State institution", any hospital, sanatorium, infirmary, clinic and other such facility owned, operated or administered by the commonwealth, which furnishes general health supplies, care or rehabilitative services and accommodations.

"Surcharge payor," an individual or entity that pays for or arranges for the purchase of health care services provided by acute hospitals and ambulatory surgical center services provided by ambulatory surgical centers; provided, however, that the terms "surcharge payor" shall not include Title XVIII and Title XIX programs and their beneficiaries or recipients, other governmental programs of public assistance and their beneficiaries or recipients, and the workers compensation program established pursuant to chapter 152.

"Third party payer", an entity including, but not limited to, Title XVIII and Title XIX programs, other governmental payers, insurance companies, health maintenance organizations and nonprofit hospital service corporations. Third party payer shall not include a purchaser responsible for payment for health care services rendered by a hospital, either to the purchaser or to the hospital.

"Title XIX," Title XIX of the Social Security Act, 42 USC 1396 et seq., or any successor statute enacted into federal law for the same purposes as Title XIX.

"Uninsured patient", a patient who is not covered by a health insurance plan, a self-insurance health plan, or a medical assistance program.

Section 2.

Health Care Cost Containment Council.

(a) Establishment.-- There is hereby established an independent council to be known as the health Care Cost Containment Council.

(b) Composition.-- The council shall consist of 13 voting members, composed of and appointed in accordance with the following:

- a. The Secretary of the Executive Office of Health and Human Services;
- b. The Commissioner of the Division of Insurance;
- c. The Commissioner of the Division of Medical Assistance;
- d. Two representatives of the business community, at least one of whom represents small business, who are purchasers of health care as defined in section 3, none of which is primarily involved in the provision of health care or health insurance, one of which shall be appointed by the President of the Senate and one of which shall be appointed by the Speaker of the House of Representatives from a list of seven qualified persons recommended by the Associated Industries Association of which three nominees shall be representatives of small business;
- e. Two representatives of organized labor, one of which shall be appointed by the President of the Senate and one of which shall be appointed by the Speaker of the House of Representatives from a list of five qualified persons recommended by the Massachusetts AFL-CIO;
- f. One representative of consumers who is not primarily involved in the provision of health care or health care insurance, appointed by the Governor from a list of three qualified persons recommended jointly by the President of the Senate and the Speaker of the House;
- g. One representative of hospitals, appointed by the Governor from a list of three qualified hospital representatives recommended by the Massachusetts Hospital Association. The representative under this paragraph may appoint a delegate to act for the representative only at meetings of committees as provided for in subsection (f)
- h. One representative of physicians, appointed by the Governor from a list of three qualified physician representatives recommended by the Massachusetts Medical Society. The representative under this paragraph may appoint a delegate to act for the representative only at meetings of committees as provided for in subsection

(f);

- i. One representative of nurses, appointed by the Governor from a list of three qualified persons recommended by the Massachusetts Nurses Association and the Massachusetts Organization of Nurses Executives;
- j. One representative from a health maintenance organization, appointed by the Governor from a list of three qualified persons recommended by the Massachusetts Association of Health Plans; and
- k. One representative of a carrier, appointed by the Governor from a list of three qualified persons recommended by the Massachusetts Association of Health Plans.
- l. In the case of each appointment to be made from a list supplied by a specified organization, it is incumbent upon that organization to consult with and provide a list that reflects the input of other equivalent organizations representing similar interests. Each appointing authority will have the discretion to request additions to the list originally submitted. Additional names will be provided not later than 15 days after such request. Appointments shall be made by the appointing authority no later than 90 days after receipt of the original list. If, for any reason, any specified organization supplying a list should cease to exist, then the respective appointing authority shall specify a new equivalent organization to fulfill the responsibilities of this act.

(c) Chairs.-- The members shall annually elect, by a majority vote of the members, a chairperson and a vice chairperson of the council from among the business and labor representatives on the council.

(d) Quorum.-- Seven members shall constitute a quorum for the transaction of any business, and the act by the majority of the members present at any meeting in which there is a quorum shall be deemed to be the act of the council.

(e) Meetings.-- All meetings of the council shall be advertised and conducted pursuant to Chapter 30A unless otherwise provided in this section.

- a. The council shall meet at least once every two months, and may provide for special meetings as it deems necessary. Meeting dates shall be set by a majority vote of the members of the council or by the call of the chairperson upon seven days' notice to all council members.
- b. All meetings of the council shall be publicly advertised, as provided for in this subsection, and shall be open to the public, except that the council, through its bylaws, may provide for executive sessions of the council. No act of the council shall be taken in an executive session.
- c. The council shall file a schedule of its meetings with the Secretary of State and shall publish a schedule of its meetings in at least two newspapers, one newspaper in general circulation in the Commonwealth. Such notice shall be published and filed at least once in each calendar quarter and shall list the schedule of meetings of the council to be held in the subsequent calendar quarter. Such notice shall specify the date, time and place of the meeting and shall state that the council's meetings are open to the general public, except that no such notice shall be required for executive sessions of the council.
- d. All action taken by the council shall be taken in open public session, and action of the council shall not be taken except upon the affirmative vote of a majority of the members of the council present during meetings at which a quorum is present.

(f) Bylaws.-- The council shall adopt bylaws, not inconsistent with this act, and may appoint such committees or elect such officers subordinate to those provided for in subsection (c) as it deems advisable. The council shall provide for the approval and participation of additional delegates appointed under subsection b (g) and (h) so that each organization represented by delegates under those paragraphs shall not have more than one vote on any committee to which they are appointed. The council shall also appoint a technical advisory group which shall, on an ad hoc basis, respond to issues presented to it by the council or committees of the council and shall make recommendations to the council. The technical advisory group shall include physicians, researchers and biostatisticians. In appointing the technical advisory group, the council shall consult with, and take nominations from, the representatives of the Massachusetts Hospital Association, the Massachusetts Medical Society or other like organizations. At its discretion, nominations shall be approved by the executive committee of the council. If the subject matter of any project exceeds the expertise of the technical advisory group, physicians in appropriate specialties who possess current knowledge of the issue under study may be consulted. The technical advisory group shall also review the availability and reliability of severity of illness measurements as they relate to small hospitals and psychiatric, rehabilitation and children's hospitals and shall make recommendations to the council based upon this review.

(g) Compensation.-- The members of the council shall not receive a salary or per diem allowance for serving as members of the council but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties. Said expenses may include reimbursement of travel and living expenses while engaged in council business.

(h) Terms.-- a. The terms of the Secretary of the Executive Office of Health and Human Services, the Commissioner of the Division Medical Assistance and the Commissioner of the Division of Insurance shall be concurrent with their holding of public office. The nine appointed council members shall each serve for a term of three years and shall continue to serve thereafter until their successor is appointed, except that, of the members first appointed:

- i. One of the representatives of business and the representative of consumers shall serve for a term to expire on June 30 of the year following their appointment.
- ii. One of the representatives of organized labor and the representative of a carrier shall serve for a term to expire on June 30 of the second year following their appointment.

iii. The other representatives of business and organized labor and the representatives of hospitals, physicians and health maintenance organizations shall serve for a term to expire on June 30 of the third year following their appointment.

b. Vacancies on the council shall be filled in the same manner in which they were originally designated under subsection (b), within 60 days of the vacancy, except that when vacancies occur among the representatives of business or organized labor, two nominations shall be submitted by the organization specified in subsection (b) for each vacancy on the council. If the officer required in subsection (b) to make appointments to the council fails to act within 60 days of the vacancy, the council chairperson may appoint one of the persons recommended for the vacancy, until the appointing authority makes the appointment.

c. A member may be removed for just cause by the appointing authority after recommendation by a vote of at least 8 members of the council.

(i)

Commencement of Operations.

a. Within 60 days after the effective date of this act, each organization or individual required to submit a list of recommended persons to the Governor, the President of the Senate or the Speaker of the House of Representatives under subsection (b) shall submit said list.

b. Within 90 days of the effective date of this act, the Governor, the President of the Senate and the Speaker of the House of Representatives shall make all of the appointments called for in subsection (b), and the council shall begin operations immediately following these appointments.

(j) Subsequent appointments.-Submission of lists of recommended persons and appointments of council members for the second and succeeding terms shall be made in the same manner as prescribed in subsection (b), except that:

a. Organizations required under subsection (b) to submit lists of recommended persons shall do so at least 60 days prior to expiration of the council members' terms.

b. The officer required under subsection (b) to make appointments to the council shall make said appointments at least 30 days prior to expiration of the council members' terms. If the appointments are not made within the specified time, the council chairperson may make interim appointments from the lists of recommended individuals. An interim appointment shall be valid only until the appropriate officer under subsection (b) makes the required appointment. Whether the appointment is by the required officer or by the chairperson of the council, the appointment shall become effective immediately upon expiration of the incumbent member's term.

(k) Appointments of acting councilors.-Should any organization or individual fail to submit a list of recommended persons as required under subsection (b) within the time limits in subsection (i) or (j), the officer designated to make the appointment under subsection (b) shall appoint as many acting councilors as required under subsection (b) until such time as the list of recommended persons is submitted by the original organization as required in subsection (b).

Section 3.

Powers and duties of the council.

(a) General powers.-The council shall exercise all powers necessary and appropriate to carry out its duties, including the following:

a. To employ an executive director, investigators and other staff necessary to comply with the provisions of this act and regulations promulgated thereunder, to employ or retain legal counsel, and to engage professional consultants, as it deems necessary to the performance of its duties. Any consultants, other than sole source consultants, engaged by the council shall be selected in accordance with the provisions for contracting with vendors set forth in section 12.

b. To fix the compensation of all employees and to prescribe their duties. Notwithstanding the independence of the council under section 2(a), employees under this paragraph shall be deemed employees of the commonwealth for the purpose of benefits provided for under Chapter 32 and 32A of the General Laws.

c. To make and execute contracts and other instruments, including those for purchase of services and purchase or leasing of equipment and supplies, necessary or convenient to the exercise of the powers of the council. Any such contract shall be let only in accordance with the provision for contracting with vendors set forth in section 12.

d. To enter into agreement or transactions with any federal, state or municipal agency or other public institution or with any private individual, partnership, firm, corporation, association or other entity;

e. To acquire, own, hold, dispose of, and encumber personal property and to lease real property in the exercise of

its powers and the performance of its duties;

f. To maintain a prudent level of reserve funds to protect the solvency of any trust funds under the operations and control of the council;

g. To conduct examinations and investigations, to conduct audits, pursuant to the provisions of subsection (c), and to hear testimony and take proof, under oath or affirmation, at public or private hearings, on any matter necessary to its duties.

h. To do all things necessary to carry out its duties under the provisions of this act.

(b) Rules and regulations.-

The council may adopt and amend rules and regulations in accordance with chapter 30A for the administration of its duties and power and to effectuate the provision and purposes of this act.

(c) Audit powers.-

The council shall have the right to independently audit all information required to be submitted by data sources as needed to corroborate the accuracy of the submitted data, pursuant to the following:

a. Audits of information submitted by providers or health care insurers shall be performed on a sample and issue-specific basis, as needed by the council, and shall be coordinated, to the extent practicable, with audits performed by the Commonwealth. All healthcare insurers and providers are hereby required to make those books, records of accounts and any other data needed by the auditors available to the council at a convenient location within 30 days of a written notification by the council.

b. Audits of information submitted by purchasers shall be performed on a sample basis, unless there exists reasonable cause to audit specific purchasers, but in no case shall the council have the power to audit financial statements of purchasers.

c. All audits performed by the council shall be performed at the expense of the council.

(d) General duties and functions.-

The council is hereby authorized to and shall perform the following duties and functions:

a. Develop a computerized system for the collection, analysis and dissemination of data. The council may contract with a vendor who will provide such data processing services. The council shall assure that the system will be capable of processing all data required to be collected under this act. Any vendor selected by the council shall be selected in accordance with the provisions of section 12, and said vendor shall relinquish any and all proprietary rights or claims to the database created as a result of implementation of the data processing system.

b. Establish a Massachusetts Uniform Claims and Billing Form for all data sources and all providers that shall be utilized and maintained by all data sources and all providers for all services covered under this act.

c. Collect and disseminate data, as specified in section 4, and other information from data sources to which the council is entitled, prepared according to formats, time frames and confidentiality provisions as specified in sections 4 and 6, and by the council.

d. Adopt and implement a methodology to collect and disseminate data reflecting provider quality and provider service effectiveness pursuant to section 4 and to continuously study quality of care systems.

e. Subject to the restrictions on access to raw data set forth in section 6, issue special reports and make available raw data as defined in section 1 to any purchaser requesting it. Sale by any recipient or exchange or publication by a recipient, other than a purchaser, of raw council data to other parties without the express written consent of, and under terms approved by, the council shall be unauthorized use of data pursuant to section 6(c).

f. On an annual basis, file with the General Court on the first Wednesday in November, a list of all the raw data reports it has prepared under section 6(f) and a description of the data obtained through each computer-to-computer access it has provided under section 6(f) and of the names of the parties to whom the council provided the reports or the computer-to-computer access during the previous month.

g. Promote competition in the health care and health insurance markets.

h. Assure that the use of council data does not raise access barriers to care.

i. Make annual reports to the General Court on the first Wednesday in March on the rate of increase in the cost of health care in the Commonwealth and the effectiveness of the council in carrying out the legislative intent of this act. In addition, the council may make recommendations on the need for further health care cost containment legislation. The council shall also make annual reports to the General Court on the quality and effectiveness of health care and access to health care for all citizens of the Commonwealth.

j. Adopt, within one year, a model patient itemized statement for all providers, which itemizes all charges for services, equipment, supplies and medicine, designed to be more understandable than current patient bills. Each provider shall be required to utilize said model patient itemized statement for covered services within 90 days of adoption of said form by the council. Such model patient itemized statements shall be written in language that is understandable to the average person and be presented to each patient upon discharge from a health care facility or provision of patient services or within a reasonable time thereafter. Patients may request a copy of their Massachusetts Uniform Claims and Billing Form; and, upon request, the provider shall furnish this form to the patient within 30 days.

- k. Conduct studies and publish reports thereon analyzing the effects that non-inpatient, alternative health care delivery systems have on health care costs. These systems shall include, but not be limited to: health maintenance organizations; preferred provider organizations; primary health care facilities; home health care; attendant care; ambulatory service facilities; freestanding emergency centers; birthing centers; and hospice care. These reports shall be submitted to the General Court and shall be made available to the public.
- l. Conduct studies and make reports concerning the utilization of experimental and nonexperimental transplant surgery and other highly technical and experimental procedures, including costs and mortality rates;
- m. Review and comment upon all capital expenditure projects requiring a determination of need pursuant to the provisions of section twenty-five of chapter one hundred and eleven of the General Laws, including, but not limited to, less costly or more effective alternative financing methods for such projects; the immediate and long-term financial feasibility of such projects; the probable impact of the project on costs of and charges for services; and the availability of funds for capital and operating needs. The council shall transmit to the department of public health its written recommendations on each project, which shall become part of the written record compiled by said department during its review of such project. The council executive director shall appear and comment on any application for a determination of need where a public hearing is required pursuant to the provisions of said section twenty-five C of said chapter. To carry out the purposes of this paragraph, the council executive director shall act as a liaison with said department.
- n. To contract pursuant to section 12, with a third part administrator to administer the uncompensated care pool established by section 22;
- o. To oversee the health finance unit established pursuant to section 14.

Section 4.

Data submission and collection.

- (a) Submission of data.-The council is hereby authorized to collect and data sources are hereby required to submit, upon request of the council, all data required in this section, according to uniform submission formats, coding systems and other technical specifications necessary to render the incoming data substantially valid, consistent, compatible and manageable using electronic data processing according to data submission schedules, such schedules to avoid, to the extent possible, submission of identical data from more than one data source, established and promulgated by the council in regulations pursuant to its authority under section 3(b). If payor data is requested by the council, it shall, to the extent possible, be obtained from primary payor sources.
- (b) Massachusetts Uniform Claims and Billing Form.-The council shall adopt, within 180 days of the commencement of its operations pursuant to section 2(i), a Massachusetts Uniform Claims and Billing Form format. The council shall furnish said claims and billing form format to all data sources, and said claims and billing form shall be utilized and maintained by all data sources for all services covered by this act. The Massachusetts Uniform Claims and Billing Form shall consist of the Uniform Hospital Billing Form UB-82/HCFA-1450, and the HCFA-1500, or their successors, as developed by the National Uniform Billing Committee, with additional fields as necessary to provide all of the data set forth in subsections (c) and (d).
- (c) Data elements.-For each covered service performed in Massachusetts, the council shall be required to collect the following data elements:
 - a. uniform patient identifier, continuous across multiple episodes and providers;
 - b. patient date of birth;
 - c. patient sex;
 - d. patient race, consistent with the method of collection of race/ethnicity data by the United States Bureau of the Census and the United States Standard Certificates of Live Birth and Death;
 - e. patient ZIP Code number;
 - f. date of admission;
 - g. date of discharge;
 - h. principal and up to five secondary diagnoses by standard code, including external cause code;
 - i. principal procedure by council-specified standard code and date;
 - j. up to three secondary procedures by council- specified standard codes and dates;
 - k. uniform health care facility identifier, continuous across episodes, patients and providers;
 - l. uniform identifier of admitting physician, by unique physician identification number established by the council, continuous across episodes, patients and providers;
 - m. uniform identifier of consulting physicians, by unique physician identification number established by the council, continuous across episodes, patients and providers;
 - n. total charges of health care facility, segregated into major categories, including, but not limited to, room and board, radiology, laboratory, operating room, drugs, medical supplies and other goods and services according to guidelines specified by the council;
 - o. actual payments to health care facility, segregated, if available, according to the categories specified in paragraph n;
 - p. charges of each physician or professional rendering service relating to an incident of hospitalization or treatment in an ambulatory service facility;

- q. actual payments to each physician or professional rendering service pursuant to paragraph p;
- r. uniform identifier of primary payor;
- s. ZIP Code number of facility where health care service is rendered;
- t. uniform identifier for payor group contract number;
- u. patient discharge status; and
- v. provider service effectiveness and provider quality pursuant to section 3(d)(d) and subsection (d).

(d) Provider quality and provider service effectiveness data elements.-In carrying out its duty to collect data on provider quality and provider service effectiveness under section 3(d)(d) and subsection (c)(v), the council shall define a methodology to measure provider service effectiveness which may include additional data elements to be specified by the council sufficient to carry out its responsibilities under section 3(d)(d). The council may adopt a nationally recognized methodology of quantifying and collecting data on provider quality and provider service effectiveness until such time as the council has the capability of developing its own methodology and standard data elements. The council shall include in the Massachusetts Uniform Claims and Billing Form a field consisting of the data elements required pursuant to subsection (c)(v) to provide information on each provision of covered services sufficient to permit analysis of provider quality and provider service effectiveness within 180 days of commencement of its operations pursuant to section 2.

(e) Reserve field utilization and addition or deletion of data elements.-The council shall include in the Massachusetts Uniform Claims and Billing Form a reserve field. The council may utilize the reserve field by adding other data elements beyond those required to carry out its responsibilities under section 3(d)(c) and (d) and subsections (c) and (d), or the council may delete data elements from the Massachusetts Uniform Claims and Billing Form only by a majority vote of the council and only pursuant to the following procedure:

- a. The council shall obtain a cost-benefit analysis of the proposed addition or deletion, which shall include the cost to data sources of any proposed additions.
- b. The council shall publish notice of the proposed addition or deletion, along with a copy or summary of the cost-benefit analysis, with the General Court, and such notice shall include provision for a 60-day comment period.
- c. The council may hold additional hearings or request such other reports as it deems necessary and shall consider the comments received during the 60-day comment period and any additional information gained through such hearings or other reports in making a final determination on the proposed addition or deletion.

(f) Other data required to be submitted.-Providers are hereby required to submit and the council is hereby authorized to collect, in accordance with submission dates and schedules established by the council, the following additional data, provided such data is not available to the council from public records:

- a. Audited annual financial reports of all hospitals and ambulatory service facilities providing covered services as defined in section 1.
- b. The Medicare cost report OMB Form 2552 or equivalent Federal form, or the AG-12 form for Medical Assistance or successor forms, whether completed or partially completed, and including the settled Medicare cost report and the certified AG-12 form.
- c. Additional data, including, but not limited to, data which can be used to provide at least the following information:

- i. the incidence of medical and surgical procedures in the population for individual providers;
- ii. physicians who provide covered services and accept medical assistance patients;
- iii. physicians who provide covered services and accept Medicare assignment as full payment;
- iv. mortality rates for specified diagnoses and treatments, grouped by severity, for individual providers;
- v. rates of infection for specified diagnoses and treatments, grouped by severity, for individual providers;
- vi. morbidity rates for specified diagnoses and treatments, grouped by severity, for individual providers;
- vii. readmission rates for specified diagnoses and treatments, grouped by severity, for individual providers; and rate of incidence of postdischarge professional care for selected diagnoses and procedures, grouped by severity, for individual providers.

- d. Any other data the council requires to carry out its responsibilities pursuant to section 3(d).

(g) Allowance for clarification or dissents.-The council shall maintain a file of written statements submitted by data sources who wish to provide an explanation of data that they feel might be misleading or misinterpreted. The council shall provide access to such file to any person and shall, where practical, in its reports and data files indicate the availability of such statements. When the council agrees with such statements, it shall correct the appropriate data and comments in its data files and subsequent reports.

(h) Availability of data.-Nothing in this act shall prohibit a purchaser from obtaining from its health care insurer, nor relieve said health care insurer from the obligation of providing said purchaser, on terms consistent with past practices, data previously provided or additional data not currently provided to said purchaser by said health care insurer pursuant to any existing or future arrangement, agreement or understanding.

SECTION 5.

Data dissemination and publication.

(a) Public reports.-Subject to the restrictions on access to council data set forth in section 6 and utilizing the data collected under section 4 as well as other data, records and matters of record available to it, the council shall prepare and issue reports to the General Court and to the general public, according to the following provisions:

a. The council shall, for every provider within the Commonwealth and within appropriate regions and subregions within the Commonwealth and for those inpatient and outpatient services which, when ranked by order of frequency, account for at least 65% of all covered services and which, when ranked by order of total payments, account for at least 65% of total payments, prepare and issue reports that at least provide information on the following:

- i. Comparisons among all providers of payments received, charges, population-based admission or incidence rates, and provider service effectiveness, such comparisons to be grouped according to diagnosis and severity, and to identify each provider by name and type or specialty.
- ii. Comparisons among all providers, except physicians, of inpatient and outpatient charges and payments for room and board, ancillary services, drugs, equipment and supplies and total services, such comparisons to be grouped according to provider quality and provider service effectiveness and according to diagnosis and severity, and to identify each health care facility by name and type.
- iii. Until and unless a methodology to measure provider quality and provider service effectiveness pursuant to sections 3(d)(d) and 4(c) and (d) is available to the council, comparisons among all providers, grouped according to diagnosis, procedure and severity, which identify facilities by name and type and physicians by name and specialty, of charges and payments received, readmission rates, mortality rates, morbidity rates and infection rates. Following adoption of the methodology specified in sections 3(d)(d) and 4(c) and (d), the council may, at its discretion, discontinue publication of this component of the report.
- iv. The incidence rate of selected medical or surgical procedures, the provider service effectiveness and the payments received for those providers, identified by the name and type or specialty, for which these elements vary significantly from the norms for all providers.

b. In preparing its reports under paragraph a, the council shall ensure that factors that have the effect of either reducing provider revenue or increasing provider costs, and other factors beyond a provider's control which reduce provider competitiveness in the market place, are explained in the reports. It shall also ensure that any clarifications and dissents submitted by individual providers under section 4(g) are noted in any reports that include release of data on that individual provider.

c. The council shall, for all providers within the Commonwealth and within appropriate regions and subregions within the Commonwealth, prepare and issue quarterly reports that at least provide information on the:

- i. number of physicians, by specialty, on the staff of each hospital or ambulatory service facility and those physicians on the staff that accept Medicare assignment as full payment and that accept Medical Assistance patients.

d. The council shall publish all reports required in this section with the General Court and shall publish, in at least one newspaper of general circulation in each subregion within the Commonwealth, reports on the providers in that subregion and subregions adjacent to it. In addition, the council shall advertise annually the availability of these reports and the charge for duplication and in at least one newspaper of general circulation in each subregion within the Commonwealth at least once in each calendar quarter.

(b) Raw data reports and computer access to council data.- The council shall provide special reports derived from raw data and a means for computer-to-computer access to its raw data to any purchaser, pursuant to section 6(f). The council shall provide such reports and computer-to-computer access, at its discretion, to other parties, pursuant to section 6(g). The council shall provide these special reports and computer-to-computer access in as timely a fashion as the council's responsibilities to publish the public reports required in this section will allow. Any such provision of special reports or computer-to-computer access by the council shall be made only subject to the restrictions on access to raw data set forth in section 6(b) and only after payment for costs of preparation or duplication pursuant to section 6(f) or (g).

Section 6.

Access to council data.

(a) Public access.-The information and data received by the council shall be utilized by the council for the benefit of the public and public officials. Subject to the specific limitations set forth in this section, the council shall make determinations on requests for information in favor of access.

a. Outreach programs.-The council shall develop and implement outreach programs designed to make its information understandable and usable to purchasers, providers, other Commonwealth agencies and the general public. The programs shall include efforts to educate, through pamphlets, booklets, seminars and other appropriate measures and to facilitate making more informed health care choices.

(b) Limitations on access.-Unless specifically provided for in this act, neither the council nor any contracting system vendor shall release and no data source, person, member of the public or other user of any data of the council shall gain access to:

a. Any raw data of the council that does not simultaneously disclose payment, as well as provider quality and provider service effectiveness pursuant to sections 3(d)(d) and 4(d) or 5(a)(a)(iii).

b. Any raw data of the council which could reasonably be expected to reveal the identity of an individual patient.

c. Any raw data of the council which could reasonably be expected to reveal the identity of any purchaser, as defined in section 1, other than a purchaser requesting data on its own group or an entity entitled to said purchaser's data pursuant to subsection (f).

d. Any raw data of the council relating to actual payments to any identified provider made by any purchaser, except that this provision shall not apply to access by a purchaser requesting data on the group for which it purchases or otherwise provides covered services or to access to that same data by an entity entitled to the purchaser's data pursuant to subsection (f).

e. Any raw data disclosing discounts or differentials between payments accepted by providers for services and their billed charges obtained by identified payors from identified providers unless comparable data on all other payors is also released and the council determines that the release of such information is not prejudicial or inequitable to any individual payor or provider or group thereof. In making such determination the council shall consider that it is primarily concerned with the analysis and dissemination of payments to providers, not with discounts.

(c) Unauthorized use of data.-Any person who knowingly releases council data violating the patient confidentiality, actual payments, discount data or raw data safeguards set forth in this section to an unauthorized person commits a misdemeanor of the first degree and shall, upon conviction, be sentenced to pay a fine of \$10,000 or to imprisonment for not more than five years, or both. An unauthorized person who knowingly receives or possesses such data commits a misdemeanor.

(d) Unauthorized access to data.-Should any person inadvertently or by council error gain access to data that violates the safeguards set forth in this section, the data must immediately be returned, without duplication, to the council with proper notification.

(e) Public access to records.-All public reports prepared by the council shall be public records and shall be available to the public for a reasonable fee.

(f) Access to raw council data by purchasers.-Pursuant to sections 3(d)(e) and 5(b) and subject to the limitations on access set forth in subsection (b) in this section, the council shall provide access to its raw data to purchasers in accordance with the following procedure:

a. Special reports derived from raw data of the council shall be provided by the council to any purchaser requesting such reports.

b. A means to enable computer-to-computer access by any purchaser to raw data of the council as defined in section 1 shall be developed, adopted and implemented by the council, and the council shall provide such access to its raw data to any purchaser upon request.

c. In the event that any employer obtains from the council, pursuant to paragraph a or (b), data pertaining to its employees and their dependents for whom said employer purchases or otherwise provides covered services as defined in section 1 and who are represented by a certified collective bargaining representative, said collective bargaining representative shall be entitled to that same data, after payment of fees as specified in paragraph d. Likewise, should a certified collective bargaining representative obtain from the council, pursuant to paragraph (a) or (b), data pertaining to its members and their dependents who are employed by and for whom covered services are purchased or otherwise provided by any employer, said employer shall be entitled to that same data, after payment of fees as specified in paragraph d.

d. In providing for access to its raw data, the council shall charge the purchasers which originally obtained such access a fee sufficient to cover its costs to prepare and provide special reports requested pursuant to paragraph a or to provide computer-to-computer access to its raw data requested pursuant to paragraph b. Should a second or

subsequent party or parties request this same information pursuant to paragraph c, the council shall charge said party a reasonable fee.

(g) Access to raw council data by other parties.--Subject to the limitations on access to raw council data set forth in subsection (b) in this section, the council may, at its discretion, provide special reports derived from its raw data or computer-to-computer access to parties other than purchasers. The council shall publish regulations that set forth the criteria and the procedure it shall use in making determinations on such access, pursuant to the powers vested in the council in section 2. In providing such access, the council shall charge the party requesting the access a reasonable fee.

Section 7.

Special studies and reports.

(a) Special studies.--The council may publish or contract for publication of special studies. Any special study so published shall become a public document.

(b) Special reports.--

a. Any council may study and issue a report on the special medical needs, demographic characteristics, access or lack thereof to health care services and need for financing of health care services of:

- i. Senior citizens, particularly low-income senior citizens, senior citizens who are members of minority groups and senior citizens residing in low-income urban or rural areas.
- ii. Low-income urban or rural areas.
- iii. Minority communities.
- iv. Women.
- v. Children.
- vi. Unemployed workers.
- vii. Veterans.

b. The reports shall include information on the current availability of services to these targeted parts of the population, and whether access to such services has increased or decreased over the past ten years, and specific recommendations for the improvement of their primary care and health delivery systems, including disease prevention and comprehensive health care services. The council may also study and report on the effects of using prepaid, capitated or HMO health delivery systems as ways to promote the delivery of primary health care services to the underserved segments of the population enumerated above.

c. The council may study and report on the short-term and long-term fiscal and programmatic impact on the health care consumer of changes in ownership of hospitals from nonprofit to profit, whether through purchase, merger or the like. The department may also study and report on factors, which have the effect of either reducing provider revenue or increasing provider cost, and other factors beyond a provider's control, which reduce provider competitiveness in the marketplace, are explained in the reports.

Section 8.

Enforcement; penalty.

(a) Compliance enforcement.--The council shall have standing to bring an action in law or in equity through private counsel in any court of common pleas to enforce compliance with any provision of this act, except section 7, or any requirement or appropriate request of the council made pursuant to this act. In addition, the Attorney General is authorized and shall bring any such enforcement action in aid of the council in any court of common pleas at the request of the council in the name of the Commonwealth.

(b) Penalty.--Any person who fails to supply data pursuant to section 4 commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine not to exceed \$1,000. Each day on which the required data is not submitted constitutes a separate offense under this paragraph. Any person who, after being sentenced under paragraph (a), fails to supply data pursuant to section 4 commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of \$10,000 or to imprisonment for not more than five years, or both. In addition, the appropriate licensing authority may suspend or revoke, after an adjudicatory proceeding in accordance with chapter thirty A, the license of any provider of services that knowingly fails to file with the council data, statistics, schedules or other information required by this section or by any regulation of the council or that knowingly falsifies the same.

Section 9.

Research and demonstration projects.

The council shall actively encourage research and demonstrations to design and test improved methods of assessing provider quality, provider service effectiveness and efficiency. To that end, provided that no data submission requirements in a mandated

demonstration may exceed the current reserve field on the Massachusetts Uniform Claims and Billing Form, the council may:

- a. Authorize contractors engaged in health services research selected by the council, pursuant to the provisions of section 12, to have access to the council's raw data files, providing such entities assume any contractual obligations imposed by the council to assure patient identity confidentiality.
- b. Place data sources participating in research and demonstrations on different data submission requirements from other data sources in this Commonwealth.
- c. Require data source participation in research and demonstration projects when this is the only testing method the council determines is promising.

Section 10.

Grievances and Hearings

(a) Procedures and requirements.-Pursuant to its powers to publish regulations under section 3(b) and with the requirements of this section, the council is hereby authorized and directed to establish procedures and requirements for the filing, hearing and adjudication of grievances against the council of any data source. Such procedures and requirements shall be published with the General Court.

(b) Claims; hearings.-Grievance claims of any data source shall be submitted to the council or to a third party designated by the council, and the council or the designated third party shall convene a hearing, if requested, and adjudicate the grievance.

Section 11.

Antitrust provisions.

Persons or entities required to submit data or information under this act or receiving data or information from the council in accordance with this act are declared to be acting pursuant to State requirements embodied in this act and shall be exempt from antitrust claims or actions grounded upon submission or receipt of such data or information.

Section 12.

Contracts with vendors.

(a) Any contract with any vendor other than a sole source vendor for purchase of services or for purchase or lease of supplies and equipment related to the council's powers and duties shall be let only after a public bidding process and only in accordance with the following provisions, and no contract shall be let by the council that does not conform to these provisions:

- a. The council shall prepare specifications fully describing the services to be rendered or equipment or supplies to be provided by a vendor and shall make these specifications available for inspection by any person at the council's offices during normal working hours and at such other places and such other times as the council deems advisable.
- b. The council shall publish notice of invitations to bid. The council shall also publish such notice in at least four newspapers in general circulation in the Commonwealth on at least three occasions at intervals of not less than three days. Said notice shall include at least the following:
 - i. The deadline for submission of bids by prospective vendors, which shall be no sooner than 30 days following the latest publication of the notice as prescribed in this paragraph.
 - ii. The locations, dates and times during which prospective vendors can examine the specifications required in paragraph (a).
 - iii. The date, time and place of the meeting or meetings of the council at which bids will be opened and accepted.
 - iv. A statement to the effect that any person is eligible to bid.

c. Bids shall be accepted as follows:

- i. No council member who is affiliated in any way with any bidder shall vote on the awarding of any contract for which said bidder has submitted a bid, and any council member who has an affiliation with a bidder shall state the nature of the affiliation prior to any vote of the council.
- ii. Bids shall be opened and reviewed by the appropriate council committee, which shall make recommendations to the council on approval. Bids shall be accepted and such acceptance shall be announced only at a public meeting of the council as defined in section 2(e), and no bids shall be accepted at an executive session of the council.
- iii. The council may require that a certified check, in an amount determined by the council, accompany every bid, and, when so required, no bid shall be accepted unless so accompanied.

d. In order to prevent any party from deliberately underbidding contracts in order to gain or prevent access to council data, the council may award any contract at its discretion, regardless of the amount of the bid, pursuant to the following:

- i. Any bid accepted must reasonably reflect the actual cost of services provided.
- ii. Any vendor so selected by the council shall be found by the council to be of such character and such integrity as to assure, to the maximum extent possible, adherence to all the provisions of this act in the provision of contracted services.
- iii. The council may require the selected vendor to furnish, within 20 days after the contract has been awarded, a bond with suitable and reasonable requirements guaranteeing the services to be performed with sufficient surety in an amount determined by the council, and upon failure to furnish such bond within the time specified, the previous award shall be void.
- iv. The council shall make efforts to assure that its vendors have established affirmative action plans to assure equal opportunity policies for hiring and promoting employees.

Section 13.

Reporting.

The council shall provide an annual report of its financial expenditures to the House Ways and Means Committee and the Senate Ways and Means Committee of the Massachusetts Legislature.

Section 14.

Health Care Finance Unit.

The Health Care Finance Unit is hereby established within the Health Care Cost Containment Council. The council shall oversee the unit and shall employ other staff necessary pursuant to section 3 to comply with the following provisions in this section. The executive director pursuant to section 3 shall oversee the duties and functions of the unit.

(a) General Duties and Functions of the unit.

- a. To make an annual report to the council and the general court the first Wednesday in November specifying the management of its affairs, an analysis of reimbursement policy for each class of providers of services and for state institutions, a projection of the percentage change and fiscal impact of any changes in rates or regulations for every provider and program under its jurisdiction for the fiscal year beginning July first in the year following such November first, a detailed analysis of the factors influencing each increase and an explanation for any rate increase in excess of the consumer price index. Said report shall further detail efforts of the unit to coordinate its rate making function with rule making functions of other state agencies regulating said providers and institutions, and its recommendations for legislation, if any.
- b. To provide, on a basis calculated to reduce or contain the costs of the program, a program of insurance coverage for health care services for persons in the commonwealth who are not otherwise eligible for or covered by a health insurance plan, a self-insurance health plan, a medical assistance program or any other plan or program which provides for payment by a third-party payer for health care services;
- c. To design and to revise, consistent with this chapter, a basic schedule of health care services that enrollees in any health insurance program implemented by the unit shall be eligible to receive. Such covered services shall include those which typically are included in employer-sponsored health benefit plans in the commonwealth. The unit may promulgate schedules of covered health care services which differ from the basic schedule and which apply to specific classes of enrollees. The unit may promulgate a schedule of premium contributions, co-payments, co-insurance, and deductibles for said programs, including reduced premiums based on a sliding fee, and other fees and revise them from time to time, subject to the approval of the division of insurance; and provided, however, that such schedule shall provide for such enrollees to pay one hundred per cent of such premium contributions if their income substantially exceeds the non-farm poverty guidelines of the United States office of management and budget;
- d. To establish rates pursuant to this section to be paid providers of health care services by governmental units, including the division of industrial accidents which are reasonable and adequate to meet the costs which are incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable state and federal law, regulations and quality and safety standards, and which are within the financial capacity of the commonwealth. The unit shall have the responsibility for establishing fair and adequate charges to be used by state institutions for general health supplies, care or rehabilitative services and accommodations, which charges shall be based on the actual costs of each state institution reasonably related, in the circumstances of each institution, to the efficient production of such services in such institution and shall also have sole responsibility for determining rates paid for educational assessments conducted or performed by psychologists and other trained certified educational personnel pursuant to the tenth paragraph of section 3 of

chapter 71B of the general laws, notwithstanding the provisions of an other special or general law or rule or regulation to the contrary;

i. The unit (1) shall determine, after public hearing, at least annually for institutional providers, and at least biennially for non-institutional providers, the rates to be paid by each governmental unit to providers of health care services; (2) shall determine, after public hearing, at least annually, the rates to be charged by each state institution for general health supplies, care or rehabilitative services and accommodations; (3) shall certify to each affected governmental unit the rates so determined; (4) shall determine, after public hearing, at least annually, and certify to the division of industrial accidents of the department of labor and industries, rates of payment for general health supplies, care or rehabilitative services and accommodations, which rates shall be paid for services under chapter 152; (5) shall, upon request of the division of insurance, assist the division of insurance in the performance of its duties as set forth in section four of chapter one hundred and seventy-six B; (6) may establish fair and reasonable classifications upon which any rates may be based for rest homes, nursing homes and convalescent homes; provided, however, that the unit shall not cause a decrease in a rate or add a penalty to a rate because such home has an equity position which is less than zero.

ii. The unit shall establish such rates for nursing homes and rest homes, as defined under section seventy-one of chapter one hundred and eleven, as of October first of each year for facilities whose rate is set on a retrospective basis and as of January first of each year for facilities whose rate is set on a prospective basis. In setting such prospective or retrospective rates of reimbursement, the unit shall use as base year costs for rate determination purposes the reported costs of the calendar year not more than four years prior to the current rate year, adjusted for reasonableness and to incorporate any audit findings applicable to said base year costs; provided, however, that no base year cost shall be incorporated unless a comprehensive desk audit has been completed for the costs incurred in that base year. In any appeal of any matter arising out of the setting of such prospective rates of reimbursement, the aggrieved party shall not be permitted to introduce into the record of such an appeal evidence of costs for any year other than the base year used to establish the rate. Notwithstanding any other general or special law or regulation to the contrary, except as provided in chapter one hundred and eighteen E, each governmental unit shall pay to a provider of services and each state institution shall charge as a provider of health care services, as the case may be, the rates for general health supplies, care and rehabilitative services and accommodations determined and certified by the unit.

iii. The unit, in establishing rates of payment to providers of services, shall control rate increases and shall impose such methods and standards as are necessary to ensure reimbursement for those costs which must be incurred by efficiently and economically operated facilities and providers. Such methods and standards may include, but are not limited to the following: peer group cost analyses; ceilings on capital and operating costs; productivity standards; caps or other limitations on the utilization of temporary nursing or other personnel services; use of national or regional indices to measure increases or decreases in reasonable costs; limits on administrative costs associated with the use of management companies; the availability of discounts for large volume purchasers; the revision of existing historical cost bases, where applicable, to reflect norms or models of efficient service delivery; and other means to encourage the cost-efficient delivery of services. Rates produced using these methods and standards shall be in conformance with Title XIX, including the upper limit on provider payments.

iv. The unit, in determining rates to be paid by governmental units to providers of services, shall include as an operating expense of a provider of services any contribution made in lieu of taxes by such provider of services to a city or town and shall establish by regulation those expenses treated as business deductions under the Internal Revenue Code, which shall be included as allowable operating expenses in determining rates of reimbursement. Except for ceilings or maximum rates of reimbursement, which are determined in accordance with rate determination methods imposed on nursing homes, any ceiling or maximum imposed by the unit upon the rate of reimbursement to be paid to rest homes shall reflect the actual costs of rest home providers and shall not prevent any such rest home provider from receiving full payment for costs necessarily incurred in the provision of services in compliance with federal or state regulations and requirements.

v. The unit, in determining rates to be paid by governmental units to acute-care hospitals, as

defined in section 25B of chapter 111, and any hospital or separate unit of a hospital that provides acute psychiatric services, as defined in said section 25B, shall include as an operating expense the reasonable cost of providing competent interpreter services as required by section 25J of said chapter 111 or section 23A of chapter 123. No hospital shall receive reimbursement or payment from any governmental unit for amounts paid to employees, as salary, or to consultant or other firms, as fees, where the primary responsibility of the employees or consultants is, either directly or indirectly, to persuade or seek to persuade the employees of the hospital to support or oppose unionization. Attorney's fees for services rendered in dealing directly with a union, in advising hospital management of its responsibilities under the National Labor Relations Act, or for services at an administrative agency or court or for services by an attorney in preparation for the agency or in court proceeding shall not be deemed to be support or opposition to unionization.

vi. The unit shall establish rates on a prospective basis, subject to rules and regulations promulgated by the unit whenever possible; provided, however, that whenever the unit by regulation provides that a final rate for a reporting period shall be computed on the actual cost of a provider of services, or a state institution, for such period, it shall establish an interim rate for said provider or institution within twenty-one days of the beginning of said interim rate period, from which interim rate said provider may appeal as provided under section thirty-six.

vii. The unit shall also adopt regulations pursuant to council approval to enable each provider or institution to secure adjustment in said interim rate from time to time to meet current reasonable costs. Said provider or institution shall have the right at any time to petition the unit for an increase in said interim rate. A petition for an adjustment in an interim rate shall include a certified statement that such a petition is not interposed for delay, a detailed explanation, under oath, of the basis upon which said increase is sought, together with a sworn statement of an independent licensed accountant or independent certified public accountant that he has examined the pertinent data relative to the accounts forming the basis of the petition and that in his opinion, said accounts are as represented by the petitioner. The petitioner shall provide such other information as the unit shall require. The unit, subject to council approval, may create such rules and regulations that may waive the required independent audit for non-institutional providers whenever the unit determines that such audit would create a financial hardship. The executive director shall report in writing his recommendations to the petitioner, giving his reasons therefore in detail, and the petitioner shall have ten days to file objections, arguments and comments to the unit. The unit shall thereupon make a rate determination, which shall become effective when filed with the state secretary. No appeal under section nine of this chapter shall be allowed from an interim rate determined under the provisions of this paragraph.

viii. The unit shall, whenever a final rate for a filing period is to be determined after the end of such period, calculate a preliminary final rate within 60 days after receipt of a satisfactory financial and operating cost report from a provider of services or state institution for such filing period. If such reports provide all the information required by the unit and are attested to by an independent licensed accountant or an independent certified public accountant in such a manner and form as the unit may require, the unit may, prior to a field audit, establish such preliminary final rate on the basis of such information submitted. No appeal may be taken from such preliminary final rate. Ninety percent of the difference between the interim rate and said preliminary final rate shall become payable by or to governmental units when certified to the state secretary. Said preliminary final rate may be promulgated as the final rate of a provider of services or state institution if the unit is satisfied with a provider's report. In the event that a final rate is determined without a field audit, the unit shall institute such procedures, including random field audits, as are required to assure accurate reporting by providers of health care services and state institutions. If the unit is not satisfied with the provider's report, the unit shall within six months and after a field audit promulgate a different rate of payment.

ix. The unit, in establishing rates for nursing pools pursuant to section seventy-two Y of chapter one hundred and eleven, shall take into consideration wages and benefits paid by the pool to the medical personnel supplied to a health care facility and that portion of the rate attributable to wages and benefits shall not exceed the prevailing wages and benefits allowed for permanent medical personnel of the same type at such health care facilities. Such rate shall also take into consideration the reasonable administrative expenses and an allowance, which shall provide a reasonable return on equity. The unit shall establish procedures whereby nursing pools shall submit accountable cost reports, which may be subject to audit, to the unit for the purpose of

establishing such rates. The unit shall establish interim rates for nursing pools until such time as said reports are complete.

x. The unit shall set rates for rest homes, nursing homes and convalescent homes, beginning with interim rates for the rate year beginning October first, nineteen hundred and eighty-nine, by recalculating the base year whenever estimated costs for payments to nursing pools are no longer reflective of or are higher than actual costs to such facilities for such payments.

xi. Notwithstanding the provisions of any general or special law or any rule or regulation to the contrary, the unit, in determining the rate of payment for prescribed drugs dispensed to publicly-aided or industrial accident patients by pharmacy providers, shall not apply or use, either directly or indirectly, a discount from the primary standard used by the unit in establishing such rate.

xii. Except as otherwise provided in this section any person aggrieved by any rate determination made under this section shall have a right of appeal as provided under section nine.

xiii. The unit may enter into such contracts or agreements with the federal government, a political subdivision of the commonwealth, or any public or private corporation or organization, as it deems necessary; provided, however, that the unit shall not enter into any contract or agreement with a private corporation or organization to furnish information and statistical data to be used by said unit as its sole basis for setting rates, if such private corporation or organization is to make or receive payments based upon the rates so set.

xiv. Each governmental unit shall cooperate with the health finance unit at all times in the furtherance of the unit's purposes. Each state institution shall permit the unit or any designated representatives thereof, to examine its books and accounts and shall file with the unit from time to time or upon request such data, statistics, schedules or other information as the unit may reasonably require.

xv. Each rate established by the unit shall be deemed a regulation and shall be subject to review as hereinafter provided. The unit shall promulgate rules and regulations for the administration of its duties and the determination of rates as are herein required subject to the procedures prescribed by chapter thirty A. Every rate, classification and other regulation established by the unit shall be consistent where applicable with the principles of reimbursement for provider costs in effect from time to time under Titles XVIII and XIX of the Social Security Act governing reimbursements or grants available to the commonwealth, its departments, agencies, boards, divisions or political subdivisions for general health supplies, care, and rehabilitative services and accommodations.

xvi. In the event that any aggregate rates certified by the unit exceed the upper limit of payment in effect for any period under Titles XVIII or Title XIX of the Social Security Act or any other requirement of said Titles, where applicable, the unit shall redetermine and recertify any such aggregate rates in order to bring them into compliance with such federal requirement for the entire period during which such upper limit is effective. The provisions of this section shall not apply to acute or non-acute hospitals; provided, however, that the provisions of this section shall apply to acute and non-acute hospitals for services under the workers' compensation act. Upon petition of a receiver appointed under section seventy-two N of chapter one hundred and eleven, the unit shall, in accordance with regulations to be promulgated hereunder, adjust the facility's rate, if necessary, to insure compensation of the receiver and payment for a bond. Such adjustment shall not be in effect if the licensee is under the jurisdiction of the United States Bankruptcy Court.

xvii. All rates of payment to acute hospitals and non-acute hospitals under Title XIX shall be established by contract between the provider of such hospital services and the unit of medical assistance, except as provided in subsections (a) and (b), or otherwise permitted by law. All rates shall be subject to all applicable Title XIX statutory and regulatory requirements.

xviii. All such rates for non-acute hospitals shall be effective as of the date specified in section thirteen A of chapter one hundred and eighteen E of the General Laws, unless otherwise specified by law.

xix. For disproportionate share hospitals, the unit shall establish rates that equal the financial requirements of providing care to recipients of medical assistance.

xx. The unit shall establish rates of payment which shall apply to emergency services and continuing emergency care provided in acute hospitals to medical assistance program recipients, including examination or treatment for an emergency medical condition or active labor in women or any other care rendered to the extent required by 42 USC 1395(dd), unless such services are provided pursuant to an agreement between the division of medical assistance and the acute hospital. Such rates of payment shall reflect the reasonable costs of providing such care and shall take into account the characteristics of the hospital in which such care is provided, including, but not limited to, its status as a teaching hospital, specialty hospital, disproportionate share hospital or sole community provider. An acute hospital shall, when a medical assistance program recipient requires post emergency room care and, after screening and stabilizing the patient's condition, notify the division of medical assistance or its designated representative and assist said division, to the extent possible, in transferring the recipient to an appropriate medical setting in accordance with said division's direction. Nothing herein shall be construed to require the hospital to breach its obligation under said 42 USC 1395(dd) or require the recipient to forego any right to refuse transfer pursuant to said 42 USC 1395(dd). If an acute hospital is unable or prohibited by law or regulation from transferring the patient in accordance with said division's direction, said division shall pay for any and all care associated with such patient's treatment including, but not limited to, care or services provided in the emergency room or in an inpatient or outpatient setting. Whenever said division is required to pay for such care rendered in a non-emergency room setting, said division shall pay all reasonable costs for such services in such hospital, as determined by the division of health care finance and policy pursuant to this chapter and consistent with the provisions of Title XIX laws.

xxi. All rates of payment to acute hospitals and non-acute hospitals under Title XIX shall be established by contract between the provider of such hospital services and the division of medical assistance, except as provided in subsections (a) and (b), or otherwise permitted by law. All rates shall be subject to all applicable Title XIX statutory and regulatory requirements and shall include reimbursement for the reasonable cost of providing competent interpreter services pursuant to section 25J of chapter 111 or section 23A of chapter 123.

xxii. All such rates for non-acute hospitals shall be effective as of the date specified in section thirteen A of chapter one hundred and eighteen E of the General Laws, unless otherwise specified by law.

xxiii. For disproportionate share hospitals, the unit shall establish rates that equal the financial requirements of providing care to recipients of medical assistance.

xxiv. The unit shall establish rates of payment which shall apply to emergency services and continuing emergency care provided in acute hospitals to medical assistance program recipients, including examination or treatment for an emergency medical condition or active labor in women or any other care rendered to the extent required by 42 USC 1395(dd), unless such services are provided pursuant to an agreement between the division of medical assistance and the acute hospital. Such rates of payment shall reflect the reasonable costs of providing such care, including the costs of providing competent interpreter services pursuant to section 25J of chapter 111 or section 23A of chapter 123 and shall take into account the characteristics of the hospital in which such care is provided, including, but not limited to, its status as a teaching hospital, specialty hospital, disproportionate share hospital or sole community provider. An acute hospital shall, when a medical assistance program recipient requires post emergency room care and, after screening and stabilizing the patient's condition, notify the division of medical assistance or its designated representative and assist said division, to the extent possible, in transferring the recipient to an appropriate medical setting in accordance with said division's direction. Nothing herein shall be construed to require the hospital to breach its obligation under said 42 USC 1395(dd) or require the recipient to forego any right to refuse transfer pursuant to said 42 USC 1395(dd). If an acute hospital is unable or prohibited by law or regulation from transferring the patient in accordance with said division's direction, said division shall pay for any and all care associated with such patient's treatment including, but not limited to, care or services provided in the emergency room or in an inpatient or outpatient setting. Whenever said division is required to pay for such care rendered in a non-emergency room setting, said division shall pay all reasonable costs for such services in such hospital, as determined by the unit

pursuant to this chapter and consistent with the provisions of Title XIX laws.

xxv. No acute hospital may charge to a governmental unit for services provided to publicly aided patients at a rate higher than the rate payable by the division of medical assistance under Title XIX for the same service, unless such service is provided by said division pursuant to a unique arrangement such as a selective contract or a managed care contract.

xxvi. Nothing in this chapter shall be construed to conflict with the provisions of a waiver of otherwise applicable federal requirements which the division of medical assistance may obtain from the secretary of health and human services for the purpose of implementing a primary care case management system for delivering services, or for the purpose of implementing any other type of managed care service delivery system in which the eligible recipient is directed to obtain services exclusively from one provider or one group of providers.

xxvii. If the division of medical assistance contracts with any third party payer for the provision of medical benefits for medical assistance recipients under Title XIX, said division shall assure that on a quarterly basis such contracted third party payers notify each acute hospital of the number of inpatient days of service provided by the hospital to such recipients covered by such contracts.

xxviii. The unit shall establish rates of payment which shall apply to community hospitals located in rural and isolated areas where access to other such providers is not reasonably available. Such hospitals, specially designated by the commonwealth as sole community providers, shall receive payment rates calculated to reflect the rural characteristics of such community hospital and the essential nature of the services they provide, which rates shall not be less than ninety-seven per cent of such hospitals' reasonable financial requirements.

xxix. The unit shall not consider the following as resources of such hospitals in the establishment, review or approval of acute and non-acute hospital rates and charges: restricted and unrestricted grants; gifts; contributions; bequests; fund principle; term endowments and endowment balances; restricted gifts; unrestricted gifts and all income from any of the foregoing, including unrestricted income from endowment funds and income and gains from investment of unrestricted funds. The following words shall have the following meanings as used in this paragraph:

1. "Income and gains from investment of unrestricted funds", interest, dividends, rents or other income on investments, including net gains or losses resulting from investment transactions.
2. "Term endowment", funds available upon termination of restrictions.
3. "Unrestricted gifts", gifts, grants, contributions and bequests, upon which there are no restrictions imposed by the donor.
4. "Unrestricted income from endowment funds", income earned on investment of endowment funds which have no restrictions on income.
5. An acute or non-acute care hospital aggrieved by any action or failure to act by the unit under this chapter may file an appeal pursuant to the provision of section nine.

xxx. Except for rates established pursuant to section eleven, any person, corporation or other party aggrieved by an interim rate or a final rate established by the unit, or by failure of the unit to set a rate or to take other action required by law and desiring a review thereof shall, within thirty days after said rate is filed with the state secretary or may, at any time, if there is a failure to determine a rate or take any action required by law, file an appeal with the division of hearings officers established by section four H of chapter seven. Any appeal filed under this section shall be accompanied by a certified statement that said appeal is not interposed for delay. On appeal, the rate determined for any provider of services shall be adequate, fair and reasonable for such provider, based upon, the costs of such provider, but not limited thereto.

xxxi. On an appeal from an interim rate or a final rate the division of hearings officers shall conduct an adjudicatory proceeding in accordance with chapter thirty A, and said division shall file its decision with the unit and the state secretary within thirty days after the conclusion of the hearing.

xxxii. Said decision shall contain a statement of the reasons therefore, including a determination of each issue of fact or law upon which such decision was based. If such decision results in a recommendation for a rate different from that certified, the unit shall establish a new rate based upon such statement of reasons. If the executive director determines that the statement of reasons is inadequate to determine a fair, reasonable and adequate rate, it may remand the appeal to the hearing officer for further investigation. Any party aggrieved by a decision of the unit may, within thirty days of the receipt of such decision, file a petition for review in superior court for the county of Suffolk, which shall have exclusive jurisdiction thereof.

xxxiii. A provider may appeal as an aggrieved party in accordance with the provisions of the preceding sentence, in the event that a remand by the unit to a hearing officer does not result in a final decision within twenty-one days of the date of remand. The petition shall set forth the grounds upon which the decision of the unit should be set aside. The aggrieved party shall, within seven days after the petition for review is filed, notify the unit and all the parties to the appeal that a petition for review has been filed by sending each a copy thereof. Within forty days after the petition for review is filed, or within such further time as the court may allow, the division of hearings officers shall file in court the original or a certified copy of the record under review. The court may affirm, modify or set aside the decision of the unit in whole or in part, remand the decision to the unit for further proceedings, or enter such other order as justice may require. Nothing herein shall be construed to prevent the division of hearing from granting temporary relief if, in its discretion, such relief is justified nor, from informally adjusting or settling controversies with the consent of all parties. Judicial review shall be governed by section fourteen of chapter thirty A to the extent not inconsistent with the provisions of this section.

Section 15.

Payment of Expenses by Acute Hospitals

Each acute hospital shall pay to the commonwealth an amount for the estimated expenses of the unit. Such amount shall be equal to the amount appropriated by the general court for the expenses of the unit minus amounts collected from

- (1) filing fees,
- (2) fees and charges generated by the unit's publication or dissemination of reports and information, and
- (3) federal matching revenues received for such expenses or received retroactively for expenses of predecessor agencies.

Each acute hospital shall pay such net amount multiplied by the ratio of the hospital's gross patient service revenues to the total of all such hospital's gross patient services revenues. Each acute hospital shall make a preliminary payment to the unit on October first of each year in an amount equal to one-half of the previous year's total assessment. Thereafter, each hospital shall pay, within thirty days notice from the unit, the balance of the total assessment for the current year based upon its most current projected gross patient service revenue. The unit shall subsequently adjust the assessment for any variation in actual and estimated expenses of the unit and for changes in hospital gross patient service revenue. Such estimated and actual expenses shall include an amount equal to the cost of fringe benefits, as established by the division of administration pursuant to section six B of chapter twenty-nine. In the event of late payment by any such hospital, the treasurer shall advance the amount of due and unpaid funds to the unit prior to the receipt of such monies in anticipation of such revenues up to the amount authorized in the then current budget attributable to such assessments, and the unit shall reimburse the treasurer for such advances upon receipt of such revenues. The provisions of this paragraph shall not apply to any state institution or to any acute hospital which is operated by a city or town.

Section 16.

Conditions for reimbursement

Any provider of health care services that receives reimbursement or payment for treatment of injured workers under chapter one hundred fifty-two and any provider of health care services other than an acute or non-acute hospital that receives reimbursement or payment from any governmental unit for general health supplies, care and rehabilitative services and accommodations, shall, as a condition of such reimbursement or payment:

- (1) permit the unit, or any designated representative thereof, the attorney general or his designee, to examine such books and accounts as may reasonably be required for it to perform its duties;
- (2) file with the unit from time to time or on request, such data, statistics, schedules, or other information as it may reasonably require, including outcome data and such information regarding the costs, if any, of such

provider for research in the basic biomedical or health delivery areas or for the training of health care personnel which are included in its charges to the public for health care services, supplies and accommodations; and (3) accept reimbursement or payment at the rates established by the unit, subject to a right of appeal under section nine, as discharging in full any and all obligations of an eligible person and the governmental unit to pay, reimburse or compensate the provider of health care services in any way for general health supplies, care, and rehabilitative services or accommodations provided.

Section 17.

All purchasers and third party payers, excluding purchasers and payers under the workers' compensation act, except as provided in chapter one hundred fifty-two, may enter into contractual arrangements with acute and non-acute hospitals for services. No such arrangement, including but not limited to prices or charges which may be charged for non-contracted services or which may be negotiated in individual contracts between such purchasers or third party payers and such acute or non-acute hospitals, shall be subject to prior approval by any public agency; provided, however, that nothing in this section or chapter shall limit the authority of the unit to establish rates of payment for all health care services adjudged compensable under chapter one hundred fifty-two, and provided, further, that charges established by an acute or non-acute hospital for health care services rendered shall be uniform for all patients receiving comparable services.

Any acute or non-acute hospital that makes a charge or accepts payment based upon a charge in excess of that filed required or approved by the unit or that fails to file any data, statistics or schedules or other information required under this chapter or by any regulation promulgated by the council or which falsifies the same, shall be subject to a civil penalty of not more than one thousand dollars for each day on which such violation occurs or continues, which penalty may be assessed in an action brought on behalf of the commonwealth in any court of competent jurisdiction. The attorney general shall bring any appropriate action, including injunctive relief, as may be necessary for the enforcement of the provisions of this chapter.

Section 18.

Access to care and services for chapter 117A recipients.

No acute hospital shall deny access to care and services which the hospital would provide under chapter one hundred and eighteen E to recipients of benefits under chapter one hundred and seventeen A.

Section 19.

Surcharges for residents of other countries.

Notwithstanding any provisions of this chapter to the contrary, all costs and charges for patients who are residents of other countries shall, as provided herein, be exempted from the limitations imposed by this chapter. Any hospital shall be allowed to impose a surcharge on the normal charges that would otherwise be allowed for such residents of other countries. Such surcharges shall not be included in the calculation of gross patient service revenues. The normal charge and the patient discharge statistics shall otherwise be included under the provisions of this chapter.

Section 20.

Contract rights of HMOs.

A health maintenance organization organized under chapter one hundred and seventy-six G may (i) negotiate directly with any hospital with respect to such health maintenance organization's rate of payment for hospital services and (ii) enter into an agreement with such hospital reflecting such rate of payment without the approval of the council established under chapter one hundred eighteen G. The specification in this section of contracting rights of health maintenance organizations shall not be construed as affirming or denying such rights with respect to any other third party payer.

Section 21.

Small business health insurance programs.

(a) The unit may establish programs to enable small businesses to purchase health insurance for their employees at rates which are as equivalent as possible to the rates at which large employers can purchase health insurance. Such programs shall include, but not be limited to, the following:

- a. the study of the insurance market and the practices of insurance companies, hospital service corporations, medical service corporations and health maintenance organizations, to determine the causes of the relative unavailability of health insurance plans for small businesses and of disproportionate health insurance premium costs for small businesses and to recommend and develop initiatives and strategies to improve the availability

- and reduce the relative cost of health insurance for small businesses;
- b. the awarding of technical assistance grants to private organizations to assist them to act as brokers on behalf of small businesses seeking to procure health insurance plans;
- c. the establishment of a small business health insurance pool for businesses consisting of six or fewer full-time employees, for the purpose of purchasing health insurance plans for employees and their dependents of businesses in the pool, and the study of the expansion of such pool to cover small businesses of up to ten full-time employees; provided, however, that not more than thirty per cent in the aggregate of the employees may be enrolled in a health insurance plan of a single health insurance company, hospital service corporation, or health maintenance organization;
- d. the evaluation of the effectiveness of the initiatives of the unit and tax incentives in reducing the cost of health insurance to small businesses and the impact of such voluntary incentives on the number of small businesses offering health insurance to their employees.

(b) Any small business health insurance pool program established by the unit may, subject to appropriation or the availability of unappropriated funds, establish by negotiation with private third-party payors, and purchase on such terms as it deems to be in the best interest of the commonwealth and enrollees in said program, from one or more insurance companies, hospital service corporations, medical service corporations, or health maintenance organizations, a policy of group general or blanket insurance providing hospital, surgical, medical, and other health insurance benefits covering persons who are the employees and their dependents of small businesses in which the number of full-time employees does not exceed six. The council shall oversee all the unit's agreements and the unit shall execute all agreements or contracts pertaining to said policies or any amendments thereto for and on behalf of and in the name of the unit, pursuant to section 12 and upon final approval of the council. Said unit may negotiate a contract for such term not to exceed three years as it may, in its discretion, deem to be the most advantageous to the unit and the eligible small business employees. The unit shall endeavor to purchase health insurance plans in an economical manner and shall enroll individuals in managed health care plans whenever practicable; and provided, further, that the unit shall ensure that every enrollee shall have a choice of at least two policies providing health care insurance benefits. The unit shall promulgate regulations regarding eligibility criteria, enrollment, and termination policies. The unit shall allow, on an annual basis, an opportunity for enrollees to transfer their enrollments among participating health insurance plans. The unit shall establish a schedule of premium contributions, co-payments, deductibles, or co-insurance amounts to be paid by eligible small businesses and individual enrollees; provided, however that such schedule shall provide for enrollees to pay one hundred per cent of such premium contributions if their income substantially exceeds the non-farm poverty guidelines of the United States Office of Management and Budget.

Section 22.

Uncompensated Care Pool

(a) The third party administrator shall, without imposing undue hardship upon any individual, to secure payment for unpaid bills owed to acute hospitals by persons ineligible for free care which have been accounted for as bad debt by the hospital and which are voluntarily referred by a hospital to the department for collection; provided, however, that such unpaid charges shall be considered debts owed to the commonwealth and that all payments received shall be credited to the Uncompensated Care Trust Fund; and provided, further, that all actions to secure such payments shall be conducted in compliance with a protocol previously submitted by the former division of health care finance and policy to the committee on health care and the house and senate committees on ways and means.

(b) There is hereby established an Uncompensated Care Trust Fund, which shall be administered by the third party administrator. Expenditures from said Trust Fund shall not be subject to appropriation unless otherwise required by law. The purpose of said fund shall be to provide access to health care for low income uninsured and underinsured residents of the commonwealth. The third party administrator shall administer said fund using such methods, policies, procedures, standards and criteria that the unit has approved as necessary for the proper and efficient operation of said fund and the programs funded thereby in a manner consistent with simplicity of administration, the provisions of this chapter and the best interests of low income uninsured and underinsured persons.

(b) The Uncompensated Care Trust Fund shall consist of all amounts paid by acute hospitals and surcharge payors for the purposes of the uncompensated care pool pursuant to this act; all appropriations for the purpose of uncompensated acute hospital care or uncompensated community health center care; any sums paid by acute hospitals pursuant to section 56 of chapter 495 of the acts of 1991; all property and securities acquired by and through the use of monies belonging to said fund and all interest thereon; less payments therefrom for the purposes of the uncompensated care pool and amounts transferred to the separate MassHealth account established by subsection (c). All interest earned on the amounts in said fund shall be deposited or retained in said fund. The unit shall from time to time requisition from said fund such amounts as it deems necessary in order for the third party administrator to meet its current obligations for the purposes of said fund and estimated obligations for a reasonable future period.

(c) Within said fund, the unit shall establish a separate account for the insurance reimbursement program component of the MassHealth demonstration program established by section 9C of chapter 118E. This separate account shall consist of amounts

transferred from the Uncompensated Care Trust Fund, any federal funds transferred from the Children's and Seniors' Health Care Assistance Fund established by section 2FF of chapter 29, and any funds as may be appropriated for deposit into this account. The unit shall administer this account and disburse funds from this account for the purposes of said insurance reimbursement program component of said MassHealth program. Funds deposited in this account shall be kept separate and shall not be commingled with funds of the uncompensated care pool. The comptroller is hereby authorized and directed to effect the transfers authorized by this subsection pursuant to a spending plan filed by the division of medical assistance with the secretary of administration and finance and the house and senate committees on ways and means.

(d) Within said fund, the third party administrator shall administer an uncompensated care pool consisting of revenues produced by acute hospital assessments and the surcharge percentage calculated by the third party administrator pursuant to this section and section 18A and all appropriations for the purpose of uncompensated care provided by acute hospitals, or community health centers, including, but not limited to, federal funds made available for uncompensated care payments to certain acute hospitals as may be appropriated from the General Fund or any other fund. For purposes of this subsection, the words ""revenues produced by acute hospital assessments" shall equal the value of and have the same meaning as the words ""acute hospitals' liability to the pool" established pursuant to subsection (e) and the words ""revenues produced by the surcharge percentage" shall equal the value of and have the same meaning as the words ""surcharge payors' liability to the pool" as established pursuant to section 18A. Amounts placed in the Uncompensated Care Trust Fund, except for amounts transferred into the separate MassHealth account established in subsection (c), shall be expended by the third party administrator for the purposes of the uncompensated care pool. The third party administrator shall administer the uncompensated care pool and require payments to the pool and disburse funds from the pool consistent with the surcharge payors' and acute hospitals' liability to the pool and the pool's liability to an acute hospital or a community health center. The unit shall specify by regulation, appropriate mechanisms that provide for interim determination and payment of a surcharge payor's liability to the pool and an acute hospital's liability to and from the pool during each fiscal year and for final settlement of the pool for each fiscal year. The unit may promulgate regulations, which authorize the assessment of interest on any unpaid liability at a rate not to exceed an annual percentage rate of 18 per cent and late fees at a rate not to exceed 5 per cent per month. The unit may calculate final settlements when it determines that data for a fiscal year are substantially complete and that further refinements would not materially affect the calculation. The unit may incorporate final settlement amounts by prospective adjustment of acute hospitals' and surcharge payors' liability rather than by retrospective payments or assessments.

(e) An acute hospital's liability to said pool shall equal the product of (1) the ratio of its private sector charges to all acute hospitals' private sector charges; and (2) the private sector liability to the uncompensated care pool as determined by law less the surcharge payors' liability established pursuant to section 18A. Before October 1 of each year, the unit shall establish each acute hospital's liability to the pool using the best data available, as determined by the unit. The unit shall update each acute hospital's liability to the pool as updated information becomes available. For any fiscal year, an acute hospital's final liability to said pool shall be calculated in accordance with subsection (d). The unit shall specify by regulation an appropriate mechanism for interim determination and payment of an acute hospital's liability to and from said pool.

(f) An acute hospital's liability to said pool shall in the case of a transfer of ownership be assumed by the successor in interest to the acute hospital.

(g) The unit shall establish by regulation an appropriate mechanism for enforcing an acute hospital's liability to the pool in the event that an acute hospital does not make a scheduled payment to said pool. Such enforcement mechanism may include notification to the division of medical assistance requiring an offset of payments on the Title XIX claims of any such acute hospital, any health care provider under common ownership with the acute hospital or any successor in interest to the acute hospital, from the division of medical assistance in the amount of payment owed to said pool including any interest and late fees, and to transfer the withheld funds into said pool. If the division of medical assistance offsets claims payments as ordered by the division, it shall be deemed not to be in breach of contract or any other obligation for payment of noncontracted services, and providers to which payment is offset under order of the division shall serve all Title XIX recipients in accordance with the contract then in effect with the division of medical assistance, or, in the case of a noncontracting or disproportionate share hospital, in accordance with its obligation for providing services to Title XIX recipients pursuant to this chapter. In no event shall the division direct the division of medical assistance to offset claims unless an acute hospital has maintained an outstanding obligation to the uncompensated care pool for a period longer than 45 days and has received proper notice that said division intends to initiate enforcement actions in accordance with the regulations of said division.

(h) Said pool's liability to an acute hospital shall be calculated periodically by the unit based on the best data available. Such data shall include, but not be limited to, allowable free care charges as determined by the division and the cost-to-charge ratio, which shall be calculated by the unit for each acute hospital. The final settlement of the pool's liability to a hospital shall equal the product of allowable actual free care charges, adjusted for any audit findings, multiplied by its final cost-to-charge ratio. In the case of non-disproportionate share hospitals, such calculation shall represent the ratio of the reasonable actual costs of patient care services, as determined by the unit, to gross patient service revenue for the most recent year for which audited financial statements for the hospital are available. In the case of disproportionate share hospitals, such calculation shall represent the ratio of the hospital's reasonable financial requirements, as determined by the unit, to gross patient service revenue for the most recent

year for which audited financial statements for such hospital are available. The unit shall, throughout the year, update each acute hospital's ratio in the event more current audited financial statement information becomes available. Said unit shall further establish, for each non-disproportionate share acute hospital for any given fiscal year, a final ratio using the reasonable costs for patient care services and gross patient service revenues as appearing in the audited financial statements for the fiscal year. For disproportionate share hospitals, said unit shall establish a final ratio based upon its reasonable financial requirements, as defined by the unit, and actual gross patient service revenues as appearing in the audited financial statements for the fiscal year. The final settlement of the pool's liability to an acute hospital shall be calculated in accordance with subsection (d). The pool's liability to a community health center shall be calculated periodically by the unit based on the best data available as determined by the division. Such data shall include, but not be limited to, allowable free care charges as determined by the unit and the rates established by the unit to be paid for free care services. Such rates shall represent the community health center's reasonable financial requirements, as determined by the unit.

(i) The unit shall manage said pool in order to encourage maximum efficiency and appropriateness in the utilization of services. The unit shall promulgate regulations detailing the definition of free care, including, but not limited to, defining the qualifications of eligible persons and the scope of eligible services, setting standards for reasonable efforts to notify uninsured or underinsured persons of the various insurance options as well as the availability of free care, and setting standards for reasonable efforts to collect costs of emergency care and setting standards to determine medical hardship. Said regulations shall include provision for the review of determinations of eligibility for free care and the establishment of penalties for acute hospitals or community health centers which upon audit show an excessive rate of incorrect eligibility determinations. The unit shall adopt regulations prohibiting payments from said pool for non-urgent and non-emergency health care services provided to residents of other states and foreign countries. The unit may require utilization review. After consultation with consumer representatives and representatives of acute hospitals and community health centers, the unit shall develop programs and guidelines to encourage maximum enrollment of pool beneficiaries into health care plans and programs of health insurance offered by public and private sources, and to promote the delivery of care in the most appropriate setting, through coordination of care and referral of primary care cases to community health centers. Such programs and guidelines shall not deny payments on the ground that services should have been provided in a more appropriate setting if the hospital was required to provide such services pursuant to 42 USC 1395(dd). The unit may adopt regulations requiring disproportionate share hospitals to use a portion of payments received from said pool to reimburse physicians for the costs of free care which such physicians provide in such hospitals. In adopting regulations under this subsection, the unit shall consult and work cooperatively with representatives of low income uninsured and underinsured persons, health care providers who provide health care to such persons, and organizations representing said persons and providers.

(j) The unit shall adopt any other regulations necessary for the third party administrator to manage said pool including, but not limited to, regulations: requiring data submissions, setting pool audit standards, establishing enforcement mechanisms consistent with this section, and establishing reasonable controls on utilization. The unit shall require acute hospitals and community health centers to submit data to the administrator that the unit determines necessary to efficiently and effectively administer the uncompensated care pool. Said data may include, but shall not be limited to, charge and cost data, patient diagnoses and types of uncompensated service provided, patient demographics, write-off amounts, unique patient identifiers and other such data that would enable the unit to conduct analyses, verify eligibility and calculate settlements on a case-by-case basis. The unit shall consider all available options for collecting said data, including claims and electronic data submission, and shall implement the most efficient and effective method after consultation with interested parties. If the unit finds that hospitals are not complying with the data submission requirements or if the data submitted are not sufficient to enable the unit to verify eligibility and calculate settlements on a case-by-case basis, the unit may adopt regulations providing for a claims adjudication process for payments from the uncompensated care pool. Such claims adjudication process shall maximize administrative simplicity to the extent practicable and shall not significantly delay cash flow from said pool. The unit shall consult with interested parties, including the Massachusetts hospital association, in developing the methodology for such claims adjudication process and shall submit the methodology to the joint committee on health care 90 days in advance of adopting such regulations. The third party administrator shall analyze the data collected under this section in conjunction with any other pertinent data to determine the demographic characteristics and the clinical and social needs of uncompensated care recipients. If said analysis indicates that one or more managed care or case management programs would better meet the needs of low income individuals, the division shall consult with representatives of the uninsured and underinsured and the providers who serve them and other interested parties regarding the potential for managed care or case management approaches to improve care provided under said pool. If the unit determines that such approaches would improve care, the unit may contract pursuant to council approval and section 12 with health care delivery or management organizations or to enter interagency service agreements with the division of medical assistance or the department of public health for the purpose of contracts with health care or managed care providers to deliver services to individuals eligible for free care or; provided, however, that no such contract shall be entered into until the unit finds that the cost of such contract does not exceed the amounts that would otherwise have been expended on free care for these individuals; and, provided further, that the expenditures for such contracts shall not exceed \$5,000,000 in any hospital fiscal year.

(k) The unit shall promulgate regulations to develop and implement methods and procedures to verify the eligibility of individuals for free care and to ensure that other coverage options are utilized fully before free care is granted. These systems may include but are not limited to investigation and recovery of third party liabilities, and penalties for noncompliance. The unit

shall compile and maintain a catalog of program information for all programs of health care coverage for low income persons including those sponsored by public and private organizations. The catalog shall include, at a minimum, eligibility criteria, benefits and services offered, enrollment procedures and information necessary for contact and follow-up. The unit shall ensure that if free care is granted for the copayment and deductible of an eligible person with other coverage, no payments shall be made from the uncompensated care pool which would cause the total payment to the provider to exceed the applicable rates for free care services. The unit shall refuse to allow payments or shall disallow payments to acute hospitals and community health centers for free care provided to individuals if reimbursement is available from other public or private sources including, but not limited to, the Medicaid or Medicare program, or if the individual is not eligible for free care. The unit shall require acute hospitals and community health centers to screen each free care applicant for other sources of coverage and for potential eligibility for government programs, and to document the results of such screening. If an acute hospital or community health center determines that an applicant is potentially eligible for Medicaid or another government program, said acute hospital or community health center shall assist the applicant in applying for benefits under such program. The third party administrator shall audit free care accounts of acute hospitals and community health centers to determine compliance with this section and shall deny pool payment for any audited account for any acute hospital or community health center that fails to document compliance with this section.

(l) The unit may enter into interagency agreements with the department of revenue to verify income data for recipients of free care. Such written agreements shall include provisions permitting the unit to provide a list of persons receiving or applying for free care, including any applicable members of the households of such recipients or applicants which would be counted in determining eligibility, and to furnish relevant information including, but not limited to, name, social security number, if available, and other data required to assure positive identification. Such written agreements shall include provisions permitting the department of revenue to examine the data available under the wage reporting system established under section 3 of chapter 62E and make positive identification of cases in which recipients or applicants for free care, individually or as part of a household unit, are receiving wages in excess of any threshold eligibility requirements established by the division. The department of revenue is hereby authorized to furnish the unit with information on the cases of persons so identified, including, but not limited to, name, social security number and other data to ensure positive identification, name and identification number of employer, and amount of wages received. The unit may inform acute hospitals and community health centers only of an individuals eligibility or noneligibility for free care based on information obtained from the department of revenue, but may not release any specific information concerning the individual.

(m) The third party administrator shall deposit any amounts received pursuant to chapter 62D in the Uncompensated Care Trust Fund to reimburse the uncompensated care pool for expenditures made for persons who received free care through said pool and who, upon review, was determined to be ineligible for uncompensated care based upon applicable income standards.

(n) The third party administrator shall not at any time make payments from said pool for any period in excess of amounts that have been paid into or are available in said pool for such period; provided, however, that the unit may temporarily prorate payments from said pool for cash flow purposes. In the event that after making allowable free care payments to community health centers, there exists a shortfall of pool revenue, excluding any revenue in the separate MassHealth insurance reimbursement program account, in any fiscal year to cover allowable free care payments to acute hospitals, the administrator shall allocate such payments so that those acute hospitals with the greatest proportional requirement for pool income shall receive a greater proportional payment from said pool. In the event that there exists a surplus of pool revenue in any fiscal year over that necessary to cover allowable free care payments, the administrator shall apply such surplus to allowable free care payments for any succeeding fiscal year in which there is a shortfall of pool revenue.

(o) Within the Uncompensated Care Trust Fund, there shall be established a medical assistance intergovernmental transfer account, administered by the commissioner of the division of medical assistance, consisting of any transfers to the commonwealth from publicly-operated entities providing Title XIX or Title XXI reimbursable services, and federal reimbursements related to medical assistance payments, so called, to publicly-operated entities. All amounts credited to this account shall be held in trust and shall be available for expenditure by the commissioner of the division of medical assistance to be used for medical assistance payments to entities designated and authorized by the general court, or which have contractually agreed to make intergovernmental transfers to said account; provided, however, that any amount in excess of such medical assistance payments may be credited to the General Fund; provided, further, that the amount of all such expenditures shall be subject to annual approval by the general court. The maximum payments and transfers from said account shall not exceed those permissible for federal reimbursement under Title XIX or Title XXI of the Social Security Act or any successor federal statute. The comptroller may make payments, including payments during the accounts payable period, in anticipation of revenues, including receivables due and collectibles during the months of July and August, and shall establish procedures for reconciling overpayments or underpayments from said account to publicly-operated entities; provided, that said procedures shall include, but not be limited to, appropriate mechanisms for refunding intergovernmental transfers and federal reimbursements upon recoupment of any such overpayments. The division of medical assistance shall notify the unit regarding revenue and expenditure activity within said account and submit to the secretary of administration and finance and the house and senate committees on ways and means a schedule of said payments ten days prior to any expenditures, and no funds shall be expended without an enforceable agreement with or legal obligation imposed upon the recipient public entity to make an intergovernmental transfer in an appropriate amount to said account.

Section 23.

Health care for the medically indigent.

(a) Declaration of policy.-

The General Court finds that every person in this Commonwealth should receive timely and appropriate health care services from any provider operating in this Commonwealth; that, as a continuing condition of licensure, each provider should offer and provide medically necessary, lifesaving and emergency health care services to every person in this Commonwealth, regardless of financial status or ability to pay; and that health care facilities may transfer patients only in instances where the facility lacks the staff or facilities to properly render definitive treatment.

(b) Studies on indigent care.-

To reduce the undue burden on the several providers that disproportionately treat medically indigent people on an uncompensated basis, to contain the long-term costs generated by untreated or delayed treatment of illness and disease and to determine the most appropriate means of treating and financing the treatment of medically indigent persons, the council, at the request of the Governor or the General Court, may undertake studies and utilize its current data base to:

a. Study and analyze the medically indigent population, the magnitude of uncompensated care for the medically indigent, the degree of access to and the result of any lack of access by the medically indigent to appropriate care, the types of providers and the settings in which they provide indigent care and the cost of the provision of that care pursuant to subsection (c).

b. Determine, from studies undertaken under paragraph (b), a definition of the medically indigent population and the most appropriate method for the delivery of timely and appropriate health care services to the medically indigent.

(c) Studies.-

The council shall conduct studies pursuant to subsection (b)(1) and thereafter report to the General Court the results of the studies and its recommendations. The council may contract with an independent vendor to conduct studies in accordance with the provisions for selecting vendors in section 12. The studies shall include, but not be limited to, the following:

a. the number and characteristics of the medically indigent population, including such factors as income, employment status, health status, patterns of health care utilization, type of health care needed and utilized, eligibility for health care insurance, distribution of this population on a geographic basis and by age, sex and racial or linguistic characteristics, and the changes in these characteristics, including the following:

- i. the needs and problems of indigent persons in urban areas;
- ii. the needs and problems of indigent persons in rural areas;
- iii. the needs and problems of indigent persons who are members of racial or linguistic minorities;
- iv. the needs and problems of indigent persons in areas of high unemployment; and
- v. the needs and problems of the underinsured;

b. the degree of and any change in access of this population to sources of health care, including hospitals, physicians and other providers; the distribution and means of financing indigent care between and among providers, insurers, government, purchasers and consumers, and the effect of that distribution on each;

c. the major types of care rendered to the indigent, the setting in which each type of care is rendered and the need for additional care of each type by the indigent;

d. the likely impact of changes in the health delivery system, including managed care entities, and the effects of cost containment in the Commonwealth on the access to, availability of and financing of needed care for the indigent, including the impact on providers which provide a disproportionate amount of care to the indigent;

e. the distribution of delivered care and actual cost to render such care by provider, region and subregion;

f. the provision of care to the indigent through improvements in the primary health care system, including the management of needed hospital care by primary care providers;

g. innovative means to finance and deliver care to the medically indigent; and

h. reduction in the dependence of indigent persons on hospital services through improvements in preventive health measures.

Section 24.

Effective date.

This act shall take effect immediately.

The amendment was *rejected*.

Messrs. Knapik, Lees, Rosenberg and Brewer and Ms. Melconian moved that the bill be amend by inserting the following new Section:-

"SECTION . There shall be established on the books of the commonwealth separate funds to be known as the Soldiers' Home in Massachusetts Capital Maintenance Trust Fund and the Soldiers' Home in Holyoke Capital Maintenance Trust Fund. Said funds shall consist of federal reimbursements recovered or collected from any and all capital improvement projects at the Soldiers' Homes; any amounts received from any appropriation, grant, gift, bequest or other contribution explicitly made to said funds, and any income derived from the investment of amounts credited to said funds. The amounts so received shall be credited and invested by the treasurer of the commonwealth and held in trust by the secretary of health and human services. Amounts expended from said funds shall not be subject to further appropriation, and shall not exceed the amount earned in interest and other income derived from the investment of the principle amount credited to said fund. Any expenditures from said funds shall be at the direction of said secretary solely for the purposes of capital maintenance at said Soldiers' Homes. No expenditure from said funds shall be made for any direct or indirect costs associated with personnel. The secretary shall file, with the House and Senate committees on Ways and Means not later than September first of each fiscal year, an annual financial plan of the projected revenues and expenditures for the ensuing fiscal year. All revenues credited to and expenditures made from such funds shall be reported, by subsidiary, on the Massachusetts management accounting and reporting system."

The amendment was *rejected*.

Mr. O'Leary moved that the bill be amended in section 2, in item 4120-2000 by inserting after the words "Life Focus Center" the following:-

"; provided further, that not less than \$20,000 shall be expended for an all-access playground in the town of Dennis".

The amendment was *rejected*.

Mr. Joyce moved that the bill be amended in section 2, in item 4120-4010, by striking out the figure "\$1,065,000" and inserting in place thereof the following figure:- "\$1,800,000".

The amendment was *rejected*.

Mr. Moore and Ms. Resor moved that the bill be amended by adding at the end thereof the following new Section:-
SECTION _____. Section 20 of chapter 90 of the Massachusetts General Laws, as amended by 2003, 26, Sec. 226 effective July 1, 2003, is hereby amended by striking out the second and third sentences of the fourth paragraph and inserting in its place the following sentence:-

The total surcharge shall be transferred by the registrar of motor vehicles to the state treasurer for deposit into the Head Injury Treatment Services Trust Fund.

The amendment was *rejected*.

Ms. Melconian moved that the bill be amended in section 2, in item 4130-1000, by inserting after the words "parents" the following:-

", provided further that not less than \$811,000 shall be expended for the Springfield Catchment Area with the Northern Educational Services, Inc. (NES) so-called, as the lead agency".

The amendment was *rejected*.

Mr. Tarr moved that the bill be amended in section 2, in item 4130-2998, by striking out the text from the word "and" in line and 6 to the words "fiscal years 2005".

The amendment was *rejected*.

Mr. Joyce moved that the bill be amended in section 2, in item 1107-2400, by striking out the figure "\$573,469" and inserting in place thereof the following figure:- "\$634,000".

The amendment was *rejected*.

Mr. Brown moved that the bill be amended in section 2, in item 1410-0010, by inserting after the words "Green Hill Park in Worcester;" the following wording:- "provided further that not less than \$5,000 be expended for a Veteran's Memorial in the town of Wayland;"

The amendment was *rejected*.

Mr. Antonioni moved that the bill be amended in section 2, in item 1410-0012, by striking out the figure "\$167,394" and inserting in place thereof the following figure:- "\$292,480"; and

By striking out the figure "\$1,089,114" and inserting in place thereof the following figure:- "\$1,214,200".

The amendment was *rejected*.

Messrs. Nuciforo and Rosenberg moved that the bill be amended in section 2, in line item 1410-0250, by striking the language

after the words "city of Haverhill;" and inserting the following:-
"provided further, that not less than \$200,000 shall be obligated for a

contract with the United Veterans of America Shelter located in the town of Leeds ;"
The amendment was *rejected*.

Ms. Chandler and Mr. Glodis moved that the bill be amended in section 2, in item 1410-0250, by striking out the figure "303,966",
and inserting in place thereof the following figure:- "453,966".
The amendment was *rejected*.

Mr. Antonioni moved that the bill be amended in section 2, in item 1410-0250, by striking out the figure "\$108,000" and inserting in place thereof the following figure:- "\$120,000"; and

By striking out the figure "\$1,347,124" and inserting in place thereof the following figure:- "\$1,359,124".
The amendment was *rejected*.

Messrs. Creedon and Joyce moved that the bill be amended in section 2 in line item 1410-0251 by striking the figure "\$2,093,735"
and inserting in place thereof the following figure: "\$2,593,735"
The amendment was *rejected*.

Mr. Lees moved that the bill be amended in Section 2, in item 4403-2120, in line 6, by striking out the following:-
"provided, however, that any family whose income exceeds 100 per cent of the federal poverty level while the family is receiving assistance funded by this item, shall not become ineligible for assistance due to exceeding the income limit for a period of 6 months from the date that the 100 per cent level was exceeded;

provided further, that the department shall establish reasonable requirements for such families to escrow some or all of the portion of their income which exceeds 100 per cent of the federal poverty level, provided further, that any such escrowed funds shall be exempt from otherwise applicable asset limits;

provided further that the family shall be allowed to withdraw the amount placed in escrow upon transition to permanent housing or losing eligibility for shelter services;" and inserting in place thereof the following: "provided further, the department shall promulgate regulations to implement a pilot program permitting shelter recipients whose earned income exceeds the eligibility standard to establish an escrow account and deposit in said account that portion of their income that exceeds the eligibility standard;

provided further, that said regulations shall permit the department to establish standards to ensure that the pilot program is cost effective and does not cause a deficiency in the account;

provided further, that said standards may include establishing a time limit on eligibility for the pilot program, placing a maximum on the amount of the escrow account, limiting the number of families that may participate in the pilot, or any other reasonable measures to ensure the level of funds appropriated to this account are not exceeded;"
The amendment was *rejected*.

Messrs. Lees, Tisei, Tarr, Hedlund, Knapik and Brown and Mrs. Sprague moved that the bill be amended in Section 331 by inserting after the words "senate president" the following words:-
", one of whom shall be the senate minority leader"; and

In said section by inserting after the words "speaker of the house of representatives" the following words:-
", one of whom shall be the house minority leader"
The amendment was *rejected*.

Mr. Hart moved that the bill be amended by inserting, after Section ____, the following new Section.
"SECTION _____. Pursuant to authority granted to it by section 65A of Chapter 152 and notwithstanding any general or special law to the contrary, the Workers Compensation Rating and Inspection Bureau (hereinafter referred to as "WCRIB") shall initiate a cost containment pilot project for the workers' compensation assigned risk pool whereby third party claims administrators meeting certain criteria shall service claims for policies issued by said assigned risk pool in an effort to reduce losses and introduce competition and innovation into said pool. The WCRIB shall adhere to the following guidelines when implementing said pilot project:

- (1) Any third party administration firm wishing to handle claims from the assigned risk pool must evidence its ability to perform its services based upon the qualification of its key operating personnel and documentation

must be submitted demonstrating the claims experience of said personnel.

(2) The third party administration firm must have at least 7 years of experience administering claims for insured first dollar workers compensation programs, so-called, in the commonwealth of Massachusetts and past experience servicing claims in the Massachusetts workers compensation reinsurance pool. The third party administrator firm must also be a certified Massachusetts Utilization Review Agent

(a) the third party administrator must submit a list to the WCRIB, in a format prescribed by the WCRIB, of all its client employers who have Massachusetts workers compensation insurance premium and the names of the insurance carriers for whom they have administered Massachusetts workers compensation reinsurance pool claims. The WCRIB shall have the right to inspect the books and business records of the third party administration firm in order to verify that their list is complete; (b) the third party administrator must demonstrate to the WCRIB that it possesses and utilizes a management information system capability that allows for both computer access to its claims file by the pool carrier to whom the risk has been assigned and on whose behalf the administrator is administering claims for pursuant to the pilot project; (c) the third party administrator designee must demonstrate that its data can be electronically transferred either directly to the insurer or to an intermediary that would convert the data to a format compatible to the claims data system used by the servicing carrier.

(3) The pilot project shall commence on July 1, 2004 and shall end on July 1, 2007. The WCRIB shall set aside at least 18 million dollars of the total written pool premium in the first year of the pilot project and 24 million dollars of the total written pool premium in the second year for claims administration by qualified third party claims administration firms. Satisfactory performance criteria for the pilot program shall be established by the WCRIB and shall include, but not be limited to, the following actual cost savings attributable to the servicing administrators, efficiency of claim handling, and accuracy and timeliness of information flow between parties. The WCRIB shall review the operations of the servicing administrators on an ongoing basis to determine if their performance has been satisfactory according to the criteria created for judging such. Computer access to the claim files and a start-up kit shall be immediately provided to the appropriate insurance carriers(s) by the third party administration firms participating and an information transmittal relative to the claims being administered shall be provided to said carriers every 30 days in accordance with the standards established by the insurer. After each year of the pilot program, the WCRIB, may based on performance, increase the amount of premium to be assigned to third party claims administration firms participating in the pilot project. After three years, the performance results of the third party administrators participating in the pilot program shall be measured by the WCRIB against the overall performance of the entire assigned risk pool. Said results shall then be compiled by the WCRIB for a report that shall be submitted to the House and Senate chairs of the Joint Committee on Commerce and Labor at the end of the 3-year pilot project. The first report shall be filed by the WCRIB on July 31, 2007.

(4) (a) Pursuant to standards established by the WCRIB's Board of Directors, the WCRIB shall allocate business under this pilot project to qualified third party administration firms that have no common ownership with any insurer writing workers' compensation insurance in the Commonwealth; (b) Only those third party administration firms that have demonstrated an ability to significantly reduce workers compensation losses for their client companies shall be considered for allocation of such pool business under this project; (c) The claims servicing fees that shall apply to the business so allocated shall be the same as those presently paid to other service handling companies by the workers compensation assigned risk pool as authorized by the WCRIB under Chapter 152, Massachusetts General Laws; (d) Any third party administration firm designated by the WCRIB to administer claims shall adhere to any and all standards of performance as such standards are written in the pool's plan of operation at the time of the pilot."

The amendment was *rejected*.

Mr. Nuciforo moved that the bill be amended by inserting at the end thereof the following section:-

SECTION –Section 9 of Chapter 93A of the General Laws as appearing in the 2000 official edition is hereby amended in paragraph 3 by striking out the last sentence.

The amendment was *rejected*.

Mr. Shannon moved that the bill be amended by inserting, after Section 362, the following new Section:-

SECTION __. The commissioner of the division of capital asset management and maintenance is hereby authorized to convey, notwithstanding the provisions of sections 40F through 40J, inclusive, of chapter 7 of the General Laws, or any other general or special law or any rule or regulation to the contrary, by deed approved as to form by the attorney general, a parcel of state-owned land, formerly under the care and control of the Massachusetts Water Resources Authority, and containing an area of 25, 715 square feet, located at 150 Cross Street in the Town of Winchester and shown on a plan dated April 12, 2003, prepared by Robert E. Conway, P.E., Winchester Town Engineer, to the Town of Winchester for use by the Town of Winchester Fire Department to house a Massachusetts Decontamination Emergency Response Unit and other fire vehicles and equipment.

The consideration for the conveyance authorized by this act shall be the full and fair market value of said property for the purpose described in section 1 based upon an independent professional appraisal as determined by the commissioner of said division. The inspector general shall review and approve said appraisal. The inspector general shall prepare a report of his review of the methodology utilized for said appraisal. The inspector general shall prepare a report of his review and file said report with the commissioner for submission to the house and senate committees on ways and means and the chairmen of the joint committee on state administration in accordance with this act. The commissioner shall, thirty days before the execution of any agreement authorized by this act, or any subsequent amendment thereof, submit the agreement or amendment and a report thereon to the inspector general for his review and comment. The inspector general shall issue his review and comment within fifteen days of receipt of any agreement or amendment. The commissioner shall submit the agreement and any subsequent amendments thereof, the reports, and the comments of the inspector general, if any, to the house and senate committees on ways and means and the chairmen of the joint committee on state administration at least fifteen days prior to execution.

The Town of Winchester shall pay for all costs of the appraisal, survey and deed preparation for the conveyance of the property authorized by this act as deemed necessary by the commissioner of the division of asset management and maintenance.

In the event that said property ceases to be used at any time for the purpose described in section 1, or is used for any purpose other than the purpose stated herein, said property, upon notice by the commissioner of the division of asset management and maintenance, shall revert to the care and control of the commonwealth and any further disposition of said property shall be subject to the provisions of sections 40E through 40J, inclusive, of chapter 7 of the General Laws, and require the prior approval of the General Court.

If the conveyance authorized by this act is not completed by March 31, 2005, the commissioner of capital asset management and maintenance may, notwithstanding sections 40F to 40I, inclusive, of chapter 7 of the General Laws, dispose of the parcel described in section 1 of this act using the procedures set forth in section 548 of chapter 26 of the acts of 2003.

This act shall take effect upon its passage.

The amendment was *rejected*.

Mr. Shannon moved that the bill be amended by inserting, after Section 362, the following new Section:-

"SECTION _____. Notwithstanding any general or special law, rule or regulation to the contrary, cities and towns may adopt a local exemption to any statewide smoking ban for bars and restaurants based on food sales within said establishments, provided that said food sales do not constitute more than 10 to 20 percent of the establishment's total sales. Said exemption shall be adopted through a vote of the appropriate local governing body, including but not limited to the local board of health or licensing board.

The amendment was *rejected*.

Mr. Havern moved that the bill be amended by inserting a new section at the end thereof: -

SECTION _____. Cities and Towns may set a cost for electronic public records of no more than \$0.02 (2 cents) per name, this cost shall not apply to voter list electronic records."

The amendment was *rejected*.

Mr. Havern moved that the bill be amended by adding the following section at the end thereof:-

"SECTION _____. Section 21A of chapter 44 of the General Laws is hereby amended by striking out the first sentence and inserting in place thereof the following:- "The city council of a city, the board of selectmen of a town and the prudential committee, if any, otherwise, the commissioners of a district, may authorize and provide for the issuance of refunding bonds or notes of the city, town or district for the purpose of paying or refunding all or any designated part of an issue of bonds or notes then outstanding, including the amount of any redemption premium thereon; provided further, that, notwithstanding any provision of any general or special law, city charter, city ordinance or city council rule or order to the contrary, any vote of the city council or a city authorizing and providing for the issuance of refunding bonds or notes of the city may be introduced and given final passage at one meeting of the city council, shall not be subject to any publication requirement, shall not be subject to any referendum provision, and shall be effective upon passage.

SECTION _____. Section 21A of chapter 44 of the General Laws is hereby amended by deleting the first clause of the second sentence and by inserting in place thereof, the following new clause:-

The first annual payment of principle on account of an issue of refunding bonds or notes shall not be later than the last day of the fiscal year in which any of the bonds or notes being refunded would otherwise have been payable and the annual payments thereafter shall be arranged in accordance with the provisions of section nineteen."

The amendment was *rejected*.

Messrs. Lees, Knapik and Brown and Mrs. Sprague moved that the bill be amended by adding at the end thereof the following sections:-

"SECTION . Section 548 of Chapter 26 of the Acts of 2003 is hereby amended by striking out, in line 61, the words "June 30, 2005" and inserting in place thereof the following:- June 30, 2010.

SECTION . Subsection (n) of Section 548 of Chapter 26 of the Acts of 2003 is amended by striking out the text in its entirety and inserting in place thereof the following:-

(n) The commissioner shall deposit in fiscal year 2005 \$25 million of the proceeds realized from property dispositions pursuant to this section into the General Fund. For any proceeds in excess of that amount, each dollar of the proceeds of the sale of any real property identified by a state agency as no longer needed for its purposes, declared surplus by the commissioner on or before June 30, 2010, and sold pursuant to this Section 548 as now or hereafter amended, shall be made available to said state agency for capital projects, maintenance and repairs. Said funds shall be in addition to capital funds otherwise allocated to said state agency, and shall be approved for release to said state agency's capital program when the disposition of said surplus real property has closed and funds have been received by the Commonwealth."

The amendment was *rejected*.

Mr. Tolman moved that the bill be amended by inserting, after Section 362, the following new Section:-

"SECTION 363. There is hereby established a special commission to consist of two members of the senate appointed by the Senate President; two members of the house of representatives appointed by the Speaker of the House; the treasurer and receiver general; the secretary of the executive office of administration and finance or his designee; the director of the department of housing and community development or his designee; the secretary of the executive office of health and human services or his designee; the director of the department of economic development or his designee; the chairman of the board of higher education or his designee; one of whom shall be a representative of the Massachusetts Community Action Program Directors' Association; one of whom shall be a representative of the Massachusetts Association of Community Development Corporations; one of whom shall be a representative of the Massachusetts Individual Development Account Solutions; and, eleven persons appointed by the Governor, one of whom shall be a representative of the general public who has participated or is participating in an individual development account administered by a community based organization based in Massachusetts; one of whom shall be a representative from the general public who manages an existing Individual Development Account program in Massachusetts; two of whom shall be representatives of the Massachusetts Bankers Association; one of whom shall be a representative of a private philanthropy or private foundation; one of whom shall be a representative of the Women's Educational and Industrial Union; one of whom shall be a representative of the Asset Development Institute at the Heller School for Social Policy and Management at Brandeis University; one of whom shall be a representative of a public or private institution of higher education; one of whom shall be a representative of the Massachusetts Institute for a New Commonwealth; one of whom shall be a representative of the Massachusetts AFL-CIO; and, one of whom shall be a representative of the Federal Reserve Bank of Boston.

Section 2. The commission is created for the purpose of studying and making recommendations concerning the development of financial assets as a way to ensure that all people in the state of Massachusetts achieve long-term and sustainable economic security and self-sufficiency and enjoy economic opportunity.

Said commission shall examine the success of low-income workers of the Commonwealth in saving money and building assets, and the reasons why some people have had less success than others; assess the impact of current state policies and private sector practices on saving and asset-building; identify strategies that offer a real promise of significantly increasing the numbers of those who save and build assets and the amounts they accumulate; and make recommendations - consistent with the state's short- and long-term fiscal condition - for state policies and practices, including action in coordination and collaboration with businesses and financial institutions, labor organizations, community- and faith-based organizations, to implement those strategies.

The commission, in formulating its recommendations, shall take account of the best policies and practices in other states and jurisdictions, particularly, but not limited to those relating to Individual Development Accounts for low-income and low-asset households.

The focus of the commission shall include but not be limited to asset development strategies for low-income and low-asset individuals and families living in Massachusetts.

Where relevant, the commission shall consider the impact of labor market, education and training, and family-support policies and practices on opportunities for financial asset-building.

The commission shall be empowered to hold regular, public meetings and fact-finding hearings and other public forums, as it deems necessary.

Section 3. Said commission shall file its recommendations together with recommendations for legislation, if any, with the house and senate clerks who shall forward the same to the general court no later than two years after the passage of this act."

The amendment was *rejected*.

Messrs. Lees, Tisei, Tarr, Knapik and Brown and Mrs. Sprague moved that the bill be amended at the end thereof by adding the following sections:-

"SECTION . Section 178C of chapter 6 of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by striking out the definition of "Agency" and inserting in place thereof, the following definition:-

"Agency," the department of correction, any county correctional facility, the department of youth services, the department of social services, the parole board, the department of probation, the department of mental retardation, the department of mental health when the department of mental health is acting for persons who have been classified pursuant to the provisions of section fifteen, sixteen, seventeen or eighteen of chapter one hundred and twenty-three at any time during the term of hospitalization, the department of the trial court, including the district court department, the superior court department and the juvenile court department, or any other agency, department, board, commission or entity within the executive or judicial branch, excluding the committee for public counsel services, which has or had custody of, supervision or responsibility for a sex offender as defined in accordance with this chapter, including an individual participating in a program of any such agency, whether such program is conducted under a contract with a private entity or otherwise. Each agency shall be responsible for the identification of such individuals within its custody, supervision or responsibility. Notwithstanding any general or special law to the contrary, each such agency shall be certified to receive criminal offender record information maintained by the criminal history systems board for the purpose of identifying such individuals.

SECTION . Said section 178C of chapter 6 is further amended by inserting in the definition of "Sex offense" a semicolon after the words "section 6 of chapter 274."

Said section 178C of chapter 6 is further amended by inserting in the definition of "Sex offense involving a child" a semicolon after the words "section 6 of chapter 274."

Said section 178C of chapter 6 is further amended by inserting in the definition of "Sexually violent offense" a semicolon after the words "section 6 of chapter 274."

SECTION . Section 178E of chapter 6 is further amended by inserting in clause (e) after the last sentence the following sentence:-

The court shall notify the board of all determinations made pursuant to this paragraph.

Said section 178E of chapter 6 is further amended by inserting in clause (f) after the last sentence the following sentence:-

The court shall notify the board of all determinations made pursuant to this paragraph.

SECTION . Section 178H of chapter 6 of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by striking clause (a) and inserting in place thereof the following clause:-

(a) A sex offender required to register pursuant to this chapter who knowingly:

- (i) fails to register;
- (ii) refuses to sign an acknowledgement of his duty to register as required by section one hundred seventy-eight E subsections (a), (b) and (c) of this chapter;
- (iii) fails to verify registration information;
- (iv) fails to provide notice of a change of address; or
- (v) who knowingly provides false information shall be punished in accordance with this section.

SECTION . Said section 178H of chapter 6 is further amended by inserting in clause (b) after the last sentence the following sentence:- Copies of records created by the board which are certified and attested to by the chairman of said board or his designee shall be admissible as evidence in any court of the commonwealth to prove facts contained therein.

SECTION . Section 178J of chapter 6 of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by inserting after the words "disseminated to assist in" in the last sentence of the last paragraph of subsection (a) the following words:- or defend against.

SECTION . Section 178K of chapter 6 of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by inserting in subsection (2)(a) after the words "Federal Bureau of Investigation" in the last sentence the following words:- and any other government agency responsible for the public's health and safety.

Section 178K of chapter 6 is further amended by inserting after the last sentence in subsection (2)(a) the following sentence:- The victim may be notified by the board of its registration and final classification determination regarding a level 1 offender.

SECTION . Section 178K of chapter 6 is further amended by inserting after the last sentence in subsection (2)(b) the following sentence:- The victim may be notified by the board of its registration and final classification determination regarding a level 2 offender.

SECTION . Section 178K of chapter 6 is further amended by inserting in the penultimate paragraph of subsection (2)(c) after the words "with 178I and 178J" the following sentence:- The victim may be notified by the board of its registration and final classification determination regarding a level 3 offender.

SECTION . Section 178K of chapter 6 is further amended by inserting in subsection (3) after the second sentence the following sentence:- Any statutory, regulatory, or other privilege or claim of confidentiality including, but not limited to, those set forth in sections 129A, 135, 135A, 135B and 172 of chapter 112, section 60A of chapter 119, section 20B of chapter 233, section 100A and 100B of chapter 276, relating to confidential communications or information shall not prohibit an agency from providing such files and data to the sex offender registry board pursuant to the provisions of this section.

SECTION . Section 178M of chapter 6 of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by striking the words "of such sex offender's petition for review" in the second sentence and inserting the following words:- of the filing of all dispositive of motions, pleadings and memoranda filed on behalf of all the parties.

Section 178M of chapter 6 is further amended by striking the last sentence and inserting the following sentence:-
The court shall impound all records from such proceedings, but the filing of an action under this section shall not stay the effect of the board's final classification or registration requirements.

SECTION . Section 12 of chapter 123A of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by inserting after subsection (e) the following subsection:-
(f) The district attorney or the attorney general shall provide written notice to the sex offender registry board of all petitions filed pursuant to this section."
The amendment was *rejected*.

Mr. O'Leary, Ms. Wilkerson, Ms. Fargo and Mr. Joyce moved that the bill be amended by inserting, after Section 362, the following new Section: -

"SECTION ____ . Section 1. Section 2 of chapter twenty-five B of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by adding the following new definitions: -

"Ceiling fan", a non-portable device that is suspended from a ceiling for circulating air via the rotation of fan blades;

"Ceiling fan light kit", the equipment used to provide light from a ceiling fan. This equipment can be: (1) integral such that the ceiling fan light kit is hardwired to the ceiling fan, or (2) attachable such that the ceiling fan light kit is not, at the time of sale, physically attached to the fan. Attachable ceiling fan light kits might be included inside the ceiling fan package at the time of sale or sold separately for subsequent attachment to the fan;

"Commercial clothes washer", a soft mount front-loading or soft mount top-loading clothes washer that is designed for use in (1) applications where the occupants of more than one household will be using it, such as multi-family housing common areas and coin laundries; or (2) other commercial applications, if the clothes container compartment is no greater than 3.5 cubic feet for horizontal-axis clothes washers, or no greater than 4.0 cubic feet for vertical-axis clothes washers;

"Commercial refrigerators and freezers", means reach-in cabinets, pass-through cabinets, roll-in cabinets and roll-through cabinets that have less than 85 cubic feet of capacity and that are not walk-in models or consumer products regulated under the National Appliance Energy Conservation Act of 1987 (Public Law 100-12);

"Digital cable television box", a device that acts as a tuner for cable television programming and that converts digital signals received from a cable service provider to a signal usable by a television set;

"Digital television converter box", a device that receives and decodes digital signals for display by an analog television set;

"Illuminated exit sign", an internally-illuminated sign that is designed to be permanently fixed in place and used to identify an exit; a light source illuminates the sign or letters from within, and the background of the exit sign is not transparent;

"Large packaged air-conditioning equipment", packaged air-conditioning equipment having 240,000 Btu/hour or more cooling capacity;

"Multifunction device", a physically integrated device that has the core function of a satellite television set-top box, digital cable television box, wireless television receiver or digital television converter box plus one or more major additional functionalities, such as Internet access device or video game console;

"Packaged air-conditioning equipment", air-conditioning equipment that is built as a package and shipped as a whole to end-user sites;

"Pass-through cabinet", a commercial refrigerator or commercial freezer with a hinged or sliding doors on both the front and rear of the refrigerator or freezer;

"Reach-in cabinet", a commercial refrigerator, commercial refrigerator-freezer, or commercial freezer with hinged or sliding doors or lids, but excluding roll-in or rollthrough cabinets and pass through cabinets

"Roll-in or roll-through cabinets", a commercial refrigerator or commercial freezer with hinged or sliding doors that allows wheeled racks of product to be rolled into or through the refrigerator or freezer;

"Set-top box", a digital cable television box, wireless television receiver, or digital television converter box;

"Torchiere fixture", a portable electric lighting fixture with a reflector bowl giving light directed upward so as to give indirect illumination;

"Traffic signal module", a standard 8-inch (200mm) or 12-inch (300mm) round traffic signal indication. It consists of a light source, lens and all parts necessary for operation and communicates movement messages to drivers through red, amber and green colors. Arrow modules in the same colors are used to indicate turning movements;

"Unit heater", means a self-contained fan-type heater that uses natural gas, propane or fuel oil and that is designed to be installed within a heated space. Unit heaters include an apparatus or appliance to supply heat, and a fan for circulating air over a heat exchange surface, all enclosed in a common casing. Unit heaters do not include 'warm air furnaces' as specifically defined under the federal Energy Policy Act of 1992 (Public Law 102486). Unit heaters do not include a product regulated by federal standards pursuant to 42 USC 6291, as amended from time to time; a product that is a direct vent, forced flue heater with a sealed-combustion burner or any oil fired heating system;

"Wireless television receiver", a device used in conjunction with a dish antenna to receive satellite or other wireless television programming and that converts signals from a dish antenna for use by a television set.

Section 2.

Section 3 of chapter twenty-five B of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by adding at the end of subdivision (e) the following new types of appliances:-

- (f) torchiere (lighting) fixtures
- (g) unit heaters
- (i) traffic signal modules
- (j) illuminated exit signs
- (k) large packaged air-conditioning equipment
- (l) set-top boxes
- (m) commercial clothes washers
- (n) ceiling fans
- (o) ceiling fan light kits
- (p) commercial refrigerators and freezers
- (q) digital cable television box
- (r) digital television converter box
- (s) pass-through cabinet
- (t) reach-in cabinet
- (u) roll-in or roll-through cabinet
- (v) wireless television receiver
- (w) such other products as may be designated by the Commissioner

Section 3.

Section 4 of chapter twenty-five B of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by striking the first paragraph and inserting in place thereof the following section: -

Not later than January 1, 2005, the Commissioner, in consultation with the heads of other appropriate agencies, shall adopt regulations, in accordance with the provisions of this act, establishing minimum energy efficiency standards for the types of new products set forth in section three.

The regulations shall provide for the following minimum efficiency standards:

- (1) Torchiere fixtures shall not consume more than 190 watts and shall not be capable of operating with lamps that total more than 190 watts.
- (2) Unit heaters shall not have pilot lights and shall have either power venting or an automatic flue damper
- (3) Traffic signal modules shall meet the product specification of the "Energy Star Program Requirements for Traffic Signals" developed by the United States Environmental Protection Agency and that took effect in February 2001 and shall be installed

with compatible, electrically-connected signal control interface devices and conflict monitoring systems.

(4) Illuminated exit signs shall meet the product specification (Version 2.0) of the "Energy Star Program Requirements for Exit Signs" developed by the United States Environmental Protection Agency.

(5) Large packaged air-conditioning equipment shall meet the Tier 2 efficiency levels of the "Minimum Equipment Efficiencies for Unitary Commercial Air Conditioners" and "Minimum Equipment Efficiencies for Heat Pumps" developed by the Consortium for Energy Efficiency, Boston, MA, and that took effect on July 1, 2002.

(6) Set-top boxes, except multifunction devices, shall meet the Tier 1 criteria of the product specification of the United States Environmental Protection Agency's "Energy Star Program Requirements for Set-top Boxes" that took effect on January 1, 2001.

(7) Commercial clothes washers shall meet the requirements shown in table P-3 of section 160.5 of the California Code of Regulations, Title 20: Division 2, Chapter 4, Article 4: Appliance Efficiency Regulations that took effect on November 27, 2002.

(8) Ceiling fans and ceiling fan light kits shall meet the Tier 1 criteria of the product specification (Version 1.1) of the "Energy Star Program Requirements for Residential Ceiling Fans" developed by the United States Environmental Protection Agency.

(9) Commercial refrigerators and freezers shall meet the August 1, 2004 requirements shown in Table A-6 of section 1605.3 of the California Code of Regulations, Title 20: Division 2, Chapter 4, Article 4: Appliance Efficiency Regulations that took effect on November 27, 2002.

On or after January 1, 2006, no new product of a type set forth in section three may be sold or offered for sale in the commonwealth, unless the energy efficiency of the new product meets or exceeds the efficiency standards set forth in the regulations adopted pursuant to this section. On or after January 1, 2007, no new product of a type set forth in section three may be installed in the commonwealth unless the energy efficiency of the new product meets or exceeds the efficiency standards set forth in the regulations adopted pursuant to this section.

Section 4.

Section 5 of chapter twenty-five B of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by inserting the following new paragraph after subsection (1): -

The Commissioner may establish increased efficiency standards on the products listed in section three. The Commissioner may also establish standards for products not specifically listed in section three. In considering such new or amended standards, the Commissioner, in consultation with the heads of the appropriate departments, shall set efficiency standards upon a determination that increased efficiency standards would serve to promote energy conservation in the commonwealth and would be cost-effective for the users, as a group, of the covered appliance, provided no new or increased efficiency standards shall become effective within one year following the adoption of any amended regulations providing for such increased efficiency standards. The Commissioner may apply for a waiver of federal preemption in accordance with federal procedures (see 42 U.S. Code 6297 (d)) for those products regulated by the federal government. The Commissioner may adopt such further regulations as necessary to implement the provisions of this section.

Section 5.

Section 6 of chapter twenty-five B of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by striking, in sentences three and ten, the word "plumbing" and inserting the word "building" in its place, and inserting the following paragraphs at the end of subsection (1): -

The Commissioner may test products covered by section three using an accredited testing facility. If products so tested are found not to be in compliance with the minimum efficiency standard established under section four, the Commissioner shall: (1) charge the manufacturer of such product for the cost of product purchase and testing, and (2) provide information to the public on products found not to be in compliance with the standards.

The Commissioner may cause periodic inspections to be made of distributors or retailers of new products covered by section three in order to determine compliance with the provisions of this Act. The Commissioner may also work with the head of building code administration to coordinate on inspections for new products that are also covered by state building code.

Section 6.

Section 7 of chapter twenty-five B of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by inserting the following paragraph at the end of subsection (1):-

Manufacturers of new products covered by section three shall identify each product offered for sale or installed in the state as in compliance with the provisions of this Act by means of a mark, label, or tag on the product and packaging at the time of sale or installation. The Commissioner may also propose to work in coordination with the certification programs of other states with like standards.

Section 7.

Section 8 of chapter twenty-five B of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by inserting the following paragraph at the end of subsection (1): -

The Commissioner shall cause investigations to be made of complaints received concerning violations of this Act and shall report the results of such investigations to the Attorney General. The Attorney General may institute proceedings to enforce the provisions of this Act. Any manufacturer, distributor or retailer who violates any provision of this Act shall be issued a warning by the Commissioner for any first violation. Repeat violations shall be subject to a civil penalty of not more than two hundred fifty dollars. Each violation shall constitute a separate offense; each day that such violation continues shall constitute a separate offense. Penalties assessed under this paragraph are in addition to costs assessed under section five of this Act. The Commissioner shall also work with the head of building code administration to coordinate on inspections for new products that are also covered by the State Building Code.

Section 8.

Section 8 of Chapter twenty-five B of the General Laws is hereby amended by adding the following subsection in between subsections (1) and (2): -

(1 ½) The Commissioner is hereby granted the authority to adopt such further regulations as necessary to ensure the proper implementation and enforcement of the provisions of this Act. The provisions of this Act shall be severable and if the application of any clause, sentence, paragraph, subdivision, section or part of this Act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the application of any other clause, sentence, paragraph, subdivision, section or part of this Act."

The amendment was *rejected*.

Mr. Joyce moved that the bill be amended by inserting, after Section ____, the following new section:-

Section ____. Section 98A of Chapter 272 of the General Laws, as amended by Chapter 126 of the Acts of 2000, is hereby amended by striking the following proviso: "; provided further, that in the case of a deaf or hearing handicapped person, or other physically handicapped person, such person carries and displays upon demand, written evidence that the dog accompanying him is a dog guide."

The amendment was *rejected*.

Ms. Melconian, Ms. Creem and Ms. Chandler moved that the bill be amended by inserting, after Section ____, the following new Section:-

"SECTION ____. Chapter 175 of the General Laws is hereby amended by inserting after section 120E, as appearing in the 2002 Official Edition, the following new section:-

Section 120F. Past lawful travel

No insurer, agent or broker, authorized to issue policies on the lives of persons in the commonwealth shall make any distinction or otherwise discriminate between persons, reject an applicant, cancel a policy or demand or require a higher rate of premium for reasons associated with an applicant's or insured's past lawful travel experiences."

The amendment was *rejected*.

Ms. Melconian, Ms. Creem and Ms. Chandler moved that the bill be amended by inserting, after Section ____, the following new Section:-

"SECTION ____. Chapter 175 of the General Laws is hereby amended by inserting after section 120E, as appearing in the 2002 Official Edition, the following new section:-

Section 120F.

Past lawful travel

No insurer, agent or broker, authorized to issue policies on the lives of persons in the commonwealth shall make any distinction or otherwise discriminate between persons, reject an applicant, cancel a policy or demand or require a higher rate of premium for reasons associated with an applicant's or insured's past lawful travel experiences."

The amendment was *rejected*.

Mr. Joyce moved that the bill be amended by insertinf after Section _____ the following new Section:-

"SECTION _____ A special commission is hereby established to investiage and study the feasibility of public access to defibrillators. Said commission shall be comprised of the Chairs of the Joint Committee on Public Safety or their designee. House and Senate Ways Means Committees or their designee, a designee from the American Heart Association, along with members of the medical profession.

Said commission shall report to the general court the results of its study together with drafts of legislation necessary to carry such recommendations into effect, by filling the same of the clerks of the house of representatives on or before the thirty-first of July, two thousand and five.

The amendment was *rejected*.

Mr. Berry moved that the bill be amended by inserting, after Section 362, the following new Section:-

"SECTION ___. Chapter 231 of the General Laws is hereby amended by adding the following new Section:-

In any action for malpractice, negligence, error, omission, mistake or unauthorized rendering of professional services, other than actions brought under section two of chapter two hundred twenty-nine, against a provider of health care, in which a verdict is rendered or a finding made or an order for judgment made for pecuniary damages for personal injuries to the plaintiff or for consequential damages, there shall be added by the clerk of the court to the amount of damages interest thereon, at a rate to be determined as set forth bellow rather than the rate specified in Section 6B of chapter two hundred thirty-one, from the date of the commencement of the action even though such interest brings the amount of the verdict or finding beyond the maximum liability imposed by law. The rate of interest to be applied by the clerk shall be at a rate equal to the coupon issue yield equivalent, as determined by the secretary of the treasury, of the average accepted auction price for the last auction of fifty-two week United States treasury bills settled immediately prior to the date on which the verdict is rendered or finding made or order made."

The amendment was *rejected*.

Ms. Fargo, Ms. Resor, Mr. Hedlund, and Ms. Wilkerson moved that the bill be amended by inserting, after Section ___, the following new Section: -

"SECTION ___. Chapter 465 of the Acts of 1956 is hereby amended by adding after section 35 thereof the following new Section:-

Section 36. (a) There shall be an advisory board to the authority consisting of a voting representative of each of the following cities and towns: Bedford, Braintree, Brookline, Cambridge, Chelsea, Cohasset, Concord, Everett, Hingham, Hull, Lexington, Lincoln, Lynn, Malden, Melrose, Medford, Milton, Nahant, Quincy, Revere, Somerville, Weymouth, Winthrop and Worcester; provided further, that the city of Boston shall have five voting representatives, one of whom shall be a resident of the Beacon Hill or South End sections of the city of Boston, one of whom shall be a resident of the East Boston section of the city of Boston, one of whom shall be a resident of the Dorchester or Roxbury sections of the city of Boston, one of whom shall be a resident of the Charlestown or South Boston sections of the city of Boston, one of whom shall be a resident of the Roslindale, Jamaica Plain or Hyde Park sections of the city of Boston. The members of the advisory board shall consist of the chief executive officer thereof; provided however, that any chief executive officer, by writing filed with the authority, may appoint a permanent designee to serve in his stead as a member of said advisory board until the expiration of each term of office of the designating chief executive officer or the earlier vacancy of the office of the designating chief executive officer; provided further, that if the chief executive officer of the city of Boston opts to serve as the representative for the city of Boston to the advisory board, he shall be deemed to represent the forgoing sections of the city of Boston; provided further that a permanent designee shall be versed in at least one of the following three disciplines: environmental affairs, community/airport relations or public health. For the purpose of this section, the term "chief executive officer" shall mean the person designated as the chief executive officer under the provisions of a local charter or laws having the force of a charter, and otherwise the mayor in every city and the chairman of the board of selectmen or president of the town council, as the case may be, in every town.

(b) Accept as otherwise proscribed in this section, each voting representative shall cast one vote on the advisory board. Each voting representative of the several sections of the city of Boston as listed in paragraph (a) shall cast one vote. Wherein the chief executive officer of the city of Boston shall opt to serve as the representative to the advisory board for the city of Boston, he shall cast five votes.

(c) Said advisory board may act at a regular periodic meeting called in accordance with its by-laws or at a special meeting called by the authority or if a majority of the cities, towns and sections of the city of Boston referred to in paragraph (a) choose to do so. For the purposes of the forgoing provision, each city, town and section of the city of Boston referred to in paragraph (a) shall count as one. Except as specially provided in paragraph (f), a quorum of the advisory board shall consist of a simple majority of voting members present, and the advisory board may act, except as otherwise provided in paragraph (f), by affirmative casting of a majority of the votes represented in the quorum. The advisory board shall be deemed to be a governing body for the purposes of, and shall be subject to section 11A½ of chapter 30A of the General Laws, as appearing in the 2000 Official Edition.

(d) For the conduct of its business said advisory board shall adopt and may revise and amend by-laws. Said advisory board shall annually elect a chairperson, a vice-chairperson, a secretary and such officers as said advisory board might determine. Each officer may be removed by a two-thirds vote of the advisory board without cause. In the event of a vacancy, said board shall fill the vacancy for the unexpired term. Each member of said advisory board shall serve without compensation but may be reimbursed, as an expense of said advisory board, for all reasonable expenses incurred in the performance of his duties as approved by the advisory board.

(e) The purposes of the advisory board shall be as follows:

- (i) to appoint one member of the board of directors of the authority, as provided for in section 2 of this chapter, as amended by section 2 of this Act, and in the manner proscribed in paragraph (f) of this section;
- (ii) to make recommendations to the authority on annual current expense expenditure budgets submitted to the

advisory board under paragraph (j);

(iii) to hold hearings, which may be held jointly with the authority at the discretion of the advisory board and said authority, on matters relating to said authority;

(iv) to review the annual report of the authority and to prepare comments thereon to the authority and the governor, and to make such examinations of the reports on the authority's records and affairs as the advisory board deems appropriate; and

(vi) to make recommendations to the governor and the general court respecting the authority and its programs.

The advisory board shall have all powers necessary or convenient to carry out and effectuate the foregoing purposes.

(f) One member of the board of directors shall be appointed by the advisory board in accordance with section 2 of this chapter, as amended by section 2 of this Act. The member of the board of directors so appointed may also be a member of said advisory board. Said advisory board shall appoint successor members, who shall replace that member of the board of directors appointed by the advisory board whose term has expired or otherwise terminated. With respect to appointment of any member of the board of directors the advisory board shall act only if a special quorum is present consisting of two-thirds of voting members, and then only by an affirmative vote of two-thirds of the voting members.

(g) Within thirty days of receiving any proposed current expense budget of the authority or within fifteen days of receiving any proposed amended expense budget of the authority, the advisory board shall hold a public hearing on matters relating to said budget for the purpose of ascertaining, for subsequent report to the authority if necessary, the views of the public thereon.

(h) The advisory board shall provide for the appointment of an ombudsman who, with the assistance from such staff and consultants as the advisory board may authorize and appoint, shall act for and in the name of the advisory board in the following respects:

(i) preparation of analysis for the advisory board of the authority's current expense budgets, capital expenditure budgets and capital programs and their effect on the charges of said authority;

(ii) representation of the advisory board to said authority on all matters pertaining to said authority's programs, operations, finances and charges;

(iii) reporting regularly to the advisory board on the activities of the ombudsman and other staff of the advisory board, on the affairs of the Authority, and on the effect of the authority's program and operations on residents of neighboring communities.

(iv) exercising such other duties and responsibilities consistent with the powers of the advisory board as the advisory board may assign from time to time.

(i) The advisory board may incur annual expenses, not to exceed \$150,000 for expenses authorized under paragraph (c) and for personnel and office expenses. Said annual expenses shall be paid by the authority.

(j) The authority shall provide any information, including but not limited to annual current expense expenditure budgets and capital expenditure reports, requested by the advisory board which are necessary for the discharge of its duties.

The amendment was *rejected*.

Mr. Berry moved that the bill be amended by inserting , after 362, the following new Section:-

"Section ____ . Chapter 686 of the acts of 1981 is hereby amended by adding the following paragraph:-

Any portion of the agricultural land which is not being used for farming or agricultural purposes, if any, may be leased for recreational purposes to private persons or organization may not exceed a term of 2 years and must be approved by the commissioner of the department of food and agriculture."

The amendment was *rejected*.

Mr. Magnani moved that the bill be amended ll by adding the following new section:

"Section ____ . Section 17 of Chapter 23D of the general laws, as appearing in the 2000 official edition, is hereby amended in the first sentence after the word branch by striking the following language: "under the supervision of the executive director of the industrial services program" and inserting after the word ownership the following:- "to be administered, consistent with the objectives of the program set forth within this chapter, by the smaller business association of New England."

The amendment was *rejected*.

Ms. Resor moved that the bill be amended by adding at the end thereof the following new section:-

"SECTION ____ . There shall be established a task force for the purpose of evaluating and recommending non-lethal and lethal methods available to wildlife managers and the public, to successfully manage and co-exist with the following animals: beaver, muskrat, coyote and moose.

The task force shall examine and evaluate the effectiveness of lethal and non-lethal techniques, such as flow devices, repellents, signage, highway/yard fencing, education, improved highway lighting, aversive conditioning, critter proofing homes, yards, and

neighborhoods, trapping and hunting. The task force may establish an effective trap loan program through MassWildlife for trappers and establish an education/incentive program for trappers to use box and cage traps.

Said task force shall be chaired by the senate and house chairmen of the joint committee on natural resources and agriculture, and shall consist of representatives from a broad range of opinions on wildlife management, and represent a broad spectrum of agencies, organizations, and citizens. At a minimum, the taskforce shall include representatives from: MassWildlife, the MSPCA, biologists specializing in the species of coyote, beaver, moose and muskrat, the Commissioner of Department of Public Health or his designee, The Commissioner of MassHighway, or his designee, A member of the Massachusetts Association of Boards of Health, Massachusetts Sportsman's Council, and the commissioner of the state department of conservation and recreation or his designee, and any other representatives the co-chairs so designate.

Said task force shall report to the general court the results of its investigation and study, and its recommendations, if any, together with drafts, of legislation necessary to carry said recommendations into effect, by filing such recommendations to the Joint Committee on Natural Resources and Agriculture six months from the date of enactment of this section."

The amendment was *rejected*.

Messrs. Morrissey and Creedon moved that the bill be amended by inserting after Section 353, the following new Section:-

"SECTION ___. Notwithstanding the provisions of any general or special law to the contrary, no individual physician or physician group under the solo or group practice exclusion from the definition of "clinic" contained in section 52 of chapter 111 of the General Laws, other than a radiologist, or any other physician who is employed by an acute hospital, shall refer a patient for services to an entity that operates medical, diagnostic or therapeutic equipment that is used to provide an innovative service or that is new technology, as such terms are defined in section 25B of chapter 111 of the General Laws, if: (i) the physician holds a direct or indirect ownership or financial interest in such medical, diagnostic or therapeutic equipment or entity; (ii) the physician's immediate family holds a direct or indirect ownership or financial interest in such medical, diagnostic, or therapeutic equipment or entity; or (iii) the physician or member of the physician's immediate family has any direct or indirect arrangement involving remuneration with the entity. For purposes of this section, "health care entity" is defined as an entity that provides health care related testing, diagnosis or treatment of individuals. For purposes of this section "financial interest" is defined as an ownership or investment interest through equity, debt, leasehold interest, or other means, or a compensation arrangement, regardless of whether such interest is direct or indirect. The department of public health shall enforce this section. The Superior Court shall have jurisdiction in equity to enforce the provisions of this section. Upon an initial determination of a violation of this section, the department shall forthwith seek injunctive relief in the Superior Court A violation of this section shall be punishable by a fine of not less than \$25,000. Any continuing violation of this section shall be punishable by a fine of not less than \$25,000 and not more than \$100,000 per day of operation, and by one or both of: (i) referral of the physician to the board of registration in medicine for appropriate disciplinary action, and (ii) revocation of the health care entity's license.

The amendment was *rejected*.

Messrs. McGee and Baddour moved that the bill be amended by inserting, after Section 344 the following new Section:-

"SECTION ___. Notwithstanding any general or special law to the contrary, MassPort is hereby authorized and directed to enter into a contract with the Massachusetts Turnpike Authority for the purposes of operating, managing, and administering the FastLane toll collection system on the Tobin Bridge. Prior to entering into said contract the Massachusetts Turnpike Authority shall conduct a cost analysis to determine the cost for providing said services and report back to the Joint Committee on Transportation, and the Committees on House and Senate Ways and Means. Said report shall be filed with the Clerk of the House and the Clerk of the Senate no later than September 1, 2004."

The amendment was *rejected*.

Messrs. Lees and Tisei and Mrs. Sprague moved that the bill be amended by inserting at the end thereof the following section:-

"SECTION ___. Section 7 of Chapter 4 of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by striking the following words contained in lines 88 and 89 of clause eighteenth:- ", with respect to Suffolk county only,"

The amendment was *rejected*.

Ms. Fargo, Ms. Resor, and Mr. Brown moved that the bill be amended by inserting, after Section ___, the following new Section: -

SECTION ___. (a) Section 1 of Chapter 64E of the General Law, as so appearing, is hereby amended by adding the following clause:-

"Toll Receipts", shall include, in addition to its usual meaning, a statement of activity issued by a Massachusetts Turnpike Authority authorized electronic toll payment collection vendor.

(b) Section 5 of Chapter 64E of the General Law, as so appearing, is hereby amended by striking out, in line 18, the word "half" and inserting in place thereof the following word:- quarter.

(c) Section 5 of Chapter 64E of the General Laws, as so appearing, is hereby further amended by striking out, in line 33, the

word "three" and in place thereof the following figure:- 14.
The amendment was *rejected*.

Mr. Moore moved that the bill be amended in section 2, in line item 4000-0300, by adding at the end thereof:- "provided further, the medical assistance program shall reinstate the MassHealth hospital inpatient benefit in effect on January 1, 2003 for all MassHealth enrollees, provided further, that in determining inpatient rates for any acute hospitals the executive office shall utilize the same payment methodology, including all exemptions, rate adjustments and passthrough payments, as was in effect on January 1, 2003."
The amendment was *rejected*.

Mr. Lees moved that the bill be amended in section 2, in line item 4000-0300, by deleting the following language:- "provided further, that in determining inpatient rates for any acute hospitals the executive office shall utilize the same payment methodology, including all exemptions, rate adjustments and passthrough payments, as was in effect on July 1, 2003; provided further that in determining outpatient rates for any acute hospitals the executive office shall utilize the same payment methodology, including all exemptions and rate adjustments, as was in effect on October 1, 2003; provided further, that any hospital with a unit designated as a pediatric specialty unit, as defined by this act, shall be exempt from the inpatient and outpatient efficiency standards, so called, being applied to their rate methodology; provided further, that said executive office shall use the same pricing methodology for durable medical equipment and oxygen as was in effect on July 1, 2003; provided further, that said executive office shall not reduce the supplement to chronic disease and rehab hospitals administrative day rate below that which was granted during hospital fiscal year 2004;"
The amendment was *rejected*.

Mr. Moore moved that the bill be amended in section 292 by adding at the end thereof the following sentence:- "Said agency shall make provisions to allow those persons enrolled in said program and meeting the eligibility requirements established under the MassHealth program to be eligible to enroll in Medicaid managed care organizations and to allow the Medicaid managed care organizations the option of enrolling program members through current managed care organization enrollment assignment guidelines if said enrollment would be cost-effective for the commonwealth."
The amendment was *rejected*.

Ms. Melconian moved that the bill be amended by striking out Section 298 and replacing it with the following:-

"SECTION 298. Notwithstanding any general or special law or regulation to the contrary, the secretary of health and human services and the division of medical assistance shall seek any necessary federal waivers or regulation changes and develop a pilot program within the MassHealth primary care clinician plan for up to 25,000 disabled managed-care eligible MassHealth members. The program shall be contracted by an open bidding process and reimbursed by the division at a predetermined capitated rate for each such enrolled MassHealth member. Such pilot program may include the provision of primary care and pharmacy benefits through community health centers, hospital-licensed community health centers and disproportionate share hospitals. No later than 60 days prior to the implementation of said pilot program, the division of medical assistance shall notify the house and senate committees on ways and means and the secretary of administration and finance of the number of projected participants, the planned date of implementation, any expected reduction in spending resulting from the program, and the effect on the level of services available to participating members. Hospitals providing services to persons participating in the pilot program shall be required to report data on program participants, including service and billing information, to the division of health care finance and policy and to the health maintenance organization or managed care organization managing the care of such participants. An evaluation of the quality and cost effectiveness of the pilot program, including any expected reduction in spending resulting from the provisions of this section and the effect on the level of services available to participating members and on the uncompensated care pool, shall be completed by the secretary in coordination with the auditor. The results of such evaluation shall be reported by the secretary to the house and senate committees on ways and means and the secretary of administration and finance, no later than March 1, 2005.
The amendment was *rejected*.

Mr. Moore moved that the bill be amended by adding at the end thereof the following:-
SECTION __ Notwithstanding any general or special law to the contrary, the definition of critical access services appearing in section 1 of chapter 118G of the General Laws, shall extend to all medically necessary services provided by acute hospitals until July 1, 2006, and after the Secretary of Health and Human Services develops a new program for the provision of medically necessary health care services for low income uninsured and underinsured residents of the Commonwealth, files recommendations with the General Court, and otherwise complies with the requirements of section 617 of chapter 26 of the Acts of 2003.

The report required in connection with such program shall be forwarded to the House and Senate Committees on Ways and Means, the Joint Health Care Committee, and the House Medicaid Committee by July 1, 2005. The definition of critical access services defined herein shall apply until July 1, 2006, following the General Court's receipt and review of the Secretary's report. In examining the definitions of critical access services, free care, emergency medical condition and emergency services, as

required by said section 617 of said chapter 26 of the Acts of 2003, the Secretary shall consult with the health care organizations outlined in the second paragraph of section 617, and with physicians who provide care to uninsured patients and who represent the following health care organizations and institutions: each member hospital of the Coalition of Boston Teaching Hospitals, and a cross-section of physicians representing hospitals and community health centers throughout the Commonwealth to be determined by the Massachusetts Hospital Association and the Massachusetts League of Community Health Centers..

Any program that recommends transfer of non-urgent, non-emergent, medically necessary patient care from acute hospitals to community health centers shall take into account longstanding patient-physician relationships; the patient's need for continuity of care; complexity or severity of a patient's mental or physician condition or illness; complexity of a patient's prescription drug regimen; patient choice; academic medical center teaching mission and programs; and geographic, capacity, transportation or other concerns regarding the patient's access to needed medical care in the most appropriate setting. The program shall also consider the efficacy and feasibility of implementing pilot projects that encourage greater care of uninsured patients in the most cost-effective, medically appropriate settings, while taking into account existing collaborations between hospitals and community health centers. The Secretary shall file a separate transition plan by July 1, 2005.

The amendment was *rejected*.

Mr. Montigny moved that the bill be amended by inserting the following two sections:-

SECTION ____ . Section 7 of Chapter 118G of the General Laws is hereby amended by adding the following new paragraph after the third paragraph: The division shall establish rates for providers of adult day health services which: recognize two levels of care, Basic and Complex, with one corresponding rate for each; are not less than the rates and reimbursements in effect for Adult Day Health and for Dementia-Specific Adult Day Health Home and Community-based waiver clients as of June 30, 2002; reimburse dementia-specific adult day health programs at not less than the Complex rate for any participant with dementia, provided that the Complex rate may be less than the aforementioned Home and Community based rate for participants other than those in dementia-specific programs.

SECTION ____ .

Chapter 118G of the General Laws is hereby amended by adding a new Section 17B as follows:

Section 17B

Adult Day Health Services

The commissioner shall review and approve or disapprove rates for the Basic and Complex levels of adult day health services. In addition to the eligibility criteria for the basic level-of-care as outlined in 130 CMR 404.407, any participant requiring nursing services as outlined in 130 CMR 456.409(C) shall be eligible for the basic level-of-care. Any participant who meets the eligibility criteria for nursing home placement pursuant to 130 CMR 456.409, in effect on January 1, 2004, and has been diagnosed with dementia shall be eligible for participation in a dementia-specific program. The commissioner of the division of medical assistance, or its successor, shall not restrict the number of persons participating in any dementia-specific program based on the number of participants who have participated in previous years.

The amendment was *rejected*.

Messrs. Moore and Montigny and Ms. Resor moved that the bill be amended by adding at the end thereof the following new Sections:-

SECTION ____ . The last sentence of section 9 of chapter 118E of the General Laws, as inserted by section 313 of chapter 26 of the acts of 2003, is hereby amended by striking out the word "levels." and inserting in place thereof the words:- levels, provided, that no premiums shall be imposed on households with children whose financial eligibility as determined by the division is below 150 per cent of the federal poverty level.

"SECTION ____ . Section 10F of chapter 118E of the General Laws, as inserted by section 319 of chapter 26 of the acts of 2003, is hereby amended by striking out the fourth paragraph and inserting in place thereof the following paragraphs:-

The cost of the program shall be funded in part by premiums contributed by enrollees according to the following eligibility categories:

- (a) enrollees in households ineligible for medical benefits pursuant to this chapter earning less than 200 per cent of the federal poverty level shall not be responsible for contributing to program premium costs;
- (b) enrollees in households earning between 201 per cent and 300 per cent of the federal poverty level, inclusive, shall contribute not less than 20 per cent and not more than 30 per cent of the monthly premium cost according to a sliding scale established by the division; provided, that additional contributions shall not be required for any enrollee after the third enrollee in such a household;
- (c) enrollees in households earning between 301 per cent and 400 percent of the federal poverty level, inclusive, shall contribute not less than eighty-five per cent and not more than ninety percent of the monthly premium cost according to a sliding scale established by the division; provided, that additional contributions shall not be required for any enrollee after the first enrollee in

such a household;

(d) enrollees in households earning more than 400 per cent of the federal poverty level shall pay no more than the full premium cost of said program.

Household earnings may be defined on the basis of gross earnings, or on an adjusted basis according to criteria deemed appropriate by the division. The division shall base premium costs on an actuarially sound methodology. Premiums contributed by enrollees shall be deposited in the Children's and Seniors' Health Care Assistance Fund, established by section 2FF of chapter 29 and may be used for the program subject to appropriation.

The amendment was *rejected*.

Messrs. Moore, Brewer, O'Leary and Knapik moved that the bill be amended by adding at the end thereof the following section.

Section ____

SECTION 1. Subsection (1) of section 9C of chapter 118E of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by striking out the phrase "200 percent of the federal poverty level" as it appears in lines 20, 27 and 35 and inserting in place thereof the following:- 300 percent of the federal poverty level.

SECTION 2. Section 9C of said chapter 118E of the General Laws, as so appearing, is hereby further amended by striking paragraph (4) and replacing it with the following new paragraph:-

(4) The amount of payments for each employer under paragraph (C) of subsection (2) shall be as follows: (i) \$600 for each eligible employee for whom the eligible employer pays 50 percent or more of the cost of qualified medical insurance; (ii) \$1,200 for each eligible employee for whom the eligible employer pays 50 percent or more of the cost of qualified two-person family medical insurance, and (iii) \$1,500 for each eligible employee for whom the eligible employer pays 50 percent or more of the cost of qualified family medical insurance, provided that the division may use reasonable data sources in determining the number of eligible employees of an eligible employer qualifying for such payments under clauses (i), (ii), and (iii).

SECTION 3. Said section 9C of said chapter 118E of the General Laws, as so appearing, is hereby further amended by striking paragraph (5) and replacing it with the following new paragraph:-

(5) The amount of payments for each self-employed single individual or each self-employed husband and wife under paragraph (B) of subsection (2) may include the following amounts: (i) \$600 for an eligible self-employed single individual if the individual purchases qualified medical insurance; (ii) \$1,200 for an eligible self-employed single individual with a dependent child or for an eligible self-employed husband and wife filing a joint tax return and who have no dependent children, if the individual or husband and wife purchase qualified two-person family medical insurance, or (iii) \$1,500 for an eligible self-employed individual with two or more dependent children, or an eligible self-employed husband and wife filing a joint tax return and who have dependent children, if the individual or husband and wife purchase qualified family medical insurance, provided that the payment shall not exceed the amount of the net premium cost to said self-employed persons of said insurance, and shall be in conformity with the regulations of the division.

The amendment was *rejected*.

Ms. Walsh moved that the bill be amended by inserting, after Section ____, the following new Section: -

"SECTION _____. Chapter 118E of the General Laws is hereby amended by striking out section 17, as amended by section 24 of chapter 177 of the acts of 2001, and inserting in place thereof the following section: -

Section 17. Multiple source drugs listed in the Massachusetts list of interchangeable drug products established pursuant to the provisions of section thirteen of chapter seventeen of the General Laws and regulations adopted thereunder shall not be reimbursable except for the "Massachusetts maximum allowable cost", as defined by regulations of the department, unless the division grants prior authorization based upon the practitioner's assertion to the division that satisfactorily demonstrates that a recipient's medical condition requires the use of a nongeneric drug and unless the practitioner writes on the face of the prescription in his or her own handwriting the words "brand name medically necessary" under the words "no substitution" in a manner consistent with applicable state law; provided that a pharmacist dispensing in accordance with this section shall be exempt from the provisions of the fourth paragraph of section twelve D of chapter one hundred and twelve. A request for prior authorization may be made by telephone or other telecommunication device or in writing. The division shall act within 24 hours of the request. If the request is denied, the practitioner or recipient may appeal as provided for in sections 47 and 48, provided that the board of hearings hold a hearing and render a decision within 90 days of the appeal to the division. The division shall authorize the use of a nongeneric drug as requested by the practitioner during the pendency of the appeal.

Notwithstanding the provisions of the first paragraph, prior authorization shall not be required for medications used to treat mental illness, including but not limited to schizophrenia, depression, bipolar disorder, anxiety, or attention deficit disorder and attention deficit hyperactivity disorder. The division shall further make available medications for persons with mental illness, including atypical antipsychotic medications, conventional antipsychotic medications, and other medications used for the treatment of mental illness without restriction or without preference for one medication over another or one class of medications

over another."

The amendment was *rejected*.

Ms. Chandler, Ms. Resor, Ms. Creem, Mr. Tolman, Mr. McGee, Ms. Wilkerson and Mr. Barrios moved that the bill be amended by inserting after Section , the following new Section:-

SECTION . Notwithstanding the provisions of any general or special law to the contrary, any individual otherwise eligible for MassHealth/CommonHealth insurance program for working adults with disabilities, shall not be subject to any enrollment caps or asset test and their eligibility to enroll in the program shall not be limited by such caps or asset tests.

The amendment was *rejected*.

Mr. Tolman moved that the bill be amended by inserting, after Section 362, the following new Section:-

"SECTION 363. SECTION 1. Section 17 of Chapter 118E of the General Laws, as appearing in the 2002 official edition, is hereby amended by striking the words "provision of written documentation by the practitioner to the division that" and inserting in place thereof:-

provisions of section 53 of this chapter and

SECTION 2. Chapter 118E of the General Laws, as appearing in the 2002 official edition, is hereby amended by adding at the end thereof the following new section:

Section 53.

Drug prior authorization process

(a) The Division shall administer a drug prior authorization process to ensure the timely dispensing of drugs, for any outpatient prescription drug. In administering said process the Division shall meet the following conditions:

- (1) Provide telephone, fax or other electronically transmitted approval or denial within twenty-four (24) hours after receipt of the prior authorization request;
- (2) If in the prescribing physician's opinion an emergency situation exists, including a situation in which a response to a prior authorization request is unavailable, allow for the prescribed drug to be dispensed at a physician's discretion and until such time as the prior authorization process and subsequent appeals are determined. Any drug dispensed in said manner shall be eligible for full coverage and payment by the Division of Medical Assistance;
- (3) Grant authorization of drugs prescribed for a medically accepted use supported by either approved product labeling or peer reviewed literature unless there is a therapeutically equivalent generic drug that is available without prior authorization;
- (4) Allow any patient that receives benefits under a program of the division, and is receiving maintenance medications for a chronic illness, to receive said medications until the existing prescription expires, or for a period not to exceed six months, whichever is greater, without the need for any prior approvals to be granted.
- (5) Consult with the Pharmacy and Therapeutics Advisory Committee, established in Section 3 of this act, to develop and implement improvements to the drug prior authorization process and make a report to the advisory committee on the status of the prior authorization list and any changes, related hearings or other proceedings semi-annually.

(b) The division shall maintain a process for the evaluation of drugs to be placed on the prior authorization list, which shall include:

- (1) A public hearing on all medications prior to a decision being made on prior authorization;
- (2) publishing conspicuous notice in at least one newspaper of general circulation and on the division's website at least thirty (30) days prior to any public hearing on whether such a drug should be placed on prior authorization;
- (3) consideration of any information provided by any interested party, including but not limited to physicians, pharmacists, beneficiaries, and manufacturers or distributors of the drug;
- (4) consideration of the potential impact on patient care, safety and other sectors of the state health care systems including emergency room visits and hospitalizations as a result of placement of such drug on prior authorization.
- (5) receipt of written approval by a physician who is board certified in the specialty that most commonly treats the disease or prescribes the relevant therapeutic class of drugs. Said physician shall not be employed by, nor have any financial relationship with, any pharmacy benefits management company managing Medicaid prescription benefits, nor be a member of the Pharmacy and Therapeutics Advisory Committee. Such written

ratification shall be submitted to the commissioner, members of the Pharmacy and Therapeutics Advisory Committee, and shall be available to the public upon request; and,

(6) A final decision shall be made within 60 days of the public hearing and published for public comment for a period of no less than 30 days. The effective date of the decision shall not be prior to the close of the comment period and effective notice of the decision's finality is available to prescribers.

(c) Notwithstanding any other provision of this section, no drug shall be recommended to require prior authorization by the division and placed on prior authorization, which has been approved or had any of its particular uses approved by the FDA under a priority review classification;

(d) The Division shall develop a grievance mechanism for interested parties to appeal the Department's decision to place a drug on prior authorization, which at a minimum shall be concluded within ten days. After participating in the grievance mechanism developed by the Department on the recommendations of the advisory committee, any interested party aggrieved by the placement of a drug on prior authorization shall be entitled to an administrative hearing before the Department;

(e) The Division shall review the prior authorization status of a drug annually;

(f) The Division shall make a report to the house and senate committees on ways and means and the house and senate committees on health care at the conclusion of all prior authorization proceedings for each therapeutic class or at least, no less often than annually. Said report shall include but not be limited to the outcomes of all public hearings and prior authorization decisions; a list of drugs which are and are not to be prior authorized along with corresponding information used to make such decisions; sectors of the state health care program that may be affected by the drug's availability for use in treating program beneficiaries; any changes made or proposed to the prior authorization process; and recommendations including legislation that may benefit the prior authorization process and program beneficiaries; said report shall be posted on the division's website.

SECTION 3. Chapter 118E of the General Laws, as appearing in the 2002 official edition, is hereby amended by adding at the end thereof the following new section:

Section 54.

Pharmacy and Therapeutics Advisory Committee

(a) There is hereby established a Pharmacy and Therapeutics Advisory Committee for the purpose of advising and making recommendations to the Division of Medical Assistance's prior authorization program. Said advisory committee shall consist of thirteen (13) members to be appointed by the Governor and shall include: five physicians licensed in Massachusetts and actively involved in the practice of medicine; three pharmacists licensed to do business in the commonwealth and actively involved in the practice of pharmacy; a representative of the Massachusetts Medical Society; a representative of the Massachusetts Pharmacy Association; a representative of medical assistance beneficiaries in the commonwealth; and, two patient advocates.

In making physician appointments the Governor shall make his selections from a list of nominees provided by the Massachusetts Medical Society. In making pharmacist appointments the Governor shall make his selections from a list of nominees provided by the Massachusetts Pharmacy Association.

Advisory committee members shall serve staggered three-year terms. Two physicians, one pharmacist and the representative of medical assistance beneficiaries shall each be appointed for one-year terms. Members may be reappointed for a period not to exceed three, three-year terms. Advisory committee members shall select a chairperson and a vice-chairperson by a majority vote of the committee membership on an annual basis. Said committee shall meet at least monthly and may meet at other times at the discretion of the chairperson. Notice of any meeting of the advisory committee shall be published thirty (30) days before such meeting; and

(b) The advisory committee shall have the power and duty to:

- (1) advise and make recommendations regarding the implementation of a drug prior authorization program for the medical assistance program;
- (2) advise and make recommendations regarding rules to be promulgated by the division regarding outpatient prescription drug prior authorization;
- (3) make recommendations for a grievance mechanism for interested parties to appeal any decision made by the Division to place a drug on prior authorization;
- (4) make recommendations to the Division regarding any inpatient or outpatient prescription drug covered by the medical assistance program that is to be prior authorized as well as which drugs are exempt from the prior approval process. Said recommendation shall be supported by an analysis of prospective and retrospective DUR data demonstrating

- (a) the expected impact of such a decision on the clinical care likely to be received by beneficiaries for whom the drug is medically necessary;
- (b) the expected impact on physicians whose patients require the drug;
- (c) the expected fiscal impact on the medical assistance program;
- (d) review and make recommendations on a semi-annual basis whether drugs placed on prior authorization should remain on prior authorization; and
- (e) make recommendations for a list of maintenance medications that are needed for chronic illnesses;"

The amendment was *rejected*.

Ms. Wilkerson moved that the bill be amended by inserting after Section 243 the following section: --
Section __. Notwithstanding any general or special law or regulation to the contrary, not-for-profit chronic hospitals located in ventilator under-bedded areas shall receive the masshealth chronic hospital inpatient per diem rate for ventilator patients classified by the division of medical assistance as on administratively necessary day (AND) status. For the purposes of this provision, "ventilator under-bedded areas" shall be defined as meeting the following criteria: (i) location in a city with a population, per U.S. Census Bureau report of 2000, in excess of 200,000, and (ii) location in an HSA with less than ten (10) licensed adult nursing home beds with a ventilator care agreement with the division of medical assistance per thousand persons aged sixty-five (65) and over.

The amendment was *rejected*.

Mr. McGee moved that the bill be amended by inserting, after Section 362, the following new Section: -
"Section __. Notwithstanding the provisions of any general or special law to the contrary, any prior authorization or restriction on medication policy, rule or regulation of the department of mental health, division of medical assistance or any other agency applicable to the treatment of children with mental illness shall require that the department of mental health provide telephone, fax or other electronically transmitted approval or denial with appropriate clinical reasons within forty-eight (48) hours after receipt of the prior authorization request. In the event a prior authorization request is denied and is subsequently appealed pursuant to the applicable regulations of the department of mental health, the prescribed drug may be dispensed at a physician's discretion and until such time as the prior authorization process and subsequent appeal are determined if in the prescribing physician's opinion, an emergency situation exists,. Any drug dispensed in said manner shall be eligible for full coverage and payment by the division of medical assistance."

The amendment was *rejected*.

Ms Resor moved that the bill be amended by inserting after section 165, the following new section:-
"SECTION 165A. Notwithstanding the provisions of any general or special law, rule, or regulation to the contrary, the division shall not require prior authorization or impose any other restriction on rescue medications used to treat pediatric asthma. The division shall make available rescue medications for children under 18 years old with asthma, and other medications used for the treatment of asthma without restriction or without preference for one medication over another or one class of medications over another."

The amendment was *rejected*.

Mr. Tarr moved that the bill be amended by adding, in Section 2, in item 4000-0600, line following the word: "plan" the following:-

"provided that \$4,000,000 shall be expended for the senior housing innovations initiatives program for the purpose of permitting the executive office of health and human services to award grants or contracts to non-profit organizations, quasi public agencies, or other entities to support initiatives that EOHHS in collaboration with the Executive Office of Elder Affairs, Office of Commonwealth Development, Department of Housing and Community Development, and the assistant secretary for disabilities and community services determine will develop or enhance programs that provide the elderly with supportive services that allow them to remain in their own homes or in homelike congregate community housing, assistance in accessing homelike, congregate community housing, assistance in transitioning out of institutional settings, or programs that provide technical assistance, planning and evaluation of the services and community-based housing supporting elders in the community."

The amendment was *rejected*.

Mr. Lees moved that the bill be amended in section 2, in item 4000-0600, by inserting in line 2 following the words "senior care plan" the following wording:- "provided that \$4,000,000 shall be expended for the Helping our Massachusetts Elders or HOME program, so-called, for the purpose of permitting the executive office of health and human services to award grants or contracts to non-profit organizations, quasi- public agencies, or other entities to support initiatives that the Interagency Task Force determines will develop or enhance programs that provide the elderly with supportive services that allow them to remain in their own homes or in home-like congregate community housing, assistance in accessing home-like, congregate community housing, assistance in transitioning out of institutional settings, or programs that provide technical assistance, planning and evaluation of the services and community-based housing supporting elders in the community."

The amendment was *rejected*.

Ms. Tucker moved that the bill be amended in section 2, in item 9110-1636, by striking out the figure "\$9,604,137" and inserting in place thereof the following figure:-
"\$11,604,137".

The amendment was *rejected*.

Ms. Wilkerson moved that the bill be amended in section 2 by inserting after item 9110-1660 the following item:
"9110 - 1700 For the Elder Residential Assessment and Placement Program...\$250,000"

The amendment was *rejected*.

Messrs. Joyce and Creedon moved that the bill be amended in section 2, in 9110-1900, in line 2 after the words "West Roxbury;" the following item:-

"and provided further that \$25,000 shall be made available to East Bridgewater Council on Aging to pay for the planning of Senior Center,"

The amendment was *rejected*.

Ms. Tucker, Mr. O'Leary, Mr. Brewer and Ms. Creem moved that the bill be amended by striking out Section 272 and inserting in place thereof the following new Section:-

"Section 272. The Executive Office of Health and Human Services shall retain in fiscal year 2005 the same standards and regulations for personal care attendants in effect on February 1, 2004 unless an agreement to any changes is reached between the division of medical assistance, designees of the governor's advisory commission on disability policy, the Massachusetts office on disability and the statewide independent living council."

The amendment was *rejected*.

Mr. Glodis, Ms. Chandler and Mr. Moore moved that the bill be amended in Section 279, by adding the following words:-

"The Executive Office of Elder Affairs, in collaboration with the Executive Office of Health and Human Services, shall by August 31, 2004 make whatever necessary application for the PACE program to increase the income eligibility to up to 300 percent of the federal benefit rate under the supplemental security income program and provide that the asset test shall not be less than \$20,000."

The amendment was *rejected*.

Mr. Moore moved that the bill be amended in section 2, in item 4000-0500, by inserting at the end thereof the following:-

"provided further, that notwithstanding the provisions of any general or special law or regulation to the contrary, inpatient behavioral health contractors under contract with MassHealth's managed care contractors for mental health/substance abuse carve-outs, shall receive their full contracted inpatient per diem rate for patients aged eighteen and under who are classified as on administrative necessary days (AND) status"

The amendment was *rejected*.

Ms. Melconian and Mr. Lees moved that the bill be amended in section 2, in item 4000-0600, by inserting after the words "house and senate committees on ways and means prior to any transfer" the following:-

"provided further, that notwithstanding any general or special law to the contrary, all licensed chronic care hospitals located in Hampden county shall be paid under the same Medicaid reimbursement methodology as applied to all other similarly situate chronic care hospitals; and provided further, that in calculation the Medicaid reimbursement, such reimbursement shall exclude any costs associated with any beds licensed by the department of mental health"

The amendment was *rejected*.

Messrs. Tisei, Lees, Knapik and Tarr, Ms. Sprague, and Mr. Brown moved that the bill be amended in section 281 by adding at the end thereof the following new paragraph:-

(b) Notwithstanding any general or special law or regulation to the contrary, the division of health care finance and policy shall in calculating Medicaid occupancy rates include Massachusetts Commission for the Blind patients.

The amendment was *rejected*.

Mr. O'Leary moved that the bill be amended by inserting, in Section 295 at the end of the second sentence after the words "Massachusetts Hospital Association" the following:-

"; provided that said secretary shall provide a \$750,000 one-time grant from said fund for a sole community hospital under the Medicare program located in Barnstable county."

The amendment was *rejected*.

Mr. Tisei moved that the bill be amended in Section 295 by inserting after the words "Massachusetts Hospital Association" the following:-

", provided that said secretary shall provide a \$250,000 one-time grant from said fund for an acute care hospital serving the Melrose and Wakefield communities that operates a family health service clinic."

The amendment was *rejected*.

Mr. Hart moved that the bill be amended in Section 295 by inserting after the first sentence the following sentence:
"Furthermore, the secretary of health and human services shall make available from said fund \$5,500,000 in a one-time grant for a disproportionate share financially distressed community hospital located in Suffolk County with a locked inpatient adolescent psychiatric unit that participates in the MassHealth program."

The amendment was *rejected*.

Mr. Hart moved that the bill be amended in section 295 by inserting at the end of the second sentence after the words "Massachusetts Hospital Association" the following: ", provided that a non-profit visiting nurse association located in Boston, that delivers at least 30 per cent of all MassHealth reimbursed skilled nursing visits and at least 50 per cent of all MassHealth reimbursed home health aide services in Suffolk county, shall receive \$750,000 from said fund."

The amendment was *rejected*.

Mr. Hart moved that the bill be amended in Section 295, by inserting after the word "fund", in line 15, the words: "Notwithstanding the provisions of any general or special law to the contrary, said secretary shall make available from said fund \$400,000 in a one time grant for a community health center located in South Boston which operates an urgent care center and which is affiliated with the disproportionate share teaching hospital in Suffolk County with the highest volume of free care, \$350,000 in a one time grant for a community health center located in the Codman Square neighborhood of Dorchester providing health care to medically underserved patients in Dorchester, who has formed an integrated health services network to provide access to primary and preventive public health services; \$350,000 in a one time grant for a community health center located near the Fields Corner neighborhood of Dorchester, on Dorchester Avenue, providing health care to medically underserved patients in Dorchester, who has formed an integrated health services network to provide access to primary and preventive public health services; and \$400,000 in a one time grant for a community health center with at least three sites serving the medically underserved areas of Dorchester and South Boston, including at least one public housing project."

The amendment was *rejected*.

Ms. Tucker moved that the bill be amended in Section 295, in line 9, by adding after the words "Massachusetts Hospital Association" the following words:-

"Said Secretary shall make available from said fund \$750,000 for a one-time payment to a disproportionate share hospital provider in the county formerly known as Essex County who has a family practice residency in partnership with a federally qualified community health center."

The amendment was *rejected*.

Mr. Nuciforo moved that the bill be amended in section 295 by inserting after the words "care sites in the community." the following:-

"Notwithstanding the provisions of any general or special law to the contrary, the secretary of health and human services shall make available from said fund \$750,000 in one-time grant for a teaching hospital located in central Berkshire county."

The amendment was *rejected*.

Mr. Knapik of Westfield moved that the bill be amended in Section 295 by adding the following words:-

"Notwithstanding the provisions of any general or special law to the contrary, said Secretary shall make available from said fund \$500,000 in a one-time grant for a hospital located in Hampden County , west of the Connecticut River with under 100 beds that participates in MassHealth."

The amendment was *rejected*.

Ms. Chandler moved that the bill be amended in Section 295, by inserting at the end of the first sentence the following wording:-
", provided that \$500,000 shall be expended for a one-time grant for a community health center that serves as a family practice residency training site for a commonwealth funded medical school and that assumed the primary care services of the former Worcester City Hospital".

The amendment was *rejected*.

Ms. Wilkerson moved that the bill be amended in Section 295 by inserting after the words "Massachusetts Hospital Association" the following: -

"; provided that a not-for-profit long term acute care hospital located in Roxbury shall receive \$250,000 from said Fund."

The amendment was *rejected*.

Mr. Lees moved that the bill be amended in section 295 by adding the following words:-

"Not less than \$4,000,000 of available funds, from said Fund, shall be made available for payment to statewide providers with the service area of the Sisters of Providence Health System and Providence Behavioral Health Hospital; provided further, that not less than \$1,000,000 shall be provided for a one-time grant for a disproportionate share teaching hospital located in Hampden County"

The amendment was *rejected*.

Mr. Berry moved that the bill be amended in Section 295 by adding at the end of the second sentence after the words "Massachusetts Hospital Association" the following words:-
", provided that said secretary shall provide a \$500,000 one-time grant from said fund for an acute care hospital located in Gloucester that is part of a health care system."

The amendment was *rejected*.

Mr. Knapik moved that the bill be amended in Section 295 by inserting at the end of the second sentence after the words "Massachusetts Hospital Association" the following:-
", provided that said secretary shall provide a \$2,500,000 one-time grant from said fund for an acute care hospital located in Holyoke that is affiliated with a commonwealth-owned university medical school and that provides clinical training programs for nurses, allied health professionals and technicians through affiliations with community colleges and private universities."

The amendment was *rejected*.

Mr. Moore moved that the bill be amended by inserting, in Section 296, after "In addition to those 12 disproportionate share hospitals, a teaching hospital located in Hampden county with high Medicaid utilization" the following:-
"and a non-profit acute care regional teaching hospital in Worcester county that is affiliated with a commonwealth-owned medical school"

The amendment was *rejected*.

Ms. Melconian and Mr. Knapik moved that the bill be amended by striking out Section 296 and replacing it with the following new Section:-

"SECTION 296. Notwithstanding any general or special law to the contrary, in hospital fiscal year 2005, the division of health care finance and policy is authorized to administer, as provided in this section, the Uncompensated Care Trust Fund established by section 18 of chapter 118G of the general laws, to collect assessments as specified in section 1 of said chapter 118G for deposit to the fund, and make certain payments to acute hospitals and community health centers from the uncompensated care pool to offset the costs of services provided to uninsured residents. The division and the division of medical assistance may promulgate regulations to implement any of the provisions in this section.

The division, in consultation with the division of medical assistance and the executive office of health and human services, shall ensure that assessment liability to the fund and payments from the uncompensated care pool are structured in a manner that would secure for the General Fund the maximum allowable federal reimbursement under Title XIX, XXI or any successor federal statute.

In hospital fiscal year 2005, the total liability of all acute care hospitals to the fund shall be \$160,000,000 and the division of health care finance and policy shall calculate an assessment percentage rate by dividing \$160,000,000 by the projected annual aggregate private sector charges in the fiscal year for all acute care hospitals. Each acute care hospital's liability to the fund shall be equal to the product of the percentage rate and its "private sector charges".

In hospital fiscal year 2005, the total surcharge liability of surcharge payers to the uncompensated care trust fund shall be \$160,000,000. The surcharge amount for each surcharge payer shall be equal to the product of (a) the surcharge percentage and (b) amounts paid for services of an acute hospital or ambulatory surgical center by each surcharge payer. The division of health care finance and policy shall calculate the surcharge percentage by dividing \$160,000,000 by the projected annual aggregate "payments subject to surcharge", as that phrase is defined in section 1 of chapter 118G of the General Laws.

All title XIX federal financial participation revenue generated by hospital payments funded by the Uncompensated Care Trust Fund, whether the payments are made by the division of health care finance and policy or the division of medical assistance, shall be credited to the General Fund; provided however, that for fiscal year 2005, the comptroller shall transfer to the Uncompensated Care Trust Fund \$218,000,000 of the federal financial participation credited to the General Fund.

All hospital payments made pursuant to this section are subject to federal approval and conditioned on the receipt of full federal financial participation. All such payments shall be established in accordance with Title XIX of the Social Security Act, or any successor federal statute, any regulations promulgated thereunder and the Commonwealth's Title XIX state plan; provided, that the division, in consultation with the division of medical assistance, the executive office of health and human services, the Massachusetts Hospital Association, and representatives of acute care hospitals, shall ensure that all funding for hospital payments made pursuant to this section through disproportionate share payments or Title XIX service rate adjustment payments, shall qualify for federal financial participation.

The division of health care finance and policy shall calculate an annual payment liability from the uncompensated care pool to each acute hospital for fiscal year 2005. In determining the liability amount, the division shall (a) ascertain each hospital's

reported unreimbursed free care costs from fiscal year 2004 and project the remaining months of hospital fiscal year 2004 using the most recent reliable data available, and shall also take into account such factors as available funding in the pool, the financial burden of hospitals that provide proportionately the largest volume of free care, medical inflation and the situation of any free-standing pediatric hospital with a disproportionately low volume of Title XVIII payments; provided further, that the division shall project every acute hospital's cost growth for hospital fiscal year 2005 using a uniform growth factor determined from the prior twelve months and projecting forwards; and (b) allocate the available funds in a manner that pays to each hospital a fixed percentage of its projected free care costs for hospital fiscal year 2005, as determined by the division using prior year data and considering the total funds available for the purpose; provided further, that the fixed percentage shall not be less than 85 per cent of free care costs as defined in section 1 of chapter 118G of the General Laws for the 2 disproportionate share hospitals with the highest relative volume of free care costs in hospital fiscal year 2002, and not less than 88 per cent of free care costs, as defined under section 1 of chapter 118G of the General Laws, for the 14 acute hospitals with the next highest relative volume of free care costs in said year. In addition to those 16 disproportionate share hospitals, a teaching hospital located in Hampden county with high Medicaid utilization shall receive not less than 88 per cent of its free care costs reimbursed. All other acute hospitals shall receive the highest possible percentage of free care costs given available remaining funds. The hospital fiscal year 2005 annual liability amount to each hospital shall be funded by the trust fund; provided, that the liability may be satisfied through either a disproportionate share payment or adjustment to Title XIX service rate adjustment payment, or combination thereof, in accordance with the terms provided for in an agreement entered into by any acute hospital and the division of medical assistance. The comptroller shall transfer without further appropriation funds to the division of medical assistance for the purpose of the Title XIX service rate adjustment payments.

The division shall maximize the use of other federally permissible funding mechanisms available for publicly-operated hospitals and hospitals with an affiliation with a publicly-operated health care entity to reimburse up to \$70,000,000 of uncompensated care costs at the hospitals using sources distinct from the funding made available to the trust fund under this section.

The division shall make payments from the uncompensated care pool for services provided by community health centers to uninsured residents in accordance with the relevant provisions of chapter 118G, and regulations promulgated under chapter 118G, in effect at the end of fiscal year 2004. Said division, in consultation with the division of medical assistance, the executive office of health and human services, and interested parties representing community health centers, shall develop a plan and take whatever steps necessary to adjust any or all payments made to community health centers for uncompensated care to be paid as Title XIX service rate adjustment payments, in accordance with Title XIX of the Social Security Act, or any successor federal statute, any regulations promulgated thereunder. The comptroller shall transfer without further appropriation funds determined by the division of health care finance and policy to the division of medical assistance for the purpose of the Title XIX service rate adjustment payments under this section. The division of health care finance and policy shall submit a report by March 30, 2005, specifying the payments made to community health centers for uncompensated care paid as Title XIX service rate adjustment payments and the amount of federal reimbursement obtained and anticipated in hospital fiscal year 2005 from such payments. Said federal reimbursement shall be deposited to Uncompensated Care Trust Fund and be appropriated by September 30, 2005, to be used by community health centers as provided by this paragraph and any other provider of free care.

In hospital fiscal year 2005, \$5,000,000 shall be transferred from the uncompensated care trust fund to the division of medical assistance, in collaboration with the division of health care finance and policy, to fund the start-up costs associated with the design and implementation of a cost-neutral pilot program of primary and preventive care and disease management of chronic conditions that will reduce the costs of federally mandated emergency care and the costs otherwise charged to the uncompensated care pool. Individuals eligible for said pilot program shall include but not be limited to recipients of emergency assistance for the elderly, disabled and children, elderly residents aged 65 or older and adults under age 65 who are disabled, blind or chronically ill. The division shall report back to the house and senate committees on ways and means on the cost neutrality of the pilot program and data on anticipated savings to the Uncompensated Care Pool by December 1, 2004.

In hospital fiscal year 2005, \$525,000,000 from the trust fund shall be credited to the uncompensated care pool for payments to acute hospitals provided for herein; provided, that an amount up to \$56,000,000 from the trust fund shall be credited to the pool for payments to community health centers provided for in this section; provided further, that \$28,000,000 of said \$56,000,000 payment for said community health centers, shall come from federal financial participation monies received from said \$28,000,000 expenditure. The comptroller shall transfer, without further appropriation, \$160,000,000 from the trust fund to the division of medical assistance for the purposes of meeting payment obligations for services provided pursuant to section 292 of this act."

The amendment was *rejected*.

Messrs. Knapik and Lees and Ms. Melconian moved that the bill be amended in Section 296 by inserting after the words "Title XIX service rate adjustment payments" the following words:- "In hospital fiscal year 2005, the division of health care finance and policy shall expend \$35,000,000 to reimburse acute hospitals for psychiatric and substance abuse related free care services rendered in emergency situations. Not less than \$4,000,000 of said amount shall be made available for a one-time payment to the Sisters of Providence Health System Behavioral Health Network to address costs associated with the provision of mental health services."

The amendment was *rejected*.

Messrs. O'Leary, Knapik and Nuciforo moved that the bill be amended in Section 296, clause (b) of the sixth paragraph, by striking the figure "10" and inserting in place thereof the following figure:-"14";

In said Section 296 by inserting after the words "with the next highest relative volume of free care costs in said year" the following: -"; provided further that in order to identify said 16 hospitals, the division shall rank all hospitals based on the percentage of each hospital's free care costs divided by the total free care costs of all hospitals in the commonwealth.";

In said Section 296 by striking the figure "12" and inserting in place thereof the following figure:-"16".

The amendment was *rejected*.

Mr. McGee moved that the bill be to amended in section 296, in paragraph seven, by inserting after the words "a teaching hospital located in Hampden County with high Medicaid utilization" the following words: - " and a community hospital located in the city of Lynn."

The amendment was *rejected*.

Mr. Moore moved that the bill be amended by adding at the end thereof the following new Section:-

SECTION __. Notwithstanding the provisions of any general or special law to the contrary, the division of medical assistance may enter into contracts with certain home health agencies to provide home health services to medical assistance recipients. The division may enter into such contracts with only those home health agencies that: (i) are organized as not-for-profit entities; (2) according to the most recent agency-specific utilization data collected from the division, delivered twenty five per cent of MassHealth reimbursed skilled nursing visits within a county designation, and more than 15 per cent of all MassHealth reimbursed home health aide services within a county designation and (3) in the determination of the division, provide services that are essential to ensure access to home health services for medical assistance recipients. The division shall ensure that any home health agency that is a party to any such contract shall comply with any performance measures, outcome goals, cost effectiveness standards and other terms and conditions established by the division. In defining a prospective payment amount under this subsection the division shall consider each agency's specific data to determine an appropriate unit of service and the number, type and duration of visits provided within that unit and a general system design that provides for continued access to quality services through appropriate adjustments based upon a clinical assessment of each patient's needs. In addition, the department of public health shall establish procedures to ensure appropriate access and quality of services provided under this system. The department shall conduct an assessment of this demonstration after six months and shall report the findings to the house and senate committees on ways and means.

The amendment was *rejected*.

Mr. Moore, Ms Chandler and Ms. Resor moved that the bill be amended in section ___ by adding at the end of the sixth paragraph, the following:-

, provided further that not less than \$3,100,000 shall be expended for a disproportionate share teaching hospital in Worcester County for emergency mental health services.

The amendment was *rejected*.

Messrs. O'Leary and Nuciforo moved that the bill be amended by inserting, after Section 362, the following new Section:-

"Section __. Notwithstanding any general or special law or regulation to the contrary, MassHealth payments to hospitals designated as critical access hospitals under the federal Medicare rural hospital flexibility program and by the massachusetts department of public health shall be funded under line item 4000-0300, shall be based on the actual cost of provided services, and shall be calculated utilizing Medicare cost reporting principles."

The amendment was *rejected*.

Mr. Brewer moved that the bill be amended in Section 295, by adding the following words:-

"Said secretary shall make available from said fund \$1,000,000 in a one-time grant for a hospital that is a member of the UMass Memorial Health Care system located in Hampden County with less than 50 licensed beds; and \$1,000,000 in a one-time grant for a community hospital located in Hampshire County with an affiliation with a teaching hospital located in Hampden County."

The amendment was *rejected*.

Mr. Creedon moved that the bill be amended in section 295 at the end of the second sentence after the words "Massachusetts Hospital Association" the following: "that the Secretary shall provide \$750,000 one-time grant from said fund to a disproportionate share acute care hospital located in Southeastern Massachusetts division of the medical assistance psychiatric service area that operates an inpatient psychiatric unit within the City of Brockton."

As previously stated, the above amendments were considered as one and *rejected*.

Mr. Moore moved that the bill be amended by inserting after Section 203 the following section:-

"SECTION 203A Chapter 175 of the General Laws is hereby amended by inserting after section 193U the following section:-

Section 193V. Every insurer or risk management organization which provides professional liability insurance to a physician licensed under chapter 112 shall make an annual report to the Betsy Lehman center for patient safety and medical error reduction established by section 16E of chapter 6A. The report shall list the top 10 categories of losses, claims or actions for damage for personal injuries alleged to have been caused by error, omission or negligence in the performance by physicians of medical services the company incurred during the previous calendar year. The report shall also identify the top 10 defendant specialties as to cost and frequency of cases in the prior year. Where applicable, organizations shall include reports outlining losses and claims for non-physician health care providers as well. The report shall include completed cases and settlements only and shall include no information identifying providers or patients. The report shall be provided to the center at its request under annual timelines and reporting requirements established by the center with the input of the advisory committee referenced in subsection (c) of said section 16E. The center shall use this information in the development of evidence-based best practices to reduce medical errors and enhance patient safety as required by paragraph (1) of subsection (e) of said section 16E and to increase awareness of error prevention strategies through public and professional education as required by paragraph (4) of said subsection (e) of said section 16E"; and further moves to amend by inserting after section 210 the following 2 sections;-

"SECTION 210A. Section 60B of chapter 231 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out the fifth paragraph and inserting in place thereof the following paragraph:

Each such action for malpractice shall be heard by said tribunal within 15 days after the defendant's answer has been filed. Substantial evidence shall mean evidence as a reasonable person might accept as adequate to support a conclusion. Admissible evidence may include, but not be limited to, hospital and medical records, nurses' notes, x-rays and other records kept in the usual course of the practice of the health care provider without the necessity for other identification or authentication, statements of fact or opinion on a subject contained in a published treatise, periodical, book or pamphlet or statements by experts who:

- (1) hold a non-restricted license from a state licensing board recognized by the Federation of State Medical Boards;
- (2) are currently board certified by a specialty board approved by the American Board of Medical Specialties or of the Advisory Board of Osteopathic Specialists from the major areas of clinical services as the defendant physician; and
- (3) actively practice, within the previous 7 years, in the same specialty as the defendant physician, without the necessity of the experts appearing at the hearing. Statements by the experts may be admissible at trial and the experts may be required to testify at trial. The tribunal may upon the application of either party or upon its own decision summon or subpoena the records or individuals to substantiate or clarify evidence which has been presented before it and may appoint an impartial and qualified physician or surgeon or other related professional person or expert to conduct any necessary professional or expert examination of the claimant or relevant evidentiary matter and to report or to testify as a witness thereto. The witness shall be allowed traveling expenses and a reasonable fee to be fixed by the tribunal which shall be assessed as costs. The testimony of the witness and the decision of the tribunal may be admissible as evidence at a trial."

SECTION 210B said chapter 231 is hereby amended by inserting after section 60J the following 2 sections:-

Section 60K. In any action for malpractice, error or mistake against a provider of health licensed pursuant to section 2 of chapter 112, including actions pursuant to section 60B of the chapter, expert witnesses are the who (1) hold a non-restricted license from a state licensing board recognized by the Federation of State Medical Boards; (2) are currently board certified by a specialty board approved by the American Board of Medical Specialties or of the Advisory Board of Osteopathic Specialists from the major areas of clinical services as the defendant physician, and (3) actively practice, within the previous 7 years, in the same specialty as the defendant physician.

Section 60L. In any action for malpractice, negligence, error, omission, mistake or unauthorized rendering of professional services, other than actions brought under section two of chapter two hundred twenty-nine, against a provider of health care, in which a verdict is rendered or a finding made or an order for judgment made for pecuniary damages for personal injuries to the plaintiff or for consequential damages, there shall be added by the clerk of the court to the amount of damages interest thereon, at a rate to be determined as set forth below rather than the rate specified in section 6B of chapter two hundred thirty-one, from the date of the commencement of the action even though such interest brings the amount of the verdict or finding beyond the maximum liability imposed by law. For all actions commenced after the effective date of this act, the rate of interest to be applied by the clerk shall be at a rate equal to the weekly average 1-year constant maturity Treasury yield plus 2 per cent, as published by the Board of Governors of the Federal Reserve System for the calendar week preceding the date of judgment."; and further moves to amend by inserting after Section 316 the following Section:-

"SECTION 316A. Notwithstanding any other general or special law to the contrary a medical malpractice insurer shall not use any rate or change any premium unless it has filed a schedule or alternative method with the commissioner of insurance and the commissioner of insurance has approved the schedule or alternative method."; and further moves to amend by inserting after Section 338 the following section:-

"SECTION 338A. There shall be a special commission for the purpose of conducting an investigation and study of the feasibility of creating a specialized court for purposes of administering medical malpractice claims. The commission shall consist of 3 members of the senate including minority representation, 4 members of the house of representatives including minority representation, the chief justice of the trial court or his designee, and 5 persons to be appointed by the governor, 1 of whom shall be a representative of the Massachusetts Bar Association, 1 of whom shall be a representative of the Massachusetts Medical Society, and 1 of whom shall be a consumer of health care who is not a doctor or a lawyer. The commission shall, in the course of its investigation and study, consider, among other things it considers relevant, specialty courts within the Commonwealth, efficiencies to be gained, expertise and training needed by jurors and jurists, use of information technology, the use of medical legal advisory panels, use of regional sites, court staffing needs, the desirability of creating a workers; compensation-like model of compensating medical malpractice claims, including exclusive remedy and mandatory claims reporting, the sharing of information with the Betsy Lehman center for patient safety and medical error reduction in order to facilitate the development of best practices guidelines and improve patient outcomes on such other matters as the commission considers relevant. Appointed members of the commission shall not be considered special state employees for the purpose of compliance with chapter 268A of the General Laws. The special commission shall submit a report to the governor, the speaker of the house of representatives, the senate president, and the chief justice of the supreme judicial court setting forth the special commission's findings, along with its recommendations and specific legislative proposals, by July 1, 2005. The special commission shall dissolve upon the completion of its duties and obligations, as indicated by submission of its findings and recommendations. The amendment was *rejected*.

Messrs. McGee and Barrios moved that the bill be amended by inserting, after Section 25, the following section:-
SECTION 25A. The care, custody, control and title to all water pipes and mains located under Routes 1 and 99 in the town of Saugus are hereby transferred to the Massachusetts Water Resources Authority.

Pending the question on adoption of the amendment, Mr. Havern moved that the amendment be amended by substituting the following:

SECTION 316A. (a) The general court finds that it is the public policy of the commonwealth to ensure its citizens receive effective water transmission service while at the same time sufficiently meeting the traffic needs on commonwealth roadways. The general court finds that in light of the commonwealth's regional transportation needs, the expedited acquisition of the easements and permits necessary for the rehabilitation and construction of water pipelines along Route 1 in the town of Saugus, by the department of highways in accordance with this act is necessary in order to provide numerous of its citizens with improved water transmission service, while maintaining the reliability of the commonwealth's regional transportation system.

(b) The department of highways is shall obtain and convey to the town of Saugus, for the nominal consideration of \$1 the permanent and temporary easements, both public and private, necessary for the development, construction and maintenance of water pipelines and related facilities, structures and equipment to improve the reliability of traffic conditions along said Route 1 and to improve water transmission systems; provided, that the Massachusetts highway department shall reimburse the town of Saugus for the design and engineering costs incurred by said town for the Route 1 pipeline project; provided further, that the highway department shall be responsible for providing traffic control during construction of said project.

(c) The Massachusetts water resources authority shall work cooperatively with the town of Saugus to maximize cost savings for the town of Saugus and the Massachusetts water resources authority.

(d) The Massachusetts water resources authority shall provide to the town of Saugus a ten-year, zero interest loan in an amount not to exceed the costs incurred by said town for the replacement and rehabilitation of its water transmission lines and service connections along Route 1 in the town of Saugus; but, this loan shall be in addition to funds made available to said town through the Massachusetts water resources authority local pipeline assistance program.

(e) Any agency, department, office or commission with regulatory jurisdiction shall, notwithstanding any general or special law to the contrary, cooperate with the highway department, the town of Saugus and the Massachusetts water resources authority to assure the attainment of the foregoing objectives and to assure that substantive and procedural regulatory requirements are exercised to achieve the purposed of this act.

The further amendment was **adopted**.

The *pending amendment (McGee)* was **adopted**, as amended.

The Ways and Means amendment was then adopted, as amended, and the bill was ordered to a third reading and read a third time.

After remarks, the question of passing the bill to be engrossed, in concurrence, was determined by a call of the yeas and the nays at twenty-three minutes before twelve o'clock midnight, on motion of Mr. Lees, as follows, to wit (yeas 35 - nays 1) [Yeas and Nays 555]:

YEAS.

Antonioni, Robert A.
Baddour, Steven A.
Barrios, Jarrett T.
Brewer, Stephen M.
Brown, Scott P.
Chandler, Harriette L.
Creedon, Robert S., Jr.
Creem, Cynthia Stone
Fargo, Susan C.
Glodis, Guy W.
Hart, John A., Jr.
Havern, Robert A.
Hedlund, Robert L.
Joyce, Brian A.
Knapik, Michael R.
Magnani, David P.
McGee, Thomas M.
Melconian, Linda J.

Menard, Joan M.
Montigny, Mark C.
Moore, Richard T.
Morrisey, Michael W.
Nuciforo, Andrea F., Jr.
O'Leary, Robert A.
Pacheco, Marc R.
Panagiotakos, Steven C.
Resor, Pamela
Rosenberg, Stanley C.
Sprague, Jo Ann
Tarr, Bruce E.
Tisei, Richard R.
Tolman, Steven A.
Tucker, Susan C.
Walsh, Marian
Wilkerson, Dianne — **35.**

NAY.

Lees, Brian P. — **1.**

PAIRED.

YEA.

Therese Murray

NAY.

Frederick E. Berry (present)
— **2.**

ABSENT OR NOT VOTING.

Shannon, Charles E. — **1.**

The yeas and nays having been completed at twenty minutes before twelve o'clock midnight, the bill was passed to be engrossed, in concurrence, with the amendments adopted by the Senate. [For text of Senate amendments, see Senate, No. 2401, printed as amended.]

Sent to the House for concurrence in the amendments.

Order Adopted.

On motion of Mr. Havern,--

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 Dan Allen Holy Cross Football Coach

Messrs. Antonioni and Knapik moved that when the Senate adjourns, it adjourn in memory of Dan Allen who coached the Holy Cross Football Team from a wheelchair all of last season. Mr. Allen was an assistant football coach at Holy Cross College from 1982 to 1989 before taking the head coaching job at Boston University where he was named the Division 1-AA Coach-of-the-Year. He returned to Holy Cross in 1996.

Accordingly, as a mark of respect to the memory of Coach Dan Allen, at seventeen minutes before twelve o'clock midnight, on motion of Ms. Melconian, the Senate adjourned to meet again on the following Monday at eleven o'clock A.M.