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UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



JOURNAL OF THE SENATE.

Wednesday, July 14, 2004.

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

At seven minutes before one o'clock P.M., the Chair (Ms. Menard) declared a recess for the purposes of attending the Joint Session of the Two Houses.

Distinguished Guests.

There being no objection, the Chair (Ms. Walsh) handed the gavel to Mr. Barrios for the purpose of an introduction. Mr. Barrios introduced, seated in the Senate gallery, a group from the Suffolk University Politics and Public Service Institute. The high school students attending the institute, Jillian Rizzo, James Quinn, Coile Jones, Christina Hung and Timothy Gallant were accompanied by Dave Rodrigues, a class president at Suffolk University as well as an intern in Senator Barrios' office.

Petition.

Ms. Menard in the Chair, Mr. Tarr presented a petition (accompanied by bill, Senate, No. 2446) of Bruce E. Tarr and Harriett L. Stanley (by vote of the town) for legislation to authorize the town of Rowley to change the use, the care, custody and control of a portion of town conservation land [Local approval received],— **and the same was referred, under Senate Rule 20, to the committee on Local Affairs and Regional Government.**
Sent to the House for concurrence.

Committees Discharged.

Mr. Havern, for the committee on Federal Financial Assistance, reported, asking to be discharged from further consideration of the House Bill relative to oil spill prevention and response in Buzzards Bay and other harbors and bays in the Commonwealth (House, No. 4831, amended),— and recommending that the same be referred to the Senate committee on Ways and Means.
Under Senate Rule 36, the report was considered forthwith and accepted.

Mr. Brewer, for the committee on Ethics and Rules, to whom was referred the Senate Order relative to authorizing the joint committee on Government Regulations to make an investigation and study of certain Senate documents (Senate, No. 2289), reported, in part, asking to be discharged from further consideration of the petition (accompanied by bill, Senate, No. 1942) of Michael R. Knapik and Michael F. Kane for legislation to restrict the authority of the Holyoke Power and Electric Company and the Holyoke Power Company,— and recommending that the same be recommitted to the committee on Government Regulations.
Under Senate Rule 36, the report was considered forthwith and accepted.

Joint Session of the Two Houses to Consider Specific Amendments to the Constitution.

At eight minutes past one o'clock P.M., the two Houses met in

JOINT SESSION

and were called to order by the Honorable Robert E. Travaglini, President of the Senate.

The Initiative Amendment to the Constitution relative to the provision of health insurance (House, No. 4444),— was considered, the question being on agreeing to the proposal.

The Proposal was as follows:—

ARTICLE OF AMENDMENT.

The people of the Commonwealth of Massachusetts hereby declare it necessary and expedient to alter the Constitution by the adoption of the following Article of Amendment:

Upon ratification of this amendment and thereafter, it shall be the obligation and duty of the Legislature and executive officials, on behalf of the Commonwealth, to enact and implement such laws as will ensure that no Massachusetts resident lacks comprehensive, affordable and equitably financed health insurance coverage for all medically necessary preventive, acute and chronic health care and mental health care services, prescription drugs and devices.

Pending the question on agreeing to the proposal, Mr. Moore moved that the proposal be amended by inserting after the word “laws”, in line 6, the following words:— “, subject to approval by the voters at a statewide election,”.

After remarks, the amendment was adopted by a three-fourths vote.

After further remarks, Mr. Tolman moved the previous question be taken forthwith on agreeing to the proposal.

On the question on agreeing to the proposal, the sense of the Joint Session was taken by a call of the yeas and nays, as required by the Constitution, at twenty-two minutes past one o'clock P.M., as follows to wit (yeas 153 — nays 41) [**Senate Yeas and Nays No. 616**] [**House Yeas and Nays No. 721**]:

YEAS — (153). <i>Senators.</i>	
Baddour, Steven A.	Brewer, Stephen M.
Barrios, Jarrett T.	Chandler, Harriette L.
Berry, Frederick E.	Creem, Cynthia Stone
Fargo, Susan C.	Nuciforo, Andrea F., Jr.
Glodis, Guy W.	O’Leary, Robert A.
Hart, John A., Jr.	Pacheco, Marc R.
Havern, Robert A.	Resor, Pamela
Hedlund, Robert L.	Rosenberg, Stanley C.
Joyce, Brian A.	Shannon, Charles E.
Magnani, David P.	Tarr, Bruce E.
McGee, Thomas M.	Tisei, Richard R.
Melconian, Linda J.	Tolman, Steven A.
Menard, Joan M.	Travaglini, Robert E.
Montigny, Mark C.	Tucker, Susan C.
Moore, Richard T.	Walsh, Marian

Morrissey, Michael W.	Wilkerson, Dianne — 33.
Murray, Therese	
<i>Representatives.</i>	
Asselin, Christopher P.	Lantigua, William
Atkins, Cory	Leary, James B.
Ayers, Bruce J.	LeDuc, Stephen P.
Balser, Ruth B.	Linsky, David Paul
Blumer, Deborah D.	L'Italien, Barbara A.
Bradley, Garrett J.	Loscocco, Paul J.
Buoniconiti, Stephen J.	Malia, Elizabeth A.
Cabral, Antonio F. D.	Mariano, Ronald
Callahan, Jennifer M.	Marzilli, J. James, Jr.
Canavan, Christine E.	Miceli, James R.
Candaras, Gale D.	Murphy, Charles A.
Carron, Mark J.	Murphy, James M.
Casey, Paul C.	Murphy, Kevin J.
Ciampa, Vincent P.	Nangle, David M.
Correia, Robert	Naughton, Harold P., Jr.
Costello, Michael A.	Nyman, Robert J.
Coughlin, Robert K.	O'Brien, Thomas J.
Creedon, Geraldine	O'Flaherty, Eugene L.
DeLeo, Robert A.	Owens-Hicks, Shirley
deMacedo, Viriato Manuel	Patrick, Matthew C.
Demakis, Paul C.	Paulsen, Anne M.
DiMasi, Salvatore F.	Peisch, Alice Hanlon
Donato, Paul J.	Petersen, Douglas W.
Donelan, Christopher J.	Petrolati, Thomas M.
Donovan, Carol A.	Petrucelli, Anthony
Driscoll, Joseph R.	Pignatelli, William Smitty
Eldridge, James B.	Poirier, Elizabeth
Fallon, Christopher G.	Pope, Susan W.

Falzone, Mark V.	Reinstein, Kathi-Anne
Fennell, Robert F.	Rivera, Cheryl A.
Festa, Michael E.	Rodrigues, Michael J.
Finegold, Barry R.	Rush, Michael F.
Flynn, David L.	Rushing, Byron
Fox, Gloria L.	Sánchez, Jeffrey
Fresolo, John P.	Scaccia, Angelo M.
Frost, Paul K.	Scibak, John W.
Galvin, William C.	Smizik, Frank I.
Goguen, Emile J.	Speliotis, Theodore C.
Golden, Brian Paul	Spellane, Robert
Golden, Thomas A., Jr.	Spiliotis, Joyce A.
Gomes, Shirley	Spilka, Karen
Grant, Mary E.	Stanley, Harriett L.
Haddad, Patricia A.	Stanley, Thomas M.
Hill, Bradford	Story, Ellen
Honan, Kevin G.	Straus, William M.
Howland, Mark A.	Sullivan, David B.
Hynes, Frank M.	Swan, Benjamin
Jehlen, Patricia D.	Teahan, Kathleen M.
Jones, Bradley H., Jr.	Timilty, Walter F.
Kafka, Louis L.	Tobin, A. Stephen
Kane, Michael F.	Toomey, Timothy J., Jr.
Kaprielian, Rachel	Turkington, Eric
Kaufman, Jay R.	Vallee, James E.
Keenan, Daniel F.	Verga, Anthony J.
Kennedy, Thomas P.	Wallace, Brian P.
Khan, Kay	Walrath, Patricia A.
Knuuttila, Brian	Walsh, Martin J.
Kocot, Peter V.	Walsh, Steven Myles
Koutoujian, Peter J.	Wolf, Alice K. — 119.
Kulik, Stephen	
NAYS — (41). <i>Senators.</i>	

Brown, Scott P.	Lees, Brian P.
Creedon, Robert S., Jr.	Sprague, Jo Ann — 5.
Knapik, Michael R.	
<i>Representatives.</i>	
Atsalis, Demetrius J.	Humason, Donald F., Jr.
Binienda, John J.	Kelly, Shaun P.
Bosley, Daniel E.	Koczera, Robert M.
Broadhurst, Arthur J.	Kujawski, Paul
Connolly, Edward G.	Larkin, Peter J.
Coppola, Michael J.	Lepper, John A.
Dempsey, Brian S.	Parente, Marie J.
Evangelidis, Lewis G.	Pedone, Vincent A.
Fagan, James H.	Perry, Jeffrey Davis
Finneran, Thomas M.	Peterson, George N., Jr.
Garry, Colleen M.	Polito, Karyn E.
George, Thomas N.	Quinn, John F.
Gifford, Susan Williams	Rogeness, Mary S.
Gobi, Anne M.	Rogers, John H.
Hall, Geoffrey D.	Ruane, J. Michael
Hargraves, Robert S.	Torrissi, David M.
Harkins, Lida E.	Travis, Philip
Hillman, Reed V.	Webster, Daniel K. — 36.
ABSENT OR NOT VOTING — (6).	
<i>Senators.</i>	
Antonioni, Robert A.	Panagiotakos, Steven C. — 2.
<i>Representatives.</i>	
Greene, William C., Jr.	St. Fleur, Marie P.
Simmons, Mary Jane	Wagner, Joseph F. — 4.

The yeas and nays having been completed at twenty-six minutes before two o'clock P.M., the proposal was agreed to. **The Initiative Petition (House, No. 4444, amended) was laid over until the next General Court.**

Subsequently a statement of Ms. Gobi of Spencer was spread upon the records of the Joint Session, as follows:

MR. PRESIDENT: During the taking of the above yeas and nays, I was present in the House Chamber and voted in the affirmative. I also verified my “yes” vote by observing that the light next to my name on the roll call board was “green”. Nevertheless I now find that I was inexplicably recorded as having voted in the negative, when it was clearly my intention to be recorded in the affirmative.

Without further action on the matters duly and constitutionally assigned for consideration, on motion of Mr. Berry, at twenty-five minutes before two o’clock P.M., the Joint Session adjourned.

The Senate reassembled at nineteen minutes before two o’clock P.M., 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 considered forthwith and adopted, as follows:—

Resolutions (filed by Mr. Baddour) “congratulating Delta Air Lines, Inc. on the occasion of its seventy-fifth anniversary.”

PAPERS FROM THE HOUSE.

Emergency Preamble Adopted.

An engrossed Bill restructuring the transportation system of the Commonwealth (see House, No. 4972), 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 question on adopting the emergency preamble 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 38 — nays 0) [**Yeas and Nays No. 617**]:

YEAS.	
Antonioni, Robert A.	Brewer, Stephen M.
Baddour, Steven A.	Brown, Scott P.
Barrios, Jarrett T.	Chandler, Harriette L.
Berry, Frederick E.	Creedon, Robert S., Jr.
Creem, Cynthia Stone	Morrissey, Michael W.
Fargo, Susan C.	Murray, Therese
Glodis, Guy W.	Nuciforo, Andrea F., Jr.
Hart, John A., Jr.	O’Leary, Robert A.
Havern, Robert A.	Pacheco, Marc R.
Hedlund, Robert L.	Resor, Pamela
Joyce, Brian A.	Rosenberg, Stanley C.
Knapik, Michael R.	Shannon, Charles E.
Lees, Brian P.	Sprague, Jo Ann
Magnani, David P.	Tarr, Bruce E.
McGee, Thomas M.	Tisei, Richard R.

Melconian, Linda J.	Tolman, Steven A.
Menard, Joan M.	Tucker, Susan C.
Montigny, Mark C.	Walsh, Marian
Moore, Richard T.	Wilkerson, Dianne — 38.
NAYS — 0. ABSENT OR NOT VOTING.	
Panagiotakos, Steven C. — 1.	

The yeas and nays having been completed at nine minutes before two o'clock P.M., the emergency preamble was adopted. The bill was signed by the President and sent to the House for enactment.

Engrossed Bills — Land Taking for Conservation, Etc.

An engrossed Bill authorizing the town of Carlisle to grant conservation restrictions for town owned conservation land (see Senate, No. 1148) (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 eight minutes before two o'clock P.M., as follows, to wit (yeas 38 — nays 0) [**Yeas and Nays, No. 618**]:

YEAS.	
Antonioni, Robert A.	Brewer, Stephen M.
Baddour, Steven A.	Brown, Scott P.
Barrios, Jarrett T.	Chandler, Harriette L.
Berry, Frederick E.	Creedon, Robert S., Jr.
Creem, Cynthia Stone	Morrissey, Michael W.
Fargo, Susan C.	Murray, Therese
Glodis, Guy W.	Nuciforo, Andrea F., Jr.
Hart, John A., Jr.	O'Leary, Robert A.
Havern, Robert A.	Pacheco, Marc R.
Hedlund, Robert L.	Resor, Pamela
Joyce, Brian A.	Rosenberg, Stanley C.
Knapik, Michael R.	Shannon, Charles E.
Lees, Brian P.	Sprague, Jo Ann
Magnani, David P.	Tarr, Bruce E.
McGee, Thomas M.	Tisei, Richard R.

Melconian, Linda J.	Tolman, Steven A.
Menard, Joan M.	Tucker, Susan C.
Montigny, Mark C.	Walsh, Marian
Moore, Richard T.	Wilkerson, Dianne — 38.
NAYS — 0. ABSENT OR NOT VOTING.	
Panagiotakos, Steven C. — 1.	

Ms. Walsh in the Chair (having been appointed by the President, under authority conferred by Senate Rule 4, to perform the duties of the Chair), the yeas and nays having been completed at one minute before two 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 Acting President (Ms. Walsh) and laid before the Governor for his approbation.

An engrossed Bill authorizing the town of North Andover to grant open space restrictions (see House, No. 3847) (which originated in the House), 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 two o'clock P.M., as follows, to wit (yeas 38 — nays 0) **[Yeas and Nays No. 619]**:

YEAS.	
Antonioni, Robert A.	Brewer, Stephen M.
Baddour, Steven A.	Brown, Scott P.
Barrios, Jarrett T.	Chandler, Harriette L.
Berry, Frederick E.	Creedon, Robert S., Jr.
Creem, Cynthia Stone	Morrissey, Michael W.
Fargo, Susan C.	Murray, Therese
Glodis, Guy W.	Nuciforo, Andrea F., Jr.
Hart, John A., Jr.	O'Leary, Robert A.
Havern, Robert A.	Pacheco, Marc R.
Hedlund, Robert L.	Resor, Pamela
Joyce, Brian A.	Rosenberg, Stanley C.
Knapik, Michael R.	Shannon, Charles E.
Lees, Brian P.	Sprague, Jo Ann
Magnani, David P.	Tarr, Bruce E.
McGee, Thomas M.	Tisei, Richard R.

Melconian, Linda J.	Tolman, Steven A.
Menard, Joan M.	Tucker, Susan C.
Montigny, Mark C.	Walsh, Marian
Moore, Richard T.	Wilkerson, Dianne — 38.
NAYS — 0. ABSENT OR NOT VOTING.	
Panagiotakos, Steven C. — 1.	

The yeas and nays having been completed at four minutes past two 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 Acting President (Ms. Walsh) and laid before the Governor for his approbation.

An engrossed Bill authorizing the town of North Andover to grant a certain easement (see House, No. 4090) (which originated in the House), 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 five minutes past two o'clock P.M., as follows, to wit (yeas 38 — nays 0) [**Yeas and Nays No. 620**]:

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

Menard, Joan M.	Tucker, Susan C.
Montigny, Mark C.	Walsh, Marian
Moore, Richard T.	Wilkerson, Dianne — 38.
NAYS — 0. ABSENT OR NOT VOTING.	
Panagiotakos, Steven C. — 1.	

The yeas and nays having been completed at seven minutes past two 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 Acting President (Ms. Walsh) and laid before the Governor for his approbation.

Matters Taken Out of the Orders of the Day.

There being no objection, the following matters were taken out of the Orders of the Day and considered, as follows:

The Senate Bill, protecting consumers against additional charges resulting from new area codes" (Senate, No. 446) (its title having been changed by the committee on Bills in the Third Reading),— **was read a third time and passed to be engrossed. Sent to the House for concurrence.**

The House Bill relative to restrictive covenants (House, No. 3532),— **was read a third time and passed to be engrossed, in concurrence.**

Report of a Committee.

By Ms. Murray, for the committee on Ways and Means, that the House Bill relative to the Massachusetts Property Insurance Underwriting Association (House, No. 4672),— ought to pass, with an amendment, in section 2 (as printed), by striking out, in lines 48 and 49, the words "increase rates in large share territories by not less than three percent and shall also"; in section 4 (as printed), by striking out, in line 14, the words "November 1" and inserting in place thereof the following words:— "October 15"; and by adding the following section:—

"SECTION 5. Sections 1, 2 and 3 shall take effect on October 1, 2005."

There being no objection, the rules were suspended, on motion of Mr. Lees, and the bill was read a second time, and was amended as recommended by the committee on Ways and Means.

Pending the question on ordering the bill, as amended, to a third reading, Mr. O'Leary moved that the bill be amended, in section 4, by inserting after the words "senate minority leader or his designee;" the following words:— "one member of the house and one member of the senate who represents Cape Cod or coastal areas of the commonwealth".

The amendment was adopted.

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

Sent to the House for concurrence in the amendments.

Subsequently, Ms. Wilkerson asked unanimous consent that no action having been taking on passing the bill to be engrossed; and there being no objection, the bill was further considered.

Ms. Wilkerson moved that the bill be amended by striking out section 4 and inserting in place thereof the following section:—

"SECTION 4. There shall be a special commission to examine the homeowner insurance market in large share territories, as defined in section 1 of chapter 175C. The commission shall investigate the availability and affordability of property insurance; the relevant rate driving factors including, but not limited to, insurance fraud, types of loss costs and their frequency, the cost and availability of reinsurance; the use of storm damage prediction data; the creation and potential benefit of a state-run catastrophic reinsurance program; and the overall competitiveness of the homeowners market in large share territories. The commission shall make any recommendations for legislative or regulatory action on those matters, with the clerks of the house and senate before November 1, 2004.

The commission shall consist of the chairman of the house committee on insurance or a designee; the vice chairman of the house committee on insurance or a designee, the house minority leader or a designee; the chairman of the senate committee on

insurance or a designee; the vice chairman of the senate committee on insurance or a designee, the senate minority leader or a designee; 1 member of the house of representatives and one member of the senate who represent Cape Cod or coastal areas of the commonwealth; the commissioner of insurance or a designee; a representative from the Massachusetts Property Insurance Underwriting Association; a representative of the Massachusetts Association of Insurance Agents, a representative of the Center for Insurance Research, and a representative of the Massachusetts Public Interest Research Group.”

The amendment was adopted.

The bill, as amended, was then passed to be engrossed, in concurrence, with amendments.

Sent to the House for concurrence in the amendments.

PAPER FROM THE HOUSE.

Engrossed Bill.

An engrossed Bill relative to certain health premium payments made by the town of Mashpee (see House, No. 4085) (which originated in the House), **having been certified by the Senate Clerk to be rightly and truly prepared for final passage, was passed to be enacted and was signed by the Acting President (Ms. Walsh) and laid before the Governor for his approbation.**

Petitions were referred, in concurrence, as follows:

Petition (accompanied by bill, House, No. 4979) of William G. Greene, Jr., relative to extending the time within which the committee on Natural Resources and Agriculture is authorized to file a report on the reclassification of certain agricultural and horticultural land;

Under suspension of Joint Rule 12, to the committee on Natural Resources and Agriculture.

Petition (accompanied by bill, House, No. 4980) of Brian Knuuttila, other members of the General Court and others relative to fees for safety tests and inspections of elevators;

Under suspension of Joint Rule 12, to the committee on Public Safety.

At twenty minutes before three o'clock P.M., at the request of Mr. Lees, for the purpose of a minority party caucus, the Chair (Mr. Rosenberg) declared a recess; and, at thirteen minutes past three o'clock P.M., the Senate reassembled, Mr. Havern in the Chair (having been appointed by the President, under authority conferred by Senate Rule 4, to perform the duties of the Chair).

PAPERS FROM THE HOUSE.

Committee of Conference Reports.

A report of the committee of conference on the disagreeing votes of the two branches, with reference to the Senate amendment to the House Bill relative to the School Building Assistance Program (House, No. 4749) (*amended by the Senate* by striking out all after the enacting clause and inserting in place thereof the text contained in Senate document numbered 2407), reports, in part, a Bill relative to school building assistance (House, No. 4978),— came from the House, and was read.

The rules were suspended, on motion of Ms. Fargo, and the report was considered forthwith and accepted, in concurrence.

A report of the committee of conference on the disagreeing votes of the two branches, with reference to the Senate amendment to the House Bill relative to the School Building Assistance Program (House, No. 4749) (*amended by the Senate* by striking out all after the enacting clause and inserting in place thereof the text contained in Senate document numbered 2407), reports, in part, a Bill relative to school building assistance (House, No. 4977),— came from the House, and was read.

The rules were suspended, on motion of Ms. Resor, and the report was considered forthwith and accepted, in concurrence.

Report of a Committee.

By Ms. Murray, for the committee on Ways and Means, that the House Bill relative to the health and safety on public construction projects (House, No. 2367),— ought to pass.

There being no objection, the rules were suspended, on motion of Mr. Shannon, the bill was read a second time, ordered to a third reading, read a third time, and was passed to be engrossed.

PAPER FROM THE HOUSE.

Engrossed Bill.

An engrossed Bill further regulating public construction in the Commonwealth (see Senate, No. 2358, amended) (which originated in the Senate), **having been certified by the Senate Clerk to be rightly and truly prepared for final passage, was**

passed to be enacted and was signed by the Acting President (Mr. Havern) and laid before the Governor for his approbation.

Report of a Committee.

By Ms. Murray, for the committee on Ways and Means, that the House Bill relative to oil spill prevention and response in Buzzards Bay and other harbors and bays in the Commonwealth (House, No. 4831, amended),— ought to pass, with an amendment in section 11, by striking out section 8 of the proposed chapter 21M and inserting in place thereof the following section:—

Section 8. (a) There shall be an Oil Spill Prevention and Response Trust Fund to provide emergency loans and to support the development, training and equipping of safety committees, response teams and other discreet units whose activities will directly benefit the commonwealth in the event of oil spill events. The fund shall be administered by the commissioner of environmental protection. Expenditures from the fund shall be only for the purposes set forth in subsection (f).

(b) Revenues credited to the fund shall be from the following sources:

- (1) funds appropriated by the general court;
- (2) funds received from federal, state or other sources for the purpose of response, containment, abatement and rehabilitation costs from oil spills in marine or estuarine waters not already credited to an existing fund;
- (3) funds received from private donors for the fund;
- (4) costs recovered or otherwise received from parties responsible for the containment and cleanup of oil at specific sites;
- (5) fines, penalties and damages recovered under this chapter;
- (6) fees imposed pursuant to subsection (d);
- (7) the VTS system fee collected pursuant to section 2; and
- (8) interest earned on any moneys in the fund.

(c)(1) A uniform oil spill response and prevention fee in an amount not exceeding 2 cents for each barrel of petroleum product, as set by the commissioner pursuant to clause (4) of subsection (d) shall be imposed upon a person owning petroleum products at the time the petroleum products are received at a marine terminal within the commonwealth by means of a vessel from a point of origin outside the commonwealth. The fee shall be remitted to the department of revenue on the thirtieth day of each month based upon the number of barrels of petroleum products received during the preceding month.

(2) An owner of petroleum products shall be liable for the fee until it has been paid to the commonwealth, except that payment to a marine terminal operator registered under this chapter is sufficient to relieve the owner from further liability for the fee.

(3) Whenever the commissioner, in consultation with the department of environmental protection and the department of revenue, estimates that the amount in the fund will reach the amount specified in clause (5) of subsection (d) and the money in the fund is not required for the purposes specified in subsection (e), the commissioner shall instruct the department of revenue to cease collecting the fee.

(4) The commissioner shall set the amount of the oil spill prevention and response fees which shall be not less than 2 cents for each barrel of petroleum products or crude oil, unless the commissioner finds that the assessment of a lesser fee will cause the fund to reach the designated amount within 6 months. The fees shall be imposed on all fee payers in the same amount.

(5) For the purposes of this chapter, “designated amount” shall mean an amount equal to \$10,000,000, adjusted for inflation after January 1, 2005, according to an index which the commissioner may reasonably choose.

(6) All fees collected pursuant to this section shall be deposited in the fund and shall be disbursed for the purposes set forth in subsection (f). The state treasurer shall not deposit or transfer revenues generated pursuant to subsection (b) to the General Fund or any other fund other than the Oil Spill Prevention and Response Trust Fund.

(d) The commissioner may use money from the fund:

(1) to provide funds to cover promptly the costs of response, containment and cleanup of oil spills into marine or estuarine waters including, but not limited to, natural resource damage assessment costs and wildlife rehabilitation.

(2) for site evaluation activities, including, but not limited to, site mapping, installation of wells and equipment, collection, monitoring and analysis of samples of air, soil and water and evaluation of the impacts of contamination of marine and terrestrial environments, production of reports and implementation and maintenance of necessary technology and equipment for complete remedial action;

(3) to provide interest-free emergency loans and to cover response and cleanup costs and other damages suffered by the commonwealth or other persons or entities from oil spills or threatened oil spills, which cannot otherwise be compensated by responsible parties or the federal government;

(4) to pay for claims for damages pursuant to clause 8;

(5) to provide interest-free emergency loans to workers including, but not limited to, commercial fishermen who are unable to work as a direct result of an oil spill and are ineligible for unemployment insurance;

(6) to pay for natural resource restoration, where necessary and appropriate;

(7) to pay for response training and equipment for municipal oil spill response agencies and training and safety equipment for

Massachusetts state pilots commissioned pursuant to chapter 103;

(8) to pay for large-scale personnel drills and exercises; and

(9) to pay for vessel navigational safety improvements including, but not limited to, systems for supplying real-time navigation condition information using the Physical Oceanographic Real-Time Systems (PORTS) operated by the National Oceanic and Atmospheric Administration.

(e)(1) The commissioner shall administer the fund in accordance with this chapter.

(2) The department of environmental protection shall develop procedures governing the expenditure of, and accounting for, money expended from the fund.

(3) The commissioner shall ensure that there are adequate moneys available in the fund to carry out this chapter.

(4) The department shall maintain accounting records showing the income and expenses of the fund.

(f)(1) The commissioner may expend money from the fund for the purposes of oil spill prevention and response equipment or training, commonwealth response to a discharge or threat of a discharge of oil and assessment of natural resource damages if the following determinations have been made:

(i) a responsible party does not exist or the responsible party is unable or unwilling to provide adequate and timely cleanup and pay for the damages resulting from the spill; provided, however, that the commissioner shall make a reasonable effort to have the responsible party timely remove the oil or agree to pay for any actions resulting from the spill that may be required by law, including attempting to access funds from the responsible party's insurer; provided further, that the efforts shall not be detrimental to fish, plant, animal or bird life in the affected waters; and

(ii) federal oil spill funds are not available or will not be available in an adequate period of time; provided, however, that notwithstanding this paragraph, the commissioner may expend money from the fund for authorized expenditures when a reimbursement procedure is in place to receive reimbursements from federal oil spill funds.

(2) Disbursements may also be made for related purposes, including:

(i) administrative expenses, personnel expenses and equipment costs of the commonwealth related to the administration of the fund and enforcement of this chapter;

(ii) all costs including, without limitation, personnel undertaking oil spill response activities and equipment expenses involved in the removal of oil, the abatement of oil pollution and the implementation of remedial measures, including restoration of water supplies, related to the release of oil, petroleum products and their byproducts;

(iii) sums allocated to research and development in accordance with this section, including the costs of assessing and evaluating the injury, destruction or loss of natural resources;

(iv) payment of damage claims and loans awarded in accordance with this section;

(v) The VTS system fee collected pursuant to section 2; and

(vi) payment of costs for the collection of overdue reimbursements.

(g)(1) Any person may apply to the fund for reasonable compensation for damages and losses suffered as a result of an oil spill under any of the following conditions, to the extent monies are available in the fund for such claims:

(i) the responsible parties cannot be ascertained.

(ii) federal oil spill funds are not available or will not be available in an adequate period of time; provided, however, that notwithstanding this clause, the commissioner may expend money from the fund for authorized expenditures when a reimbursement procedure is in place to receive reimbursements from federal oil spill funds.

(iii) emergency loans; provided, however, that in the event of an oil spill where more than 5,000 gallons of oil have been discharged in the marine or estuarine waters in any 1 day from a single event, the commissioner, after a properly noticed public hearing, may make an emergency secured interest-free loan to a private individual or entity who demonstrates that the individual or entity may suffer substantial financial hardship as a result of the oil spill without such loans; provided further, that loans under this section may be made only if the commissioner determines that a sufficient amount is available in the fund to cover costs incurred by the fund and local governments and entities in responding to and cleaning up the spill; and provided further, that the commissioner shall adopt any regulations and guidelines necessary regarding repayment terms, security and any other items the administrator deems appropriate.

(2) Awards from the fund on damage claims shall not include any amount the claimant has recovered on account of the same damage by way of settlement with the responsible party or his representatives or by the judgment of a court of competent jurisdiction against the responsible party, to the extent these amounts are duplicative.

(3) The commissioner shall pay only those claims that are approved pursuant to this section.

(4) A responsible party shall not be eligible for compensation under this section.

(5) Damage claims shall not include expenditures for the preparation and prosecution of the damage claim, such as legal fees or real estate appraisal fees.

(6) Nothing in this section shall be construed to confer a right on an eligible claimant to receive compensation from the fund.

(h) The attorney general, in consultation with the commissioner, shall initiate actions to recover all costs to the fund from any responsible party for an oil spill into marine or estuarine waters for which expenditures are made from the fund. The recovery of costs pursuant to this section shall not foreclose the attorney general from any other actions allowed by law.

(i) recognizing the importance of the development of readiness and response programs, the general court may allocate up to \$150,000 per year of the amount then currently in the fund to be devoted to research and development regarding the causes, effects and removal of pollution caused by oil, petroleum products and their by-products on the marine environment. Such funds may be disbursed, in whole or in part, to regional committees including, but not limited to, the Buzzards bay geographic response plan committee, for expenses consistent with these purposes. The remaining moneys in the fund which the general court may allocate to research and development shall be used for purposes approved by the commissioner. Such purposes may include, but shall not be limited to:

- (i) sensitive area data management and mapping;
- (ii) scientific research which is directly relevant to state legislation;
- (iii) development of more effective removal and containment technologies appropriate for the cleanup and containment of oil and petroleum products; and
- (iv) oil spill prevention or response equipment and funding to train personnel, for coastal municipalities and Massachusetts state pilots commissioned pursuant to chapter 103.

There being no objection, the rules were suspended, on motion of Ms. Fargo and the bill was read a second time and was amended, as recommended by the committee on Ways and Means, read a third time and was passed to be engrossed, in concurrence, with the amendment.

Sent to the House for concurrence in the amendment.

Matter Taken out of the Orders of the Day.

There being no objection, the following matter was taken out of the Orders of the Day and considered, as follows:

The Senate Bill relative to defining employees classified in Group 4 (Senate, No. 2240, changed),— was read a third time.

Pending the question on passing the bill to be engrossed, Mr. Rosenberg moved that the bill be amended by inserting after the enacting clause the following section:—

“SECTION 1. Section 3 of chapter 32 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out the words ‘University of Massachusetts police;’, in line 233.”; and by adding the following section:—

“SECTION 3. Said section 3 of said chapter 32, as so appearing, is hereby further amended by inserting after the word ‘facilities;’, in line 298, the following words:— police officers of the University of Massachusetts.”

The amendment was adopted.

The bill (Senate, No. 2240, changed and amended) was then passed to be engrossed.

Sent to the House for concurrence.

Recess.

There being no objection, at two minutes before four o’clock P.M., the Chair (Mr. Havern) declared a recess subject to the call of the Chair; and, at eleven minutes before five o’clock P.M., the Senate reassembled, Ms. Murray in the Chair.

PAPERS FROM THE HOUSE.

Engrossed Bill Returned by Governor With His Objections Thereto.

The engrossed Bill relative to the financial stability in the city of Springfield (see House, No. 4799, amended), which, on Friday, July 9, 2004, had been laid before His Excellency the Governor for his approbation,— came from the House the same having been returned by His Excellency the Governor, with his objections thereto in writing, insomuch as relates to Section 2 (for message, see House, No. 4971) and having passed that branch, notwithstanding said objections.

Section 2 was considered as follows:

“Notwithstanding any general or special law to the contrary, there is hereby established and set up on the books of the commonwealth the Springfield Fiscal Recovery Trust Fund, in this act called the fund, the sole purpose of which shall be to provide interest free loans to the city of Springfield. Effective June 30, 2004, the comptroller shall transfer to the fund \$52,000,000 from the General Fund to the fund.”

[The Governor reduced said section by striking wording.]

The question on passing Section 2, in concurrence, the objections of His Excellency the Governor to the contrary notwithstanding, was determined by a call of the yeas and nays, as required by Chapter I, Section I, Article II, of the Constitution, at ten minutes before five o'clock P.M., as follows, to wit (yeas 38 — nays 0) [**Yeas and Nays No. 621**]:

YEAS.	
Antonioni, Robert A.	Brewer, Stephen M.
Baddour, Steven A.	Brown, Scott P.
Barrios, Jarrett T.	Chandler, Harriette L.
Berry, Frederick E.	Creedon, Robert S., Jr.
Creem, Cynthia Stone	Morrissey, Michael W.
Fargo, Susan C.	Murray, Therese
Glodis, Guy W.	Nuciforo, Andrea F., Jr.
Hart, John A., Jr.	O'Leary, Robert A.
Havern, Robert A.	Pacheco, Marc R.
Hedlund, Robert L.	Panagiotakos, Steven C
Joyce, Brian A.	Resor, Pamela
Knapik, Michael R.	Rosenberg, Stanley C.
Lees, Brian P.	Shannon, Charles E.
Magnani, David P.	Sprague, Jo Ann
McGee, Thomas M.	Tarr, Bruce E.
Melconian, Linda J.	Tisei, Richard R.
Menard, Joan M.	Tolman, Steven A.
Montigny, Mark C.	Tucker, Susan C.
Moore, Richard T.	Walsh, Marian — 38.
NAYS — 0.	
ABSENT OR NOT VOTING.	
Wilkerson, Dianne — 1.	

The yeas and nays having been completed at one minute before five o'clock P.M., Section 2, stands, in concurrence, notwithstanding the objections of His Excellency the Governor, two-thirds of the members present and voting having approved the same.

Engrossed Bill.

An engrossed Bill relative to special elections to fill vacancies for Senator and Representative in Congress (see Senate, No. 2404) (which originated in the Senate), **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.**

Order Adopted.

On motion of Mr. Brewer,—

Ordered, That when the Senate adjourns today, it adjourn to meet again tomorrow at eleven o'clock A.M., and that the Clerk be directed to dispense with the printing of a calendar.

On motion of Mrs. Sprague, at six minutes past five o'clock P.M., the Senate adjourned to meet on the following day at eleven o'clock A.M.