

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.

Tuesday, November 18, 2003.

Met at five minutes past one o'clock P.M. (Mr. Rosenberg in the Chair).

The Senator from Essex and Middlesex, Mr. Tarr, then led the Chair (Mr. Rosenberg), members, guests and employees in the recitation of the pledge of allegiance to the flag.

Reports of Committees.

By Ms. Resor, for the committee on Natural Resources and Agriculture, on petition, a Bill relative to licensing of foresters and timber harvesters (Senate, No. 1241);

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

By Ms. Resor, for the committee on Natural Resources and Agriculture, on petition, a Bill relating to the distribution and sale of household cleaning products containing phosphorous (Senate, No. 1252);

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

By Mr. Joyce, for the committee on Election Laws, on petition, a Bill relative to voting precincts in the town of Amherst (Senate, No. 2040) [Local approval received];

By Ms. Fargo, for the committee on Local Affairs and Regional Government, on Senate Nos. 1178 and 2075, a Bill relative to a certain parcel of land in the town of Ipswich (Senate, No. 1178) [Local approval received on Senate, No. 1178];

By the same Senator, for the same committee, on petition, a Bill authorizing the town of Tewksbury to grant certain utility easements (Senate, No. 2070) [Local approval received];

By the same Senator, for the same committee, on petition, a Bill relative to the police department in the town of Bridgewater (Senate, No. 2071) [Local approval received];

By Ms. Resor, for the committee on Natural Resources and Agriculture, on petition, a Bill relative to a betterment assessment in the town of Sturbridge (Senate, No. 2030) [Local approval received];

By Mr. Magnani, for the committee on Public Service, on petition, a Bill relative to part-time elected officials of the town of Swansea (printed as House, No. 3969) [Local approval received];

By Ms. Creem, for the committee on Taxation, on petition, a Bill to authorize the town of Winchester to lien certain outstanding charges owed the town (Senate, No. 2041) [Local approval received];

By Mr. Baddour, for the committee on Transportation, on petition, a Bill designating a certain bridge as the Paul D. Harold Memorial Bridge (Senate, No. 1980, changed by striking out the language after "Massachusetts Highway Department shall erect")

and inserting in place thereof “at said location suitable markers bearing said designation in compliance with said Department. The Department of Public Works for the city of Quincy shall be responsible for the maintenance of said markers.”) [Local approval received]; and

By the same Senator, for the same committee, on petition, a Bill relative to the designation of a scenic byway in the towns of Hadley and South Hadley (Senate, No. 2012) [Local approval received];

Severally read and, under Senate Rule 26, placed in the Orders of the Day for the next session.

PAPERS FROM THE HOUSE.

Petitions were referred, in concurrence, as follows:

Petition (accompanied by bill, House, No. 4313) of Scott P. Brown (by vote of the town) that the town of Norfolk be authorized to establish a department of public works;

Petition (accompanied by bill, House, No. 4314) of Thomas P. Kennedy (with the approval of the mayor and city council) relative to the payment obligations of the city of Brockton under a certain water supply contract;

Severally to the committee on Local Affairs and Regional Government.

A Bill relative to emergency medical services (House, No. 1914,— on petition),— **was read and, under Senate Rule 26, referred to the committee on Steering and Policy.**

Communications.

The Clerk read the following communication:

COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS SENATE
STATE HOUSE, BOSTON 02133

November 17, 2003.

Mr. William Welch
Acting Clerk of the Senate
State House, Room 335
Boston, MA 02133

Dear Mr. Clerk:

I respectfully ask that this correspondence be read into the record at the next session of the Senate. Due to a scheduling conflict, I was absent from the chamber during a roll call vote on Monday, November 17.

Had I been present, I would have voted in the affirmative on the question of enactment of Senate Bill 1183, authorizing the conservation commission of Andover to grant an easement. Thank you for your assistance in this matter.

Sincerely,
CHERYL A. JACQUES,
State Senator,
Norfolk, Bristol & Middlesex District.

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

The Clerk read the following communication:

COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS SENATE
STATE HOUSE, BOSTON 02133

November 18, 2003.

Mr. William F. Welch
Acting Clerk of the Massachusetts State Senate
State House, Room 335
Boston, MA 02133

Dear Mr. Clerk:

On Monday, November 17, 2003, I was unable to be present for several roll call votes. Had I been present I would have voted as follows:

- In the affirmative on the enactment of S.1183 relative to the town of Andover;
- In the negative on the amendment to S.2130 entitled “Eliminating Nursing Home Exemption”;
- In the negative on the amendment to S.2130 entitled “Eliminating Membership Association Exemption”;
- In the affirmative on the enactment of H. 13 relative to debt collection and loan servicing agencies; and
- In the affirmative on the enactment of S.642 relative to establishing reasonable fees for copying medical records.

I respectfully request that this letter be read into the record at the next session of the Senate. Thank you for your assistance with this matter.

Sincerely,
CYNTHIA STONE CREEM,
*State Senator,
1st Middlesex and Norfolk District.*

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

Report of Committees.

By Mr. Brewer, for the committees on Rules of the two branches, acting concurrently, that Joint Rules 12 and 7B be suspended on the Senate petition of Brian P. Lees and Mary S. Rogeness (by vote of the town) for legislation to exempt the position of chief of police in the town of East Longmeadow from the civil service law [Local approval received].

Senate Rule 36 was suspended, on motion of Mr. Tarr, and the report was considered forthwith. Joint Rules 12 and 7B were suspended; and the petition (accompanied by bill) was referred to the committee on Public Service. Sent to the House for concurrence.

Recess.

At eight minutes past one o'clock P.M., the Chair (Mr. Rosenberg) declared a recess subject to the call of the Chair, and at one minute past two o'clock P.M., the Senate reassembled, the President in the Chair.

Orders of the Day

The Orders of the Day were considered, as follows:

The House Bill to improve public health in the Commonwealth (House, No. 4256, printed as amended),— was read a third time.

Mr. Havern in the Chair, pending the question on passing the bill to be engrossed, Mr. Joyce moved to amend the bill in section 1 by inserting after the word “facility.”, the following paragraph:—

“(12) night clubs where the occupancy capacity is not less than 900 persons.”

The amendment was rejected.

Messrs. Tisei and Lees moved to amend the bill by striking out in section 1 the text, in lines 178 to 189, inclusive.

After debate, the question on adoption of the amendment was determined by a call of the yeas and nays, at one minute past three o'clock P.M., on motion of Mr. Tisei, as follows, to wit (yeas 9 — nays 30) [**Yeas and Nays No. 381**]:

YEAS.

Hedlund, Robert L.	Morrissey, Michael W.
Knapik, Michael R.	Sprague, Jo Ann
Lees, Brian P.	Tarr, Bruce E.
Magnani, David P.	Tisei, Richard R. — 9.
Menard, Joan M.	

NAYS.

Antonioni, Robert A.	Creem, Cynthia Stone
Baddour, Steven A.	Fargo, Susan C.

Barrios, Jarrett T.	Glodis, Guy W.
Berry, Frederick E.	Hart, John A., Jr.
Brewer, Stephen M.	Havern, Robert A.
Chandler, Harriette L.	Jacques, Cheryl A.
Creedon, Robert S., Jr.	Joyce, Brian A.
McGee, Thomas M.	Panagiotakos, Steven C.
Melconian, Linda J.	Resor, Pamela
Montigny, Mark C.	Rosenberg, Stanley C.
Moore, Richard T.	Shannon, Charles E.
Murray, Therese	Tolman, Steven A.
Nuciforo, Andrea F., Jr.	Tucker, Susan C.
O'Leary, Robert A.	Walsh, Marian
Pacheco, Marc R.	Wilkerson, Dianne — 30.

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

Messrs. Tisei and Lees moved to amend the bill by inserting after section 2 the following section:—

“SECTION 2A. Notwithstanding other provisions of this act, any city and town by an affirmative vote of a majority of voters at any special or regular election, at which the question of rejection of this act has been placed on the ballot, may reject this act. The vote may occur at any time before or after the effective date of this act.”

After debate, the question on adoption of the amendment was determined by a call of the yeas and nays, at nine minutes past three o'clock P.M., on motion of Mr. Tisei, as follows, to wit (yeas 13 — nays 26) [**Yeas and Nays No. 382**]:

YEAS.

Baddour, Steven A.	McGee, Thomas M.
Brewer, Stephen M.	Morrissey, Michael W.
Creedon, Robert S., Jr.	Sprague, Jo Ann
Glodis, Guy W.	Tarr, Bruce E.
Knapik, Michael R.	Tisei, Richard R.
Lees, Brian P.	Tucker, Susan C. — 13.
Magnani, David P.	

NAYS.

Antonioni, Robert A.	Montigny, Mark C.
Barrios, Jarrett T.	Moore, Richard T.
Berry, Frederick E.	Murray, Therese
Chandler, Harriette L.	Nuciforo, Andrea F., Jr.
Creem, Cynthia Stone	O'Leary, Robert A.
Fargo, Susan C.	Pacheco, Marc R.
Hart, John A., Jr.	Panagiotakos, Steven C.
Havern, Robert A.	Resor, Pamela
Hedlund, Robert L.	Rosenberg, Stanley C.
Jacques, Cheryl A.	Shannon, Charles E.
Joyce, Brian A.	Tolman, Steven A.
Melconian, Linda J.	Walsh, Marian
Menard, Joan M.	Wilkerson, Dianne — 26.

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

Mr. Lees moved that the bill be amended by striking out section 3 and inserting in place thereof the following section:—

“SECTION 3. This act shall take effect on January 1, 2005.”

The amendment was *rejected*.

Mr. Lees moved that the bill be amended by striking out section 3 and inserting in place thereof the following section:—

“SECTION 3. Acceptance of this act by city or town shall be by an affirmative vote of a majority of the voters at any regular or special town election at which the question of acceptance has been placed on the ballot. This act shall take effect in the city or town 90 days following the affirmative vote.”

The amendment was *rejected*.

Mr. Lees moved that the bill be amended by striking out section 3 and inserting in place thereof the following 2 sections:—

“SECTION 3. There shall be a special commission to study the economic impact of a statewide workplace smoking ban. The commission shall consist of the house and senate chairs of the house and senate committees on ways and means who shall be co-chairpersons, 2 senators appointed by the senate president, 2 representatives appointed by the speaker of the house, 1 senator appointed by the senate minority leader, 1 representative appointed by the house minority leader, and 3 members appointed by the governor, 1 of whom shall be a member of the chamber of commerce of a city, 1 of whom shall be a member of the chamber of commerce of a town, and the secretary of economic affairs or his designee. The commission shall study issues including, but not limited to: the impact that a smoking ban will have on the economies of cities and towns located on the borders and the impact that a smoking ban will have on the economy of the state as a whole. In carrying out its investigation, the commission shall take testimony from the public and interested organizations, including but not limited to representatives of business associations. The commission shall file a report with the house and senate clerks, the speaker of the house, and the president of the senate not later than December 31, 2004, along with any proposals for legislation necessary to carry its recommendations into effect.

SECTION 4. This act shall take effect on January 1, 2005.”

The amendment was *rejected*.

Mr. Lees moved that the bill be amended, in section 1, in line 208, by striking out the word “facility” and inserting in place thereof the following words:— “facility;

(12) licensed smoking zones designated by local licensing authorities under this paragraph.

(i) As used in this paragraph the following words shall have the following meanings:—

‘Applicant’, a common victualler, innholder, pub brewer or keeper of a tavern, as defined in section 12 of chapter 138; or, a corporation the members of which are war veterans and which owns, hires or leases in the city or town a building, or space in a building, for the use and accommodation of a post of any war veterans’ organization incorporated by the Congress of the United States.

‘Local licensing authority’, the board of health in any city or town having jurisdiction over the licensee and its operations.

‘Patrons’, travelers, strangers and other business invitees and customers not under 21 years of age.

‘Smoke’, to inhale, exhale, burn or carry any lighted cigar, cigarette, pipe or other lighted tobacco product.

‘Smoking zone’, a public area located within any building operated by a licensee at its principal place of business for the primary purpose of serving the business needs of patrons of the licensee, including but not limited to, dining rooms and functions rooms and subject to the determination of the local licensing authority approved in writing.

(ii) Notwithstanding section 22 of chapter 270 or any other general or special law to the contrary, an applicant may be granted a license by the local licensing authority to allow its patrons to smoke in designated smoking zones within its premises, subject to the terms and conditions required by the local licensing authority from time to time, including but not limited to, the hours during which patrons shall be allowed to smoke. The license shall be valid for a period of not more than 1 year and may be renewed annually, subject to the discretion of the local licensing authority. The total number of licenses granted by the licensing authority shall not exceed one-third of the total number of licenses the city or town may grant for the sale of alcoholic beverages to be consumed on the premises under section 12 of chapter 138, as limited by section 17 of said chapter 138.

(iii) The local licensing authority may determine in the first instance, when originally issuing and upon each annual renewal of licenses under this section, the amount of the license fee, which shall be payable to the city or town. Before issuing a license to any applicant under this section, or before renewal of such license, the local licensing authority shall cause an examination to be made of the premises of the applicant to determine that such premises comply in all respects with the appropriate definition of a

smoking zone is clause (i) and that the applicant is not less than 21 years of age and a person of good character in the city or town in which he seeks a license hereunder. A license shall not be issued to an applicant who has been convicted of a violation of a federal or state narcotic drugs law.

(iv) A license issued under this section shall not be subject to condition or requirement varying the occupancy of the licensed premises as certified by person or state or local agency charged with the administration or enforcement of the state building code or its rules or regulations.”

The amendment was rejected.

Mr. Lees moved that the bill be amended by inserting after section 2 the following section:—

“SECTION 2A. There shall be a special commission to study the feasibility of implementing a system of local licensing allowing the patrons of certain business establishments to smoke while on the premises of said businesses. The commission shall consist of the house and senate chairs of the joint committee on health care who shall be co-chairpersons, 2 senators appointed by the senate president, 2 representatives appointed by the speaker of the house, 1 senator appointed by the senate minority leader, 1 representative appointed by the house minority leader, 3 members appointed by the governor, 1 of whom shall be a member of the board of health of a city, 1 of whom shall be a member of the board of health of a town and 1 of whom shall be a representative of the smoking industry, the commissioner of the department of public health or his designee, and a representative of the Massachusetts Restaurant Association. The commission shall study issues including, but not limited to, the feasibility or apportioning licenses for smoking establishments based on population, the feasibility of designating local boards of health as the licensing authority, the type of businesses which shall be eligible to apply for such licenses, the areas within licensed business establishments which should be open to smoking, and the terms and conditions upon which such licenses should be granted. In carrying out its investigation, the commission shall take testimony from the public and interested organizations, including but not limited to, representatives of the smoking industry and business associations. The commission shall file a report with the house and senate clerks, the house and senate committees on ways and means, the speaker of the house, and the president of the senate not later than December 31, 2004, together with any proposals for legislation necessary to carry its recommendations into effect.”

The amendment was rejected.

Messrs. Lees and Tisei moved that the bill be amended by inserting after section 2 the following section:—

“SECTION 2A. Chapter 63 of the General Laws is hereby amended by inserting after section 31H the following section:—

Section 31I. A domestic or foreign corporation or corporate franchise shall be allowed a credit against its excise due under this chapter equal to 100 per cent of the costs incurred during any taxable year beginning on or after January 1, 2002, and ending on or before December 31, 2003, for the purchase and installation of mechanical ventilation systems and related heating and air conditioning systems; walls, doors, glass, and other barriers; air ducts; plumbing, wiring, and gas lines; and any other materials used in the construction of designated smoking areas designed to reduce the presence of smoke in non-smoking areas, including any modifications to existing physical structures, as well as any costs incurred for labor and design in the construction of such designated smoking areas, used by the corporation or corporate franchise in the commonwealth and situated in the commonwealth during said period of time, pursuant to any board of health regulation, city ordinance, town bylaw, or any other municipal variance or exemption.”

The amendment was adopted.

Mr. Lees moved that the bill be amended by striking out the text contained in lines 151 to 208, inclusive.

The amendment was rejected.

Mr. Lees moved that the bill be amended in section 2, by inserting after the words “the Massachusetts Restaurant Association”, in lines 4 and 5, the following words:— , the Massachusetts Chamber of Commerce.

The amendment was adopted.

Messrs. Rosenberg and Moore moved to amend the bill by striking out in section 1, subsection (h)(6) and inserting in place thereof the following paragraph:—

“(6) The business of tobacco farmer, manufacturer, importer, exporter, or wholesale distributor of tobacco products.”

The amendment was adopted.

Ms. Fargo moved to amend the bill in section 2, by inserting after the words “Municipal Association”, in line 6, the following words:— “ , the Massachusetts Chamber of Commerce, the Massachusetts AFL-CIO.”

The amendment was adopted.

Mr. Hedlund moved to amend the bill by striking out, in lines 199 and 200, the words “(8) Performers engaged in a theatrical performance, film production or other artistic production.”

After debate, 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 P.M., on motion of Mr. Hedlund, as follows, to wit (yeas 7 — nays 32) [**Yeas and Nays No. 383**]:

YEAS.

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

NAYS.

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.
Chandler, Harriette L.	Murray, Therese
Creedon, Robert S., Jr.	Nuciforo, Andrea F., Jr.
Creem, Cynthia Stone	O'Leary, Robert A.
Fargo, Susan C.	Panagiotakos, Steven C.
Glodis, Guy W.	Pacheco, Marc R.
Hart, John A., Jr.	Rosenberg, Stanley C.
Havern, Robert A.	Shannon, Charles E.
Jacques, Cheryl A.	Tolman, Steven A.
Joyce, Brian A.	Tucker, Susan C.
Magnani, David P.	Walsh, Marian
McGee, Thomas M.	Wilkerson, Dianne — 32.

The President in the Chair, the yeas and nays having been completed at twenty-seven minutes past three o'clock P.M., the amendment was *rejected*.

Mr. Lees moved to amend the bill in section 1 by striking out, in line 208, the word "facility" and inserting in place thereof the following words:— "facility;

(12) An organization or entity that operates bingo or similar game."

The amendment was *rejected*.

Mr. Lees moved to amend the bill in section 1 by striking out, in line 208, the word "facility" and inserting in place thereof the following words:— "facility;

(12) A business licensed to sell alcohol on the premises, as defined in chapter 138 of the General Laws, that does not also serve food."

After debate, the amendment was *rejected*.

Mr. Lees moved to amend the bill in section 1, by striking out, in line 208, the word "facility" and inserting in place thereof the following words:— "facility;

(12) Any race track, as defined in chapter 128A of the General Laws."

After remarks, the amendment was *rejected*.

Mr. Lees moved that the bill be amended, in lines 94 to 98, inclusive, of section 1, by striking out the following sentence:— "This subsection shall not apply to a resident or patient of a state hospital, a private interview or meeting area of a law enforcement facility, or the Soldiers' Home in Massachusetts, the Soldiers' Home in Holyoke, or a substance abuse treatment center under the jurisdiction of the commonwealth."

The amendment was *rejected*.

Mr. Glodis moved to amend the bill in section 1, by inserting after the definition of “smoking” or “smoke” the following definition:—

“Separate smoking room”, an enclosed room the exclusive purpose of which is for smoking. No business transactions, including, but not limited to, the sale, including vending machines, service of food, beverages, or any other product, or collection of any payments, shall be conducted in this room.”; and

In said section 1, by inserting after the word “located”, in line 177, the following paragraph:—

“(4A) Separate smoking room, provided the room be clearly designated completely enclosed on all sides by solid floor to ceiling walls, comply with all applicable fire and building code requirements, and have a sprinkler system for fire safety and have a separate ventilation system whereby the air from the enclosed room is immediately exhausted to an outdoor area by an exhaust fan rather than being recirculated inside, and pressurized to prevent back streaming of secondhand smoke into smoke free areas. The room shall not contain the sole means of ingress and egress to restrooms or any other smoke free area. Any door in the room shall be self-closing, and shall remain closed except to the extent necessary to permit ingress and egress. The room shall not exceed 25 per cent of the aggregate square footage of the premises, including non-smoking lounges and shall not exceed 350 square feet. No employee shall be permitted to enter the room for the purpose of conducting any business transaction, including but not limited to, the sale or service of food, beverages, or any other product; but, an employee shall be allowed into the room to provide busing or other cleaning services when no smoking has occurred for 15 minutes before the employee enters the room and no customers are present. The room shall have a ventilation system in which the ventilation rate is at least 60 cubic feet per minute per occupant based on a maximum occupancy of 7 individuals per 100 feet of floor space, and the negative air pressure is at a rate such that when measured by a device approved by the department of health, the pressure differential is at least 3 hundredths of an inch of water column relative to the air pressure in the adjacent room in which smoking is not permitted. The ventilation system shall discharge air from separate smoking room at least 25 feet away from operable windows, doors, air-conditioning, and any other heating, ventilation and air conditioning intakes.”

The amendment was rejected.

Messrs. Tisei, Tarr and Hedlund moved to amend the bill by inserting after section 1 the following section:—

“SECTION 1A. Chapter 63 of the General Laws is hereby amended by adding the following section:—

Section 31I. A domestic or foreign corporation or corporate franchise shall be allowed a credit against its excise due under this chapter equal to 100 per cent of the costs incurred during any taxable year beginning on or after January 1, 2000, and ending on or before December 31, 2003, for the purchase and installation of mechanical ventilation systems and related heating and air conditioning systems; walls, doors, glass, and other barriers; air ducts; plumbing, wiring, and gas lines; and any other materials used in the construction of a designated smoking area designed to reduce the presence of smoke in non-smoking areas, including any modifications to existing physical structures, as well as any costs incurred for labor and design in the construction of the designated smoking area, used by the corporation or corporate franchise in the commonwealth and situated in the commonwealth during said period of time, pursuant to any board of health regulation, city ordinance, town bylaw, or any other municipal variance or exemption.”

The amendment was rejected.

Mr. Lees moved to amend the bill by striking out all after the enacting clause and inserting in place thereof the following:—

“SECTION 1. Chapter 270 of the General Laws is hereby amended by striking out section 22, as appearing in the 2002 Official Edition, and inserting in place thereof the following section:—

Chapter 270.

Section 22. Smoking in public places.

Section 22. No person shall smoke in any public elevator, supermarket or retail food outlet, in or upon any public mass transit conveyances or indoor platform or enclosed outdoor platform, at any open meeting of a governmental body as defined in section eleven A of chapter thirty A, section twenty-three A of chapter thirty-nine and section nine F of chapter thirty-four or in any courtroom. The owner, manager or other person in charge of such a facility, building or vehicle or place as herein described in this paragraph shall post conspicuously a notice at each entrance indicating that smoking is prohibited therein.

No person shall smoke in any courthouse, school, college, university, museum, library, train, airplane, waiting area of an airport, waiting area of a health care facility as defined in section nine C of chapter one hundred and twelve, group child care center, school-aged day care center, or family day care center or on any premises where activities are licensed under section thirty-eight of chapter ten, except beano, or in any public building, except in an area which has specifically been designated as a smoking area. An area shall be designated as a smoking area only if nonsmoking areas of sufficient size and capacity are available to accommodate nonsmokers. Any person admitted to a health care facility as defined in said section nine C of said chapter one hundred and twelve shall, upon request, be assigned a room in which smoking is not permitted and shall be entitled to be assigned

to such room for the duration of his stay or until an alternative assignment is requested. No person shall smoke in the state house or in any building owned by the commonwealth or in any space occupied by a state agency or department of the commonwealth which is located in another building, including any private office in any such building or space mentioned in this sentence, notwithstanding the provisions of the last paragraph. The provisions of the foregoing sentence shall not apply to residents or patients of state hospitals, private interview or meeting area of a law enforcement facility, the Soldiers' Home in Massachusetts, the Soldiers' Home in Holyoke and any substance abuse treatment center under the jurisdiction of the commonwealth.

No person shall smoke in any restaurant with a seating capacity of one hundred or more persons, except in an area which has been specifically designated as a smoking area. In such case, smoking may be permitted in an area or areas that have been specifically designated by notice or sign, only if nonsmoking areas of sufficient size and capacity are available to accommodate nonsmokers. Smoking and nonsmoking areas in any restaurant need not be separated by walls, partitions or other physical barriers; provided, however, that nonsmoking areas in any part of a restaurant, as provided herein, shall be no less than two hundred square feet of floor space.

The owner, manager or other person in charge of a facility, building, vehicle or place described in the second and third paragraphs shall post conspicuously such notices or signs at each entrance indicating that smoking is prohibited therein except in specifically designated areas, and shall post conspicuously such notice or signs indicating which is the no smoking area and which is the smoking area.

Any person aggrieved by the willful failure or refusal to comply with any of the provisions of this section may complain in writing to the local health officer in the case of a restaurant, supermarket or retail food outlet, or to the local building inspector in the case of all other facilities described in this section. Said authority shall respond in writing within fifteen days to the complainant that he has inspected the area described in the complaint and has enforced the provisions of this section. Said authority shall file a copy of the original complaint and his response thereto with the department of public health.

Any person aggrieved by the willful failure or refusal to comply with any provisions of this section in any public building may complain in writing to the head of such department or agency occupying the area wherein such violation occurs. Such agency or department head shall respond, in writing, within fifteen days to the complainant that he has inspected the area described in the complaint and has enforced the provisions of this section. Said agency or department head shall file a copy of the original complaint and his response thereto with the department of public health.

Nothing in this section shall prohibit smoking in a completely enclosed private office used by an individual within a facility, public building, vehicle or place described in the first, second and third paragraphs."

Pending the question on adoption of the amendment, and pending the main question on passing the bill to be engrossed, Mr. Lees further moved that the amendment be printed in the calendar pursuant to the provisions of Senate Rule 31; and the motion was seconded by Mr. Tisei.

Accordingly, the matter was laid over under the provisions of Senate Rule 31 until the next session.

Report of a Committee.

By Mr. Hart, for the committee on Commerce and Labor, on petition (accompanied by bill, Senate, No. 73), a Bill relative to the reform of the unemployment insurance system (Senate, No. 2146), was read.

There being no objection, the rules were suspended, on motion of Mr. Hart, and the bill was read a second time.

Mr. Berry in the Chair, pending the main question on ordering the bill to a third reading Mr. Hart moved to amend the bill by striking out Section 10 and inserting in place thereof the following section:—

"SECTION 10. Section 30 of said chapter 151A, as so appearing, is hereby amended by striking out, in line 5, the word 'twenty-nine' and inserting in place thereof the following words:— '29; provided, however, that if in any month the average local unemployment for the last 12 months, as determined by the United States Department of Labor is equal to or below 5.1 per cent in each of the 10 metropolitan statistical areas of the commonwealth, the total benefits which an unemployed individual who then files a claim may receive during his benefit year shall be an amount equal to 36 per cent of his wages in the base period or an amount equal to 26 times his benefit rate, whichever is less, plus dependency benefits payable under said section 29; provided further that no such reduction in benefit rate from 30 times to 26 times the benefit rate due to the operation of this section shall occur to an individual's total benefit amount if, in any month during the individual's benefit year, the requirements of this section have not been made'."

The President in the Chair, after debate, the question on adoption of the amendment was determined by a call of the yeas and nays, at thirteen minutes past four o'clock P.M., on motion of Mr. Lees, as follows, to wit (yeas 39 — nays 0) **[Yeas and Nays No. 384]:**

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
Chandler, Harriette L. .	Nuciforo, Andrea F., Jr
Creedon, Robert S., Jr.	O’Leary, Robert A.
Creem, Cynthia Stone	Pacheco, Marc R.
Fargo, Susan C.	Panagiotakos, Steven C.
Glodis, Guy W.	Resor, Pamela
Hart, John A., Jr.	Rosenberg, Stanley C.
Havern, Robert A.	Shannon, Charles E.
Hedlund, Robert L.	Sprague, Jo Ann
Jacques, Cheryl A.	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 eighteen minutes past four o’clock P.M., the amendment was adopted.

Mr. Lees moved to amend the bill in the last sentence of section 1, by striking after the words “shall mean” the words “fourteen thousand dollars” and inserting in place thereof the words “twelve thousand eight hundred dollars.”

After debate, the question on adoption of the amendment was determined by a call of the yeas and nays, at twenty-one minutes past four o’clock P.M., on motion of Mr. Lees, as follows, to wit (yeas 8 — nays 31) [**Yeas and Nays No. 385**]:

YEAS.

Baddour, Steven A.	Panagiotakos, Steven C.
Hedlund, Robert L.	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.	Resor, Pamela
Hart, John A., Jr.	Rosenberg, Stanley C.

Havern, Robert A.	Shannon, Charles E.
Jacques, Cheryl A.	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-six minutes past four o'clock P.M., the amendment was *rejected*.

At twenty-seven minutes past four 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 ten minutes before five o'clock P.M., the Senate reassembled, Mr. Havern in the Chair.

The Senate Bill relative to the reform of the unemployment insurance system (Senate, No. 2146),— was further considered; the main question being on ordering it to a third reading.

Messrs. Lees and Tarr and Mrs. Sprague moved to amend the bill by adding after section 4 the following new section:—

“SECTION 4A. Section 24 of said chapter 151A, as so appearing, is hereby amended by striking out, in line four, the word ‘thirty’ and inserting in place thereof the word:— forty.”

After debate, 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 8 — nays 31) [**Yeas and Nays No. 386**]:

YEAS.

Hedlund, Robert L.	Sprague, Jo Ann
Knapik, Michael R.	Tarr, Bruce E.
Lees, Brian P.	Tisei, Richard R.
Panagiotakos, Steven C.	Tucker, Susan C. — 8.

NAYS.

Antonioni, Robert A.	Melconian, Linda J.
Barrios, Jarrett T.	Menard, Joan M.
Baddour, Steven A.	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.	Resor, Pamela
Hart, John A., Jr.	Rosenberg, Stanley C.
Havern, Robert A.	Shannon, Charles E.
Jacques, Cheryl A.	Tolman, Steven A.
Joyce, Brian A.	Walsh, Marian
Magnani, David P.	Wilkerson, Dianne —
McGee, Thomas M.	31.

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

Messrs. Lees and Tarr and Mrs. Sprague moved to amend the bill by inserting at the end thereof the following new section:—

“SECTION ____ . Section 1 of chapter 151A, as appearing in the 2002 Official Edition, is hereby further amended by striking out subsection (w) and inserting in place thereof the following subsection:—

(w) ‘Average weekly wage’, an amount equal to one ninety-first of the sum of two times the total wages reported for an individual in the three highest quarters of the individual’s base period and the total wages reported in the remaining quarter of such base period. If such average weekly wage includes a fractional part of a dollar, it shall be rounded to the next lower full dollar amount.”

After remarks, the amendment was *rejected*.

Mr. Lees and Mrs. Sprague moved to amend the bill in the first sentence of Section 4, after the words “equal to or below”, by striking the number “4.5%” and inserting in place thereof the following number:— 5%; and further that the bill be amended in the third sentence of Section 4 by striking after the word “exceeds” the number “4.5%” and inserting in place thereof the number:— 5%.

The amendment was *rejected*.

Messrs. Lees, Tisei, Tarr, Hedlund and Knapik and Mrs. Sprague moved to amend the bill by striking Section 5 in its entirety.

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 7 — nays 32) [**Yeas and Nays No. 387**]:

YEAS.

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

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.	Rosenberg, Stanley C.
Jacques, Cheryl 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 — 32.

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

Messrs. McGee and Morrissey moved to amend the bill by striking out Section 9 and inserting the following section:—

“SECTION 9. Said section 25 of said chapter 151A, as so appearing, is hereby amended by adding the following subsection:—

(j) Any week in which the individual fraudulently collects benefits while not in total or partial unemployment. Whoever fraudulently collects benefits while not in total or partial unemployment, may be disqualified for each otherwise compensable week for each such week of erroneous payment; provided, however, that the amount in question shall be reduced by any earnings disregarded in subsection (d) of section 29; provided further, that in the discretion of the commissioner, an amount erroneously paid may be deducted first from any future payments of benefits accruing to the individual under this chapter; provided further, that the amount deducted each week shall not exceed 25 per cent of the individual’s weekly unemployment benefit rate; and

provided further, that the individual shall have had actual notice of the requirement to report his earnings and the notice shall have met the requirements of clause (iii) of subsection (d) of section 62A. Any individual subjected to a deduction under this section may file an appeal and obtain review in accordance with sections 39 to 42, inclusive, and section 71.”; and by striking out section 11; and by inserting after section 13 the following section:—

“SECTION 13A. Section 69 of said chapter 151A, as so appearing, is hereby amended by inserting after the word ‘chapter’, in line 5, the following words:— provided that there has been a final decision as defined in section 69D.”; and

By striking out section 14 and inserting in place thereof the following section:—

“SECTION 14. Said chapter 151A is hereby further amended by inserting after section 69C the following section:—

Section 69D. As used in this section, the term ‘final’ shall mean that: (1) there is no pending hearing or appeal under sections 39 to 42, inclusive, from a decision determining that an individual knowingly and willfully failed to furnish information; (2) no hearing or appeal from a decision on ineligibility for benefits is pending; (3) no request for waiver pursuant to subsection (c) of section 69 is pending; (4) no request for a redetermination pursuant to section 71 is pending; and (5) from a determination of overpayment, an opportunity for an interview and all appeal rights have been exhausted or not taken within the time allowed by law.”

The amendment was adopted.

Mr. O’Leary moved to amend the bill by inserting the following section:—

“SECTION ____ . Paragraph (e) of section 25 of chapter 151A, as appearing in the 2002 Official Edition, is hereby amended by striking the first clause in lines 111 to 114 appearing before (1), and replacing it with the following:—

‘For the period of unemployment next ensuing and until the individual has had at least eight weeks of work and earned an amount equivalent to or in excess of eight times the individual’s weekly benefit amount after the individual has left work’.”

The amendment was rejected.

Mr. Pacheco moved to amend the bill by inserting before section 1A the following section:—

“SECTION 1. Section 9N of chapter 23 of the General Laws is hereby amended by inserting after the word ‘employees’ in line 8, as appearing in the 2000 Official Edition, the following words:— from a list of 3 persons recommended by the president of the Massachusetts AFL-CIO.”

The amendment was adopted.

The bill, as amended, was then ordered to a third reading, read a third time and was passed to be engrossed [For text of the Senate amendments, see Senate, No. 2150, printed as amended].

Sent to the House for concurrence.

Papers from the House.

Emergency Preamble Adopted.

An engrossed Bill relative to public employees serving in the armed forces of the United States (see Senate, No. 1985, 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.

Engrossed Bills.

An engrossed Bill granting civil service preference to the children of a certain deceased police officer (see House, No. 3942) (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 President and laid before the Governor for his approbation.**

An engrossed Bill establishing a new business corporation act (see Senate, No. 103, 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.

The question on passing the bill to be enacted was determined by a call of the yeas and nays, at twelve minutes past five o’clock P.M., on motion of Mr. Pacheco, as follows, to wit (yeas 38 — nays 1) **[Yeas and Nays No. 388]:**

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.
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.	Resor, Pamela
Hart, John A., Jr.	Rosenberg, Stanley C.
Havern, Robert A.	Shannon, Charles E.
Hedlund, Robert L.	Sprague, Jo Ann
Jacques, Cheryl A.	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.

NAYS

Panagiotakos, Steven C. — **1.**

The yeas and nays having been completed at eighteen minutes past five o’clock P.M., the bill was passed to be enacted and it was signed by the President and laid before the Governor for his approbation.

Engrossed Bill — Land Taking for Conservation, Etc.

An engrossed Bill authorizing the commissioner of Capital Asset Management and Maintenance to modify, extinguish and relocate a certain easement in the city of Lawrence (see Senate, No. 2083, changed and 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 eighteen minutes after five o’clock P.M., as follows, to wit (yeas 39 — nays 0) [**Yeas and Nays No. 389**]:

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
Chandler, Harriette L. .	Nuciforo, Andrea F., Jr
Creedon, Robert S., Jr.	O’Leary, Robert A.
Creem, Cynthia Stone	Pacheco, Marc R.
Fargo, Susan C.	Panagiotakos, Steven C.
Glodis, Guy W.	Resor, Pamela
Hart, John A., Jr.	Rosenberg, Stanley C.
Havern, Robert A.	Shannon, Charles E.
Hedlund, Robert L.	Sprague, Jo Ann
Jacques, Cheryl A.	Tarr, Bruce E.

Joyce, Brian A.
Knapik, Michael R.
Lees, Brian P.
Magnani, David P.
McGee, Thomas M.
Melconian, Linda J.

Tisei, Richard R.
Tolman, Steven A.
Tucker, Susan C.
Walsh, Marian
Wilkerson, Dianne—
39.

NAYS — 0.

The yeas and nays having been completed at twenty-two minutes past five 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.

Notice of Resignation of Honorable Cheryl A. Jacques.

The Clerk read the following communication:

COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS SENATE
STATE HOUSE, BOSTON 02133-1053

November 18, 2003.

The Honorable Robert Travaglini
Senate President
State House, Room 332
Boston, MA 02133

Dear Senate President Travaglini:

In response to the request contained in your letter of November 18, 2003, I am writing to clarify my plans for departure from the Massachusetts State Senate.

I hereby irrevocably resign from my position as State Senator for the Norfolk, Bristol & Middlesex district as of 11:59 p.m. on January 4, 2004. I will assume my responsibilities as the new President and Executive Director of the Human Rights Campaign on January 5, 2004.

It has been my great honor and great pleasure to serve the people of the Norfolk, Bristol and Middlesex district in the State Senate for the past 11 years. During this time I have been humbled and inspired by the activism, openness, and heart of my constituents. I have also learned a tremendous amount from my colleagues in the Senate, about ingenuity in problem solving, dedication to core values, the art of compromise for good governance, and commitment to public service.

I move on to the Human Rights Campaign and Washington D.C., with the hope that I may continue to employ these lessons from my constituents and colleagues in the pursuit of equal rights for all Americans.

Sincerely,
CHERYL A. JACQUES.

Orders Adopted.

There being no objection, Mr. Morrissey offered the following order, to wit:

Ordered, That by the authority of article IV of section II of chapter I of the Constitution, the Senate irrevocably accept the resignation, dated November 18, 2003 and effective January 4, 2004, of Cheryl A. Jacques as senator from the Norfolk, Bristol, and Middlesex district, and declares that, by reason of this resignation, the office of senator from that district is vacant as of January 4, 2004. By the authority of article XXIV of the Amendments to the Constitution, the Senate directs the president of the Senate to issue a precept setting forth March 2, 2004 as the day for holding an election to fill the vacancy in the Norfolk, Bristol, and Middlesex district, comprising precincts 2 to 4, inclusive, of the town of Franklin, precincts B, F, and G of the town of Wellesley, and the towns of Millis, Needham, Norfolk, Plainville, and Wrentham, all in the county of Norfolk; wards 1 and 2,

and precinct A of ward 3 of the city of Attleboro, and the town of North Attleborough, all in the county of Bristol; and precincts 6, 7, 9, and 10 of the town of Natick, and the towns of Sherborn and Wayland, all in the county of Middlesex.

After debate, the question on adoption of the order was determined by a call of the yeas and nays, at twenty minutes before six o'clock P.M., on motion of Mr. Lees, as follows, to wit (yeas 31 — nays 7) [**Yeas and Nays No. 390**]:

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.
Chandler, Harriette L.	O'Leary, Robert A.
Creedon, Robert S., Jr.	Panagiotakos, Steven C.
Creem, Cynthia Stone	Pacheco, Marc R.
Fargo, Susan C.	Resor, Pamela
Glodis, Guy W.	Rosenberg, Stanley C.
Hart, John A., Jr.	Shannon, Charles E.
Havern, Robert A.	Tolman, Steven A.
Magnani, David P.	Tucker, Susan C.
McGee, Thomas M.	Walsh, Marian
Melconian, Linda J.	Wilkerson, Dianne — 31.
Menard, Joan M.	

NAYS.

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

“ANSWERED PRESENT.”

Jacques, Cheryl A. — **1.**

The yeas and nays having been completed at seventeen minutes before six o'clock P.M., the order was adopted.

There being no objection, Ms. Murray offered the following order, to wit:

Ordered, That notwithstanding the provisions of Joint Rule 12B, any matter making or supplementing an appropriation for the current fiscal year shall carryover into the second annual session of the current General Court in the same legislative status as it was at the conclusion of the first annual session or special session held during the current calendar year.

After debate, the question on adoption of the order was determined by a call of the yeas and nays, at three minutes before six o'clock P.M., on motion of Mr. Lees, as follows, to wit (yeas 33 — nays 6) [**Yeas and Nays No. 391**]:

YEAS.

Antonioni, Robert A.	Menard, Joan M.
Barrios, Jarrett T.	Montigny, Mark C.
Baddour, Steven A.	Moore, Richard T.
Berry, Frederick E.	Morrissey, Michael W.
Brewer, Stephen M.	Murray, Therese
Chandler, Harriette L.	Nuciforo, Andrea F., Jr.
Creedon, Robert S., Jr.	O'Leary, Robert A.

Creem, Cynthia Stone	Pacheco, Marc R.
Fargo, Susan C.	Panagiotakos, Steven C.
Glodis, Guy W.	Resor, Pamela
Hart, John A., Jr.	Rosenberg, Stanley C.
Havern, Robert A.	Shannon, Charles E.
Jacques, Cheryl A.	Tolman, Steven A.
Joyce, Brian A.	Tucker, Susan C.
Magnani, David P.	Walsh, Marian
McGee, Thomas M.	Wilkerson, Dianne — 33.
Melconian, Linda J.	

NAYS.

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

The yeas and nays having been completed at six o'clock P.M., the order was adopted.

Matters Taken Out of the Notice Section of the Calendar.

There being no objection, the following matters were taken out of the Notice Section of the Calendar and considered, as follows:

The Senate Bill requiring certain reports to the Division of Fisheries and Wildlife (Senate, No. 1207) (its title having been changed by the committee on Bills in the Third Reading),— was read a third time.

After remarks, the question on passing the bill to be engrossed was determined by a call of the yeas and nays, at three minutes past six o'clock P.M., on motion of Mr. Lees, as follows, to wit (yeas 38 — nays 0) [**Yeas and Nays No. 392**]:

YEAS.

Antonioni, Robert A.	Menard, Joan M.
Baddour, Steven A.	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.	Rosenberg, Stanley C.
Hedlund, Robert L.	Shannon, Charles E.
Jacques, Cheryl A.	Sprague, Jo Ann
Joyce, Brian A.	Tarr, Bruce E.
Knapik, Michael R.	Tisei, Richard R.
Lees, Brian P.	Tolman, Steven A.
Magnani, David P.	Tucker, Susan C.
McGee, Thomas M.	Walsh, Marian
Melconian, Linda J.	Wilkerson, Dianne—
	38.

NAYS — 0.

The yeas and nays having been completed at seven minutes past six o'clock P.M., the bill was passed to be engrossed. Sent to the House for concurrence.

The House Bill authorizing the town of Braintree to lease certain property (House, No. 4098),— **was read a third time and passed to be engrossed, in concurrence.**

Reports of Committees.

By Mr. Baddour, for the committee on Transportation, on petition, a Bill authorizing the Department of Highways and the city of Westfield to divert the use of certain parcels of land in the city of Westfield (Senate, No. 2087).

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

By Ms. Fargo, for the committee on Local Affairs and Regional Government, on petition, a Bill authorizing the disposition by exchange of land held for preservation of natural scenic and open qualities (Senate, No. 2086) [Local approval received].

The bill was read. There being no objection, the rules were suspended, on motion of Ms. Fargo, and the bill was read a second time, ordered to a third reading, read a third time and passed to be engrossed. Sent to the House for concurrence.

Papers from the House.

A Bill relative to granting of an easement by the city of Newton to the Massachusetts Water Resources Authority (House, No. 4009,— on petition),— was read.

There being no objection, the rules were suspended, on motion of Mr. Havern, and the bill was read a second time.

Mr. Morrissey moved to amend the bill by inserting after section 4 the following section:—

“SECTION 4A. Pursuant to subsection (d) of section 9 of chapter 372 of the acts of 1984, the Massachusetts Water Resources Authority, notwithstanding any other special or general law, ordinance or regulation to the contrary, may convey to Jay Cashman, Inc., a Massachusetts corporation, a certain parcel of land owned by the authority in the city of Quincy, consisting of approximately 12 acres. The parcel of land, generally located on South street, is part of a larger parcel commonly known as the Fore River Shipyard, and is more particularly described in a plan titled “Subdivision Plan of Land, Lot 7, Fore River Shipyard, Quincy, MA”, dated January 9, 2002, by BSC Group, signed by James Peterson, Registered PLS. The consideration for the conveyance shall be \$2,211,000.”

The amendment was adopted.

The bill, as amended, was then ordered to a third reading, read a third time and passed to be engrossed, in concurrence, with the amendment, its title having been changed by the committee on Bills in the Third Reading to read as follows: “An Act relative to the grant of easements by the city of Newton to the Massachusetts Water Resources Authority.” Sent to the House for concurrence in the amendment.

The House Bill authorizing the town of Dracut to issue an additional license for the sale of all alcoholic beverages not to be drunk on the premises (House, No. 3922),— came from the House with the endorsement that the House had concurred in the Senate amendments in line 3 striking out the following: “Alan R. Mancotte d/b/a L’l Peach Food Store” and inserting in place thereof the following: “Li’l Peach of Mammoth Rd., Dracut, Inc.” *with a further amendment* striking out the words “Li’l Peach of Mammoth Rd., Dracut, Inc.” (inserted by amendment by the Senate) and inserting in place thereof the following: “QIKSLV, Inc. d/b/a Li’l Peach of Mammoth Road, Dracut”; and by adding at the end thereof the following section:—

“SECTION 2. This act shall take effect upon its passage.”

The rules were suspended, on motion of Mr. Baddour, and the House amendment was considered forthwith and adopted, in concurrence.

The Senate Bill regulating commercial electronic mail (Senate, No. 2019, amended),— came from the House passed to be engrossed, in concurrence *with an amendment* striking out all after the enacting clause and inserting in place thereof the text contained in House document numbered 4326.

On motion of Mr. Havern, the Senate NON-concurred in the amendment, and asked for a committee of conference on the disagreeing votes of the two branches; and Senators Barrios, Melconian and Sprague were appointed to the committee on the part of the Senate.

The bill was returned to the House endorsed accordingly.

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 House Bill authorizing the town of Winchester to grant 3 additional licenses for the sale of all alcoholic beverages (printed as Senate, No. 2032) (its title having been changed by the committee on Bills in the Third Reading),— was read a third time.

Pending the question on passing the bill to be engrossed, Mr. Shannon moved that the bill be amended by adding the following 2 sections:—

“SECTION 2. Notwithstanding section 11 of chapter 138 of the General Laws as to the time and manner of voting on questions, the board of selectmen of the town of Winchester shall cause the following 2 questions to be placed on the official ballot to be used at the next annual town election or at an earlier special town election:

(a) ‘Shall the board of selectmen be authorized to grant an additional license for the sale of all alcoholic beverages not to be drunk on the premises in the town of Winchester?’

If a majority of the votes cast in answer to that question is in the affirmative, the town shall be taken to have authorized the granting of an additional license for the sale of all alcoholic beverages not to be drunk on the premises, but not otherwise.

(b) ‘Shall the board of selectmen be authorized to grant 2 additional licenses for the sale of wines and malt beverages not to be drunk on the premises?’

If a majority of the votes cast in answer to that question is in the affirmative, the town shall be taken to have authorized the granting of 2 additional licenses for the sale of wines and malt beverages not to be drunk on the premises, but not otherwise.

SECTION 3. This act shall take effect upon its passage.”.

This amendment was adopted.

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

Sent to the House for concurrence in the amendment.

Paper from the House.

A Bill authorizing a ballot question in the town of Belmont relative to the granting of licenses for the sale of alcoholic beverages (House, No. 3975,— on petition) (Representative Reinstein of Revere of the committee on Election Laws dissenting),— was read.

There being no objection, the rules were suspended, on motion of Mr. Brewer, and the bill was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence, its title having been changed by the committee on Bills in the Third Reading to read as follows: “An Act authorizing a ballot question in the town of Belmont relative to the granting of licenses for the sale of alcoholic beverages in certain restaurants”.

Order Adopted.

On motion of Mr. Havern,—

Ordered, That when the Senate adjourns today, it adjourn to meet again tomorrow at twelve o’clock noon, in a formal session, and that the Clerk be directed to dispense with the printing of a calendar.

*Adjournment in Memory of
Former Representative Joseph J. Semensi of Randolph.*

The Senator from Norfolk, Bristol and Plymouth, Mr. Joyce, moved that when the Senate adjourns today, it adjourn in memory of Former Representative Joseph J. Semensi of Randolph. Joseph Semensi, who passed away on Sunday, November 16th, served the people of the town of Randolph with distinction for over 50 years. He served in the Massachusetts House of Representatives from 1967 to 1980.

Accordingly, as a mark of respect to the memory of Representative Joseph J. Semensi of Randolph at eighteen minutes past six o’clock P.M., on motion of Mr. Havern, the Senate adjourned to meet again tomorrow at twelve o’clock noon, in a full formal session without a calendar.