

**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.



Thursday, November 6, 2003.

**[being the legislative session of Wednesday, November 5, 2003.]**

Met at one minute past eleven o'clock A.M.

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

### *Reports of Committees.*

By Ms. Tucker, for the committee on Human Services and Elderly Affairs, on petition, a Bill providing for a study by the Department of Social Services relative to foster care compensation (Senate, No. 763);

By the same Senator, for the same committee, on petition, a Bill regarding choice of long term care services (Senate, No. 767);

By the same Senator, for the same committee, on petition, a Bill to let child support come home (Senate, No. 795);

By the same Senator, for the same committee, on petition, a Bill relative to pregnancy prevention for adolescents who are recipients of Medicaid services and public assistance (printed as House, No. 3790);

By Mr. Magnani, for the committee on Public Service, on Senate, Nos. 1458 and 1460 and House, No. 1358, a Bill relative to the retirement benefits of emergency medical technicians (Senate, No. 1460); and

By the same Senator, for the same committee, on petition, a Bill relative to creditable service for vocational education teachers (Senate, No. 1559);

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

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

**Referred, under Senate Rule 36, to the committee on Steering and Policy.**

### *Recess.*

There being no objection, at two minutes past eleven o'clock A.M., the Chair (Mr. Rosenberg) declared a recess subject to the call of the Chair; and at twenty-five minutes before twelve o'clock noon, the Senate reassembled, the President in the Chair.

### *Distinguished Guests.*

There being no objection, the President handed the gavel to the Senator from Worcester, Mr. Glodis, who introduced, in the rear of the Chamber, the Shrewsbury Political Action Group from Shrewsbury High School. They were the guests of Senator Glodis.

At twenty-four minutes before twelve o'clock noon, Mr. Lees doubted the presence of a quorum; and, a count of the Senate determined that a quorum was not present.

Subsequently, at nineteen minutes before twelve o'clock noon, the President declared that a quorum was present; and the Senate proceeded with the business at hand.

*Orders of the Day.*

The Orders of the Day were considered, as follows:

The House Bill providing for investments in emerging technologies to stimulate job creation and economic opportunity in the Commonwealth (House, No. 3955, printed as amended),— was considered, the main question being on passing it to be engrossed, in concurrence.

Pending the main question on passing the bill to be engrossed, Ms. Murray moved to amend the bill in section 3, in paragraph (g), by striking out subparagraph (ii) and inserting in place thereof the following subparagraph:—

“(ii) The chief information officer of the information technology division, in consultation with the secretary of administration and finance, shall develop and implement a set of standards for the procurement of information technology by the executive department that is consistent with the requirements in chapter 7 and the enterprise standards and architecture adopted by the chief information officer and the information technology advisory board, which shall require that: (a) information technology systems be interoperable to the greatest extent possible and that the systems be designed to streamline and improve service delivery, reduce duplicative data entry and provide cross-agency utilization to allow one-portal access to state services; and (b) procurement and other information technology decisions shall be based on technology neutral criteria that focus on functionality, performance, security, value, and total lifecycle costs and that these criteria be structured so as to encourage consideration of the broadest set of technology offerings available.”;

In section 5, in subsection (a), by striking out the definition of “Housing allowance offset” and inserting in place thereof the following definition—

‘Housing allowance offset’, an amount to be paid to a municipality from the net cash proceeds derived by the commonwealth from the sale of surplus real property in that municipality. The amount shall be determined by the commissioner, in consultation with the council, upon such criteria as the commissioner, in consultation with the council, deems appropriate. Such criteria may include, but need not be limited to, the number and type of housing units that shall be made available as a result of the housing allowance action, including the number of housing units made available to individuals with incomes of not more than 80 per cent of the median income and the number of housing units made available to individuals with incomes of not more than 50 per cent of the median income, the timeframe for the introduction of new housing units at the surplus real property, the estimated cost of the housing allowance action to the municipality and the estimated benefit of the housing allowance action to the municipality, including any projected increase in property tax revenues for the municipality resulting from such action. A housing allowance offset may consist of an amount not to exceed 50 per cent of that portion of the net cash proceeds derived by the commonwealth from the sale of the surplus real property which the commissioner, in consultation with the council, deems to be attributable to the housing allowance action taken by that municipality. That amount shall be reduced by the value of any real property transferred to the municipality for municipal use in connection with the sale of the surplus real property.”;

In said section 5, by striking out subsection (f);

In section 9, by striking out the words “, herein referred to as MassPRO,”;

In said section 9, in said section 3H, in the third sentence, by striking out the word “MassPRO” and inserting in place thereof the following words:— “the Massachusetts permit regulatory office”;

In said section 9, in said section 3H, in the last sentence, by striking out the word “MassPRO” and inserting in place thereof the following words:— “the Massachusetts permit regulatory office”;

And in section 20, in section 4G, by striking out subsection (f) and inserting in its place the following subsection:—

“(f) The use by the corporation of monies to implement this section shall be considered an essential governmental function. Notwithstanding any general or special law to the contrary, subsection (a) of section 4A shall apply to expenditures made from the funds established pursuant to sections 4E and 4F; provided, however, that no such expenditure shall be deemed to involve a capital facility project; provided further, that no lease or license executed in furtherance of the public purpose and interests of the fund shall exceed 30 years in duration, and the duration and terms shall be developed in a manner consistent with good business practices; and provided further, that the corporation shall take no action which contravenes the commonwealth’s reversionary interest in any of its real property.”;

By striking out section 26 and inserting in place the following 2 sections:—

“SECTION 26. Section 36 of chapter 62C, as so appearing, is hereby amended by striking out the third paragraph and inserting in place thereof the following paragraph:—

An application for an abatement or a refund of an overpayment of any tax where a return which is required to be filed has not been timely filed, shall be made and filed, along with the overdue return, within 3 years from the date that the return was due to be filed, without regard to extensions, or within 2 years of the date that the tax was paid, whichever is later. An application for an abatement or refund filed beyond those alternate deadlines shall be denied by the commissioner. An application for refund of an overpayment of any tax where no return is required shall be made by the taxpayer within 2 years from the time such tax was paid. An application for an abatement or refund in any other circumstance, including either where no return is required to be filed, or where the return has been filed in a timely manner, shall be made within the periods provided under section 37 of this chapter.

SECTION 26A. Said chapter 62C is hereby further amended by striking out section 39, as so appearing, and inserting in place thereof the following section:—

Section 39. Any person aggrieved by the refusal of the commissioner to abate or to refund any tax, in whole or in part, whether such refusal results from the denial of an abatement application made under section 36 or section 37, may appeal therefrom, within 60 days after the date of notice of the decision of the commissioner or within 6 months after the time when the application for abatement is deemed to be denied as provided in section 6 of chapter 58A, as follows:

- (a) appeals from the decision of the commissioner as to the value of an asset of the estate for purposes of chapter 65C shall be made by filing a petition with the clerk of the appellate tax board;
- (b) appeals from the decision of the commissioner as to all other matters arising under chapter 65C shall be made by filing a petition with either the clerk of the appellate tax board or the probate court having jurisdiction of the estate of the decedent;
- (c) appeals from the commissioner’s refusal to abate any other tax or to refund any tax, in whole or in part, whether such refusal results from the denial of an abatement application made under section 36 or section 37, shall be made by filing a petition with the clerk of the appellate tax board. If, on hearing, the board or the court, whichever the case may be, finds that the person making the appeal was entitled to an abatement or a refund, it shall make such abatement or refund as it sees fit. If a tax so abated has been paid, the state treasurer, upon presentation to him of the notice of the decision of the board, or the court, shall repay to the petitioner the amount of the abatement and interest computed in accordance with section 40.”;

By inserting, after section 30 the following section:—

“SECTION 30A. Chapter 75 of the General Laws is hereby amended by adding the following section:—

Section 45.

- (a) There shall be a Massachusetts Technology Transfer Center, hereinafter referred to as the center, at the University of Massachusetts, that shall facilitate the transfer of technology from the commonwealth’s research institutions to the commonwealth’s industries, for productive use by such industries.
- (b) The center shall provide advice and assistance to public and private research institutions on strategies for technology transfer including, but not limited to, advice and assistance in the following areas:
  - (1) assessing the viability and value of developing technologies;
  - (2) defining and exploiting potential markets for such technologies;
  - (3) commercialization strategies;
  - (4) intellectual property issues, including licensing strategies; and
  - (5) business development.
- (c) The board of trustees of the University of Massachusetts, in consultation with the director of business and technology, shall appoint an executive director of the center. The executive director shall devote his full time to the operation of the center and may be removed at the pleasure of the board of trustees. The executive director shall report annually to the department of business and technology on the number of technology transfer transactions or projects that have been consummated with the assistance of the center, the names and geographic

locations of the recipient industries and the estimated number of new jobs created as a result of such transactions or projects.

(d) There shall be an advisory committee relative to the center consisting of the director of business and technology, or his designee, the director of science and technology within the department of business and technology and 7 members selected by the executive director of the center, with the approval of the board of trustees, 1 of whom shall be a representative from a technology industry, at least 1 such member shall be a representative from academia, at least 1 such member shall have experience in venture financing and at least 1 such member shall have experience in public administration. The appointed members of the committee may be removed by the executive director with or without cause, subject to the approval of the board of trustees, and shall serve without compensation, except that each member shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of official duties. The advisory committee shall meet at least twice annually.

(e) There shall be a center for economic analysis and assessment within the McCormack Graduate School of Policy Studies' Center for State and Local Policy. The center shall analyze and study economic trends in the commonwealth and shall provide its analysis to elected officials. The center shall continuously research and inform elected officials on the following subject areas:

- (1) effectiveness of the commonwealth's economic development incentive programs including, but not limited to, tax credits, loan and matching grant programs;
- (2) job creation programs;
- (3) tax policy;
- (4) workforce training and development programs; and
- (5) regional and national competitiveness of the state's economy.

The center shall work with existing research entities within the University of Massachusetts system and other public agencies to prepare timely analysis of the economy of the commonwealth and other economic indicators.”;

In section 33, in the proposed section 12EE, in subsection (f), by striking out the figure “\$25,000,000” and inserting in place thereof the following figure:— “\$25,000”;

In section 57, by striking out the figure “\$42,420,000” and inserting in place thereof the following figure:— “\$50,220,000”;

In section 58, by striking out the figure “\$36,500,000” and inserting in place thereof the following figure:— “\$28,700,000”;

In section 68, by inserting after the word “Initiative”, in line 13, the following words:— “; provided, however, that not less than \$75,000 shall be expended for the Retirees Enhancing Science Education through Experiments and Demonstrations (RESEED) program operated by Northeastern University”;

In section 74, by striking out, in line 3, the figure “3” and inserting in place thereof the following figure:— “20”;

And in said section 74, by striking out subsection (d) and inserting in place thereof the following subsection:—

“(d) The international trade council shall establish an advisory board to advise it on the scope of services to be provided under the contract with the nonprofit organization and to provide ongoing guidance assistance to the international trade council regarding the management and oversight of the contract; provided, however, that the advisory board shall consist of not more than 17 members, as follows: the president of the senate or his designee; the speaker of the house or his designee; the chairman of the senate committee on ways and means or his designee; the chairman of the house committee on ways and means or his designee; 1 member to be appointed by the minority leader of the senate; 1 member to be appointed by the minority leader of the house; provided, however, that those members shall be broadly representative of the tourism industries in the commonwealth; 1 member to be appointed by the Massachusetts office of travel and tourism; 1 member to be appointed by the Greater Boston Convention and Visitors Bureau; 1 member to be appointed by the Greater Springfield Convention and Visitors bureau; 1 member to be appointed by the Massachusetts Restaurant Association; 2 members to be appointed by the Berkshire Visitors Bureau, 1 of whom shall be from a Berkshire area hotel; 2 members to be appointed by the Cape Cod Chamber of Commerce, 1 of whom shall be from a Cape Cod area hotel; 1 member to be appointed by the Bristol County Convention and Visitors Bureau; 1 member to be appointed by the Massachusetts Cultural Council; and 1 member to be appointed by the Massachusetts Lodging Association; provided further, that the members of the advisory board shall serve without compensation and at the pleasure of their appointing authorities; provided further that the advisory board shall seek additional funding from private funding sources; and provided

further, that notwithstanding any general or special law to the contrary, advisory board members shall not be deemed state employees for the purposes of chapter 268A of the General Laws as a result of their service on the advisory board.”;

And by inserting after section 82 the following section:—

“SECTION 82A. Notwithstanding any general or special law to the contrary, 10 days after the effective date of this act, the comptroller shall transfer \$2,400,000 from the Economic Stimulus Trust Fund to the Massachusetts Technology Transfer Center at the University of Massachusetts established in section 45 of chapter 75 of the General Laws. Of that amount not less than \$500,000 shall be made available as a one-time grant to the center for economic analysis and assessment within the McCormack Graduate School of Policy Studies’ Center for State and Local Policy.”

**The amendment was adopted.**

Mr. Antonioni moved to amend the bill by inserting after section 82 the following section:—

“SECTION 82A. \$700,000 shall be made available to the city of Fitchburg for the purpose of their urban renewal plan previously approved by the department of housing and community development.”

**The amendment was rejected.**

Mr. Moore, Ms. Chandler, Ms. Fargo and Mr. Nuciforo moved to amend the bill by inserting after section 10 the following section:—

“SECTION 10A. Chapter 26 of the General Laws is hereby amended by inserting after section 8J, as appearing in the 2002 Official Edition, the following new section:—

Section 8K.

(a) There shall be an independent council to be known as the Health Insurance Cost Containment Council.

(b) The council shall consist of 13 voting members, composed of and appointed in accordance with the following:

(1) the secretary of the executive office of health and human services;

(2) the commissioner of the division of insurance;

(3) the commissioner of the division of medical assistance;

(4) two representatives of the business community, at least 1 of whom represents small business, who are purchasers of health care, none of which is primarily involved in the provision of health care or health insurance, 1 of whom shall be appointed by the president of the senate and 1 of whom shall be appointed by the speaker of the house of representatives from a list of 7 qualified persons recommended by the Associated Industries of Massachusetts of which 3 nominees shall be representatives of small business;

(5) two representatives of organized labor, 1 of whom shall be appointed by the president of the senate and one of whom shall be appointed by the speaker of the house of representatives from a list of 5 qualified persons recommended by the Massachusetts AFL-CIO;

(6) one representative to represent consumers, appointed by the governor from a list of 3 qualified persons recommended by the executive director of Health Care for All;

(7) one representative of hospitals, appointed by the governor from a list of 3 qualified hospital representatives recommended by the Massachusetts Hospital Association; but the representative under this paragraph may appoint a delegate to act for the representative only at meetings of committees as provided for in subsection (g);

(8) one representative of physicians, appointed by the governor from a list of 3 qualified physician representatives recommended by the Massachusetts Medical Society; but the representative under this paragraph may appoint a delegate to act for the representative only at meetings of committees as provided for in subsection (g);

(9) one representative of nurses, appointed by the governor from a list of 3 qualified persons recommended by the Massachusetts Nurses Association and the Massachusetts Organization of Nurses Executives;

(10) one representative from a health maintenance organization, appointed by the governor from a list of 3 qualified persons recommended by the Massachusetts Association of Health Plans;

(11) one representative of a health insurer, other than a health maintenance organization, appointed by the governor from a list of 3 qualified persons recommended by the commissioner of insurance; and

(12) in the case of each appointment to be made from a list supplied by a specified organization, it is incumbent upon that organization to consult with and provide a list that reflects the input of other equivalent organizations representing similar interests. Each appointing authority shall have the discretion to request additions to the list originally submitted. Additional names will be provided not later than 15 days after the request. Appointments shall be made by the appointing authority no later than 90 days after receipt of the original list. If, for any reason, any specified organization supplying a list should cease to exist, then the respective appointing authority shall specify a new equivalent organization to fulfill the responsibilities of this section.

(c) The members of the council shall annually elect, by a majority vote of the members, a chairperson and a vice chairperson of the council.

(d) The division of insurance, the division health care finance and policy, and the division of medical assistance shall assist the council in the furtherance of its mission. The council may accept and expend grants, in-kind services, and other assistance from the federal government, private non-profit foundations, or other sources to support its work.

(e) Seven members shall constitute a quorum for the transaction of any business, and the act by the majority of the members present at any meeting in which there is a quorum shall be considered to be the act of the council.

(f) All meetings of the council shall be advertised and conducted pursuant to Chapter 30A unless otherwise provided in this section.

(1) The council shall meet at least once every 2 months, and may provide for special meetings as it considers necessary. Meeting dates shall be set by a majority of the members of the council or by the call of the chairperson upon seven days' notice to all council members.

(2) All meetings of the council shall be publicly advertised, as provided for in this subsection, and shall be open to the public, except that the council, through its bylaws, may provide for executive sessions of the council. No act of the council shall be taken in an executive session as defined in section 11A of chapter 30A.

(3) The council shall file a schedule of its meetings with the state secretary and shall publish a schedule of its meetings in at least 2 newspapers, one newspaper in general circulation in the commonwealth. The notice shall be published and filed at least once in each calendar quarter and shall list the schedule of meetings of the council to be held in the subsequent calendar quarter. The notice shall specify the date, time and place of the meeting and shall state that the council's meetings are open to the general public, except that a notice shall not be required for executive sessions of the council.

(4) All action taken by the council shall be taken in open public session, and action of the council shall not be taken except upon the affirmative vote of a majority of the members of the council present during meetings at which a quorum is present.

(g) The council shall adopt bylaws, not inconsistent with this act, and may appoint such committees or elect such officers subordinate to those provided for in subsection (c) as it considers advisable. The council shall provide for the approval and participation of additional delegates appointed under paragraphs (7) and (8) of subsection (b)(7) and so that each organization represented by delegates under those paragraphs shall not have more than 1 vote on any committee to which shall, on an ad hoc basis, respond to issues presented to it by the council or committees of the council and shall make recommendations to the council. The technical advisory group shall include actuaries, researchers and biostatisticians.

(h) The members of the council shall not receive a salary or per diem allowance for serving as members of the council but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties. The expenses may include reimbursement of travel and living expenses while engaged in council business.

(i) The terms of the Secretary of the executive office of health and human services, the commissioner of the division of medical assistance and the commissioner of the division of insurance shall be concurrent with their holding of public office. The 9 appointed council members shall each serve for a term of 3 years and shall continue to serve thereafter until their successor is appointed, except that, of the members first appointed:

(1) One of the representatives of business and the representative of consumers shall serve for a term to expire on June 30 of the year following his initial appointment.

(2) One of the representatives of organized labor and the representative of a carrier shall serve for a term to expire on June 30 of the second year following his initial appointment.

(3) The other representatives of business and organized labor and the representatives of hospitals, physicians and health maintenance organizations shall serve for a term to expire on June 30 of the third year following their initial appointments.

(4) Vacancies on the council shall be filled in the same manner in which they were originally designated under subsection (b), within 60 days of the vacancy, except that when vacancies occur among the representatives of business or organized labor, 2 nominations shall be submitted by the organization specified in subsection (b) for each vacancy on the council. If the officer required in subsection (b) to make appointments to the council fails to act within 60 days of the vacancy, the council chairperson may appoint 1 of the persons recommended for the vacancy, until the appointing authority makes the appointment.

(j) A member may be removed for just cause by the appointing authority after recommendation by a vote of at least 8 members of the council.

(k)

(1) Within 60 days after the effective date of this act, each organization or individual required to submit a list of recommended persons to the governor, the president of the senate or the speaker of the house of representatives under subsection (b) shall submit the list.

(2) Within 90 days of the effective date of this act, the governor, the president of the senate and the speaker of the house of representatives shall make all of the appointments called for in subsection (b), and the council shall begin operations immediately following these appointments.

(l) Submission of lists of recommended persons and appointments of council members for the second and succeeding terms shall be made in the same manner as prescribed in subsection (b), except that:

(1) Organizations required under subsection (b) to submit lists of recommended persons shall do so at least 60 days prior to expiration of the council members' terms.

(2) The officer required under subsection (b) to make appointments to the council shall make said appointments at least 30 days before expiration of the council members' terms. If the appointments are not made within the specified time, the council chairperson may make interim appointments from the lists of recommended individuals. An interim appointment shall be valid only until the appropriate officer under subsection (b) makes the required appointment. Whether the appointment is by the required officer or by the chairperson of the council, the appointment shall become effective immediately upon expiration of the incumbent member's term.

(m) Should any organization or individual fail to submit a list of recommended persons as required under subsection (b) within the time limits in subsection (k) or (m), the officer designated to make the appointment under subsection (b) shall appoint as many acting councilors as required under subsection (b) until such time as the list of recommended persons is submitted by the original organization as required in subsection (b).

(n) The council shall make recommendations for administrative and legislative reforms that encourage the use of quality and safety initiatives to promote more cost effective delivery of health care in the commonwealth. The council shall make recommendations relative to initiatives that will lead to more affordable health insurance for employers and employees, including an examination of methods of providing health care to the working uninsured of the commonwealth. The council shall examine the feasibility and desirability of establishing a permanent health care cost containment system to control health costs through quality improvements that ensure successful patient outcomes. The council shall examine cost containment systems of other lines of insurance the impact of such systems on health insurance premiums including but not limited to the workers' compensation

system and the unemployment insurance system and the council shall examine the impact of the current medical liability system on health care costs.

(o) The council shall report annually to the committees on ways and means of the house of representatives and the senate and the joint committees on health care; insurance; and commerce and labor, and may recommend legislation to implement its findings.”

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

Mr. Lees moved to amend the bill by inserting after section 26 the following section:—

“SECTION 26A. Chapter 62C of the General Laws is hereby amended by inserting after section 67C the following section:—

Section 67D. (a) When used in this section, the following words shall have the following meaning:

‘Application year’, the calendar year for which a biotechnology or medical device manufacturing company submits the information required for a determination as to a jobs incentive payment.

‘Biotechnology company’, a business primarily engaged in the research, development, production or provision of biotechnology for the purpose of developing or providing products or processes for specific commercial or public purposes including, but not limited to, medical, pharmaceutical, nutritional and other health-related purposes or a person engaged in providing services or products necessary for such research, development, production or provision. This term shall include contract manufacturers engaged in the production of biotechnology products for a biotechnology company or a medical device manufacturing company.

‘Business’, a corporation, sole proprietorship, partnership, limited liability company or any other form of business organization.

‘Commissioner’, the commissioner of revenue.

‘Eligible Jobs’, a number determined by first multiplying each of the local jobs created by a biotechnology or medical device manufacturing company during a single calendar year by the job qualifier for that job, and then totaling the number for all of the local jobs created.

‘Full time employee’, a person who is employed for consideration for at least 35 hours per week and whose salary is subject to withholding as provided in chapter 62B.

‘Job qualifier fraction’, in the case of either a full-time employee or a part-time employee of a biotechnology or medical device manufacturing company, the figure that determines the extent to which that employee is employed in the commonwealth during a single calendar year. The job qualifier fraction for each employee shall be determined by multiplying the following percentages together: (i) the percentage of time that an employee worked while employed by the company expressed as average hours worked per week out of 35 hours, not to exceed 100 per cent; (ii) that employee’s time attributable to work in the commonwealth as a portion of that employee’s total work for the company; and (iii) the portion of the year the employee worked for the company.

‘Jobs incentive payment’, a business employment incentive payment for biotechnology or medical device manufacturing companies as provided for in this section.

‘Local jobs created’, the total number of jobs created by a biotechnology or medical device manufacturing company during a single calendar year in which the new employees perform qualified services at least 1 in-state location, including jobs performed by persons that are transferred within the company to work at an in-state location from a location based outside the state.

‘Medical device manufacturing company’, a business primarily engaged in manufacturing medical or surgical instruments, surgical appliances or supplies or electromedical, electrotherapeutic or irradiation apparatus. This term shall include contract manufacturers engaged in the production of such products for a medical device manufacturing company or a biotechnology company.

‘Part-time employee’, a person who is employed for consideration for less than 35 hours a week and whose salary is subject to withholding as provided in chapter 62B.

‘Payment years’, in the case of a biotechnology or medical device manufacturing company that is determined to be eligible for a jobs incentive payment, the 3 calendar years following the application year.

‘Qualified services’, direct production manufacturing services performed by an employee of a biotechnology or medical device manufacturing company during a calendar year that consist primarily of at least 1 of the following services: medicinal and botanical manufacturing, pharmaceutical and preparation manufacturing, in-vitro diagnostic substance manufacturing, biological product, except diagnostic, manufacturing, surgical and medical instrument manufacturing, electromedical and electrotherapeutic



apparatus manufacturing, surgical appliance and supplies manufacturing and irradiation apparatus manufacturing. These services are as referenced in the federal NAICS Codes for biotechnology manufacturing, numbers 325411-325414, 339112, 334510, 339113 and 334517, respectively.

‘Weighted average employment’, for a calendar year, the total number of jobs maintained by a biotechnology or medical device manufacturing company in which the employees performed employment services at at least 1 in-state location. The number is to be determined by first multiplying each of the individual jobs maintained by the company for that year by the job qualifier fraction for that job and then totaling the number for all of these jobs.

(b) A biotechnology or medical device manufacturing company that creates 10 or more eligible jobs in the commonwealth during a single calendar year shall be entitled to a jobs incentive payment if its weighted average employment for such year reflects a net increase of at least 10 jobs over the company's weighted average employment for the prior calendar year. The jobs incentive payment shall be equal to 50 per cent multiplied by the applicable Massachusetts income tax rate for the salary paid to the persons who perform the newly created eligible jobs for the calendar year in question; provided, however, that such salary shall be subject to Massachusetts withholding pursuant to chapter 62B for such year. For the purposes of this provision, an eligible job shall be deemed created in the commonwealth on the first day for which Massachusetts withholding is required in connection with the compensation paid to the employee.

(c) The jobs incentive payment shall be paid to a biotechnology or medical device manufacturing company in 3 equal installments in each of the 3 calendar years commencing with the calendar year subsequent to the application year. If, for the first or second payment year, the company's weighted average employment falls below its weighted average for the application year, the company shall be disqualified from receiving its subsequent installment payment. If a company is disqualified from receiving its second installment payment, it may still receive its third installment payment if its weighted average employment for its second payment year is above its weighted average employment for the application year.

(d) A biotechnology or medical device manufacturing company that seeks a jobs incentive payment shall apply to the commissioner to receive such payment on a form to be prescribed by the commissioner. This form shall reference the necessary information concerning the eligible jobs created by the company in the commonwealth during the application year and also the company's weighted average employment for such year and the prior calendar year. The commissioner shall advise the company of his determination in writing.

(e) Not later than March 1 of each calendar year for which a biotechnology or medical device manufacturing company has been approved to receive a jobs incentive payment, the company shall submit to the commissioner, in a form prescribed by the commissioner, the information necessary to evaluate the company's prior year weighted employment average.

(f) A biotechnology or medical device manufacturing company that has previously been approved to receive a jobs incentive payment is entitled to re-apply for an additional payment for a second or third application year. In such cases, the company may be entitled to receive a jobs incentive payment that relates to different application years in the same calendar year. When a company has previously been granted a jobs incentive payment for 3 application years, it shall not request an additional jobs incentive payment.

(g) The commissioner shall issue payments, as authorized in subsection (b), without further appropriation. The commissioner may issue rules and regulations as necessary or helpful to implement this section, including rules and regulations to ensure compliance with this section.”; and

By inserting after section 86 the following section:—

“SECTION 86A. Section 67D of chapter 62C of the General Laws shall be effective as to jobs incentive payment requests made by biotechnology companies or medical device manufacturing companies for calendar years 2004 to 2008, inclusive.”

After remarks, the amendment was adopted.

Messrs. Pacheco and Tolman moved to amend the bill by inserting after section 38 the following section:—

“SECTION 38A. The third paragraph of subsection (j) of section 14G of chapter 151A of the General Laws, as so appearing, is hereby amended by adding the following sentence:— Participants in the direct coverage plan whose household income is below 200 per cent of the federal poverty level shall not pay premiums to receive benefits from the plan”; and by inserting after section 83 the following section:—

“SECTION 83A. Notwithstanding subsection (k) of section 14G of chapter 151A of the General Laws, during fiscal year 2004, if the deputy director of employment and training determines that employer unemployment health insurance contributions will be inadequate to properly fund the unemployment health insurance program established by said section 14G, funds of the Health Care Security Trust established in section 1 of chapter 29D of the General Laws shall be expended for premiums for health insurance plans provided to persons receiving unemployment compensation. The expenditures by the Health Care Security Trust

for premiums shall be deemed a loan from the Medical Security Trust Fund to the Health Care Security Trust. Any loan shall be repaid without interest as funds are available in the Medical Security Trust Fund as determined by the deputy director, but that any loan shall be repaid within 2 years.

(b) The co-payments, deductibles and co-insurance charged to participants in the unemployment health insurance program established by said section 14G and premiums charged to participants in the continuation plan under said section shall not be more than the co-payments, deductibles, co-insurance and premiums in effect as of June 1, 2003.”

After remarks, the amendment was adopted.

Mr. Havern moved to amend the bill by inserting after section 23 the following section:—

“SECTION 23A. (a) Said section 6 of said chapter 62 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after subsection (k) the following subsection:

(l)(1) For the purposes of this subsection the following words shall have the following meanings, unless the context clearly requires otherwise:

‘Medical device’, an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including a component part or accessory which is recognized in the official National Formulary or the United States Pharmacopoeia, or any supplement to them, intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in humans or other animals, or intended to affect the structure or any function of the body of humans or other animals, and which does not achieve any of its primary intended purposes through chemical action within or on the body of a human or other animals and which is not dependent upon being metabolized for the achievement of any of its primary intended purposes.

‘Medical device company’, a sole proprietorship, partnership, limited liability company, corporate trust, corporation or other business, in each case (i) the income of which is taxed directly to the business or its owners under this chapter and (ii) having a facility located in the commonwealth which develops or manufactures medical devices.

‘Use fees’, the monetary amount actually paid by a medical device company to the United States Food and Drug Administration during the taxable year for a pre-market approval to market new technologies developed or manufactured in the commonwealth, or for a 510(k) clearance to market upgrades, changes or enhancements to existing technologies that are developed or manufactured in the commonwealth as stipulated in United States Public Law 107-250, the Medical Device User Fee and Modernization Act.

(2) There shall be allowed to any medical device company as a credit against the tax liability imposed under this chapter, an amount equal to 50 per cent of the cost of user fees paid by such medical device company during the taxable year for which the tax is due.

(3) The commissioner shall promulgate rules and regulations to implement this section.”; and

By inserting after section 25 the following section:—

“SECTION 25A. Chapter 63 of the General Laws, as so appearing, is hereby amended by inserting after section 31H the following section:—

Section 31I. (a) For the purposes of this subsection the following words shall have the following meanings, unless the context clearly requires otherwise:

‘Medical device’, an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including a component part, or accessory which is recognized in the official National Formulary, or the United States Pharmacopoeia, or any supplement to them, intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in humans or other animals, or intended to affect the structure or any function of the body of humans or other animals, and which does not achieve any of its primary intended purposes through chemical action within or on the body of a human or other animals and which is not dependent upon being metabolized for the achievement of any of its primary intended purposes.

‘Medical device company’, (1) a domestic corporation organized under or subject to chapter 156B, (2) a limited liability company organized under chapter 156C and otherwise subject to this chapter, or (3) a corporation, organization or association established, organized or chartered under laws other than those of the commonwealth and otherwise subject to this chapter, and in each case which has a usual place of business within the commonwealth wherein medical devices are developed or manufactured.

'User fees', the monetary amount actually paid by medical device companies to the United States Food and Drug Administration during the taxable year for a pre-market approval to market new technologies developed or manufactured in the commonwealth, or for a 510(k) clearance to market upgrades, changes or enhancements to existing technologies that are developed or manufactured in the commonwealth as stipulated in United States Public Law 107-250, the Medical Device User Fee and Modernization Act.

(b) There shall be allowed to any medical device company as a credit against the tax liability imposed under this chapter, an amount equal to 50 per cent of the cost of user fees paid by the medical device company during the taxable year for which the tax is due.

(c) The commissioner shall promulgate rules and regulations to implement this section."

**The amendment was adopted.**

Ms. Wilkerson and Mr. Barrios moved to amend the bill by inserting after section 55 the following sections:—

"SECTION 55A. Chapter 19 of the acts of 1993 is hereby amended by striking section 31 in its entirety.

SECTION 55B. Chapter 133 of the acts of 1992 is hereby amended by striking out section 137 and inserting in place thereof the following section:—

Section 137. (a) Notwithstanding any general or special law, rule or regulation to the contrary, there shall be established an Urban Initiative Fund, a loan and grant program for inner-city neighborhoods; provided that grants shall be made available for the purposes of education, job training, business development, health care, day care, youth activities, including athletic and recreation programs, violence and crime prevention, and housing; provided, that loans shall be for the purpose of business development, employment creation and employment preservation; provided further, that loans shall be made to non-profit organizations and profit-motivated businesses located in targeted communities; provided further, that said organizations and businesses shall be owned and controlled by minority group members; provided further that, notwithstanding sections 4, 4A, and 5 of chapter 40F of the General Laws to the contrary, the community development finance corporation shall administer the Urban Initiative Fund for the purposes of the loan and grant program; provided further, that all interest income received from loans issued pursuant to the Urban Initiative Fund program shall be applied to the administrative costs of the community development finance corporation; and provided further, that all expenditures made pursuant to said program shall be reviewed as part of the state auditor's annual field audit of the Massachusetts Community Development Finance Corporation, pursuant to section 7A of chapter 324 of the acts of 1987.

SECTION 82. Notwithstanding any general or special law to the contrary, not less than \$1,000,000 shall be made available to the Massachusetts Community Development Finance Corporation for the recapitalization of said corporation.

SECTION 82A. All assets of the Urban Initiative Fund as of the effective date of this act shall be transferred to the sole control of the Massachusetts Community Development Finance Corporation; provided, that the transfer shall take effect upon the effective date of this act; provided further, that all loans issued pursuant to the Urban Initiative Fund loan program and outstanding as of the effective date of this act shall remain in full force and effect and shall be administered by the Massachusetts Community Development Finance Corporation; provided further, that 5 per cent of any cash assets of the Urban Initiative Fund transferred to the sole control of the corporation pursuant to this section shall fund loans to newly-organized and start-up, profit-motivated businesses, and to existing businesses that do not generate more than \$500,000 in yearly gross receipts, for the purposes of education, job training, business development, health care, day care, youth activities, violence and crime prevention, and housing; provided further, that the businesses shall be located in targeted communities and shall be owned and controlled by minority group members; provided further, that all funds received by the Massachusetts Community Development Finance Corporation as payments of principal on said outstanding loans shall be considered funds available for loans to newly-organized and start-up, profit-motivated businesses, and to existing businesses that do not generate more than \$500,000 in yearly gross receipts, for the purposes of education, job training, business development, health care, day care, youth activities, violence and crime prevention, and housing; provided further, that the businesses shall be located in targeted communities and shall be owned and controlled by minority group members; provided further, that all funds received by the Massachusetts Community Development Finance Corporation as interest payments on the outstanding loans shall be applied to the administrative costs of the corporation; and provided further, that any other assets of the Urban Initiative Fund transferred to the sole control of the Massachusetts Community Development Finance Corporation pursuant to this section shall be available for loans and grants pursuant to section 1 of this act."

**The amendment was adopted.**

Ms. Wilkerson moved to amend the bill by striking out section 68; and by inserting after section 82 the following section:—

"SECTION 82A. Notwithstanding any general or special law to the contrary, not later than 10 days after the effective date of this act, \$6,000,000 shall be made available to the department of workforce development for grants administered by the department for the following purposes:

(a) Of the total transfer, not less than \$3,000,000 shall be expended for the operation of programs whose primary purpose is workplace education and training grants managed by industry-driven partnerships that include, but are not limited to, workforce development providers, institutions of higher education, and employers to promote the career advancement of workers and the productivity of businesses in the commonwealth, including for the operation of the Building Essential Skills through Training (BEST) Initiative;

(b) Not less than \$250,000 of these funds shall be made available to the Massachusetts Council of Human Service Providers, Inc.; the 'Council', to develop an industry-guided, internet-based workforce development program for direct care workers who provide direct care services pursuant to purchase of service contracts with the executive office of health and human services or agencies within that executive office. The workforce development program be designed to

- 1) provide essential training and credentialing for the direct care workforce in an industry;
- 2) improve the quality of services provided to clients; and
- 3) improve recruitment and retention of a well-trained direct care workforce. The Council may expend these funds to hire a program director as well as consultants with expertise in the field of human services training to develop a curriculum and to administer the program using an e-learning, or web or internet based, environment.

(c) Workforce development service grants shall also be expended on projects that meet the following criteria:

- (1) whether the project will lead to employment on the part of unemployed individuals and improved employment for low wage workers;
- (2) whether the project will result in employment at wages sufficient to support a family or place individuals on a career path leading to such employment and wages;
- (3) whether the project will have a positive economic impact on a region with high levels of unemployment or a high concentration of low-skilled workers; and
- (4) whether the project will lead to employment of older adults, which shall be defined as individuals who are at least 45 years of age.

Unless otherwise specified, grants made pursuant to paragraph (c) shall be for amounts not to exceed \$200,000, shall be for a term not to exceed 2 years, and shall be subject to the following additional limitations:

- (i) Not less than \$1,250,000 of the funds allocated shall be for grants under the health professions worker training program established pursuant to section 13 of chapter 23H of the General Laws;
- (ii) Not less than \$500,000 of the funds allocated shall be for grants to providers of workforce development and job skills training services for projects benefiting older adults pursuant to section 14 of chapter 23H of the General Laws;
- (iii) Not less than \$1,000,000 of these funds shall be made available for grants to provide workforce development and job training efforts, consistent with the criteria identified in paragraph (c); provided that such funding shall be made available on a competitive application process to community-based nonprofit organizations that provide such workforce development and job training services.

A recipient provider, who receives a grant pursuant to paragraph (c) must match the grant in an amount equal to 30 per cent of the value of the grant. The match may be in the form of funding, equipment, or personnel.

The director of the department of workforce development shall adopt regulations to carry out the purposes of this section.”; and by inserting after section 10 the following section:—

“SECTION 10A. Chapter 23H of the General Laws is hereby amended by adding the following section:—

Section 8. (a) The following words, whenever used in this section, shall, unless a different meaning clearly appears from the context, have the following meanings:—

‘Eligible service provider’, a community-based nonprofit organization that provides workforce development services, such as job skills training, education, placement services, and supportive services.

‘Potential employee target groups’, persons receiving TAFDC, older adults, immigrants, persons residing in economic opportunity areas, and other persons who are underemployed or unemployed.

‘Qualifying consortium’, a collaborative program of service that includes a community-based organization or union/labor-management program or institution of higher education and an employer.

(b) Subject to appropriation, the director of workforce development, shall make expenditures on workforce development service grants to educational and eligible service providers using the following guidelines:

- (1) the educational or eligible service provider is an existing, experienced, and effective provider of workforce development services within the state;
- (2) the program involves workforce development services that is an area of local employment need, particularly for low income residents and/or low wage workers; and
- (3) preference will be given to educational and eligible service providers which provide workforce development services which operate in economic opportunity areas as defined in section 3E of chapter 23A or serve residents of economic opportunity areas.

(c) A single grant to any one organization shall not exceed \$200,000.

(d) The director shall annually, by March 31, report to the secretary of administration and finance, the house and senate committees on ways and means, the joint committee on education, arts and humanities, the joint committee on state administration, and the joint committee on commerce and labor on the partnership program, including the number of educational and eligible service providers receiving grants, the number of participants receiving services, the number of participants placed in employment, the salary and benefits that participants receive post placement, and the cost per participant, and job retention or promotion rates 1 year after training ends.

The director, working with and through the state workforce investment board, may collect and disseminate information concerning areas of projected employment need. The state workforce investment board may also prepare and publish studies, organize conferences, and conduct special projects which will increase knowledge and communication in the areas of employment need, skills training, and education.

(e) By April 1, 2004, the state workforce investment board shall develop performance standards for workforce development and job training programs receiving state funding. The standards may vary across program types. The state workforce investment board may contract with a consultant to develop the performance standards. The state workforce investment board shall consult with stakeholder advocacy groups, community-based nonprofit service providers, and local workforce investment boards in the development of both performance standards and reporting requirements. The standards must at a minimum measure:

- (1) the employability levels of individuals as defined by basic skill level, the amount of work experience, and barriers to employment prior to program entry;
- (2) the individual’s annual income and employability level for the 12 months prior to entering the program, the starting annual income upon placement after completing the program, employability level and annual income 1 year after completion of the program, and the individual’s reported satisfaction;
- (3) the program completion rate, placement rate, employability level upon placement, and one-year retention rate; and
- (4) the cost per placement and per job retained at 1 year and the percentage of program funding coming from the state and other levels of government.

Commencing April 1, 2005, all workforce development services and job skills training programs receiving state funds must submit an annual performance report to the state workforce investment board. The state workforce investment board may develop a uniform format for the report and prescribe the manner in which the report is required to be submitted.

(f) By December 31 of each odd-numbered year and commencing December 31, 2005, the director of the department of workforce development, in consultation with the state workforce investment board, shall submit recommendations to the house and senate clerks regarding modifications to, including the elimination of, existing statutory requirements with respect to workforce development and job training programs. The recommendations shall include recommendations regarding funding levels required to meet worker and employer skill development needs, with a particular focus on low income and low wage workers.

(g) A health professions worker training grant program is established for the purpose of responding to the need for workers in various health care professions, subject to the requirements of section 2DDD of chapter 29.

A qualifying consortium shall apply for grant funding from the fund in the manner specified by the director.

Applications for grants must describe targeted participants of the proposed grant application and must describe the specific critical work force shortage the program is designed to alleviate. The application must include verification that in the process of determining that a critical work force shortage exists in the target area, the applicant has (1) consulted available data on work shortages and (2) conferred with employers in the target area.

Within the limits of available appropriations, the director shall make grants not to exceed \$200,000 each to qualifying consortia to provide workforce development services which may lead to employment in the health professions. Grant awards must establish specific, measurable outcomes and timelines for achieving those outcomes.

A consortium must satisfy a 30 per cent match requirement. The match requirement may be in the form of funding, equipment or personnel.

A qualifying consortium must implement a marketing and outreach strategy to recruit into the health care professions persons from one or more of the potential employee target groups. Recruitment strategies must include:

- (1) a screening process to evaluate whether potential employees may be disqualified as the result of a required background check or are otherwise unlikely to succeed in the position for which they are being recruited; and
- (2) a process for modifying course work to meet the training needs of non-English-speaking persons, when appropriate.

High school students participating in a training program shall not be permitted to work more than 20 hours per week when school is in session.

(h) An older adult worker training grant program is established for the purpose of responding to the needs of older workers of the commonwealth. An eligible service provider shall apply for grant funding in the manner specified by the director.

Within the limits of available appropriations, the director shall make grants not to exceed \$200,000 each to qualifying providers of workforce development services for programs with older adults as the target population. Grant awards must establish specific, measurable outcomes and timelines for achieving those outcomes.

A recipient service provider must satisfy a 30 per cent match requirement. The match requirement may be in the form of funding, equipment or personnel.

The amendment was *rejected*.

After remarks, the question on passing the bill to be engrossed, in concurrence, with the amendments, was determined by a call of the yeas and nays, at eleven minutes before one o'clock P.M., on motion of Mr. Hart, as follows, to wit (yeas 39 — nays 0) [**Yeas and Nays No. 361**]:

#### **YEAS.**

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

McGee, Thomas M.      Walsh, Marian  
Melconian, Linda J.      Wilkerson, Dianne —  
Menard, Joan M.      **39.**

**NAYS — 0.**

**ABSENT OR NOT VOTING.**

Berry, Frederick E. — **1.**

**The yeas and nays having been completed at seven minutes before one o'clock P.M., the bill was passed to be engrossed, in concurrence, with the amendments [For text of Senate amendments, see Senate, No. 2131]. Sent to the House for concurrence in the amendments.**

*Resolutions.*

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

Resolutions (filed by Mr. Tisei) “celebrating the one hundredth anniversary of the Greenwood Union Church in Wakefield.”

PAPER FROM THE HOUSE.

A Bill prohibiting certain vehicles from West Street in the town of Reading (House, No. 4151,— on petition) [Local approval received],— was read.

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

*Order Adopted.*

On motion of Mr. Shannon,—

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

On motion of the same Senator, at five minutes before one o'clock P.M., the Senate adjourned to meet on the following Monday at eleven o'clock A.M.