

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

## UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



### JOURNAL OF THE SENATE.

*Wednesday, February 15, 2006.*

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

#### *Communication.*

A communication from Bridgewater State Hospital relative to a plan of correction submitted pursuant to a Department of Public Health inspection of Bridgewater State Hospital (received Friday, February 10, 2006),- **was read and sent to the House for its information.**

#### *Report.*

A report of the Department of Public Health (under the provisions of Sections 5 and 20 of Chapter 111 of the General Laws) relative to inspection of the Worcester County House of Correction and Jail (received Monday, February 13, 2006),- **was read and sent to the House for its information.**

#### *Petitions.*

Petitions were presented and referred, as follows:

By Mr. Hedlund, a petition (subject to Joint Rule 12) of Robert L. Hedlund and Garrett J. Bradley for legislation relative to Jack Phillips Park; and

By the same Senator, a petition (subject to Joint Rule 12) of Robert L. Hedlund and Thomas E. Gorman for legislation to abolish Norfolk County government;

**Severally, under Senate Rule 20, to the committees on Rules of the two branches, acting concurrently.**

#### *Reports of Committees.*

By Ms. Resor, for the committee on Environment, Natural Resources and Agriculture, on petition; a Bill relative to the MWRA bond cap (Senate, No. 505); and

By Ms. Wilkerson, for the committee on State Administration and Regulatory Oversight, on petition, a Bill relative to notice of contract; identification of property owners (Senate, No. 1740);

**Read and, under Joint Rule 1F, referred to the committee on Bonding, Capital Expenditures and State Assets.**

By Ms. Resor, for the committee on Environment, Natural Resources and Agriculture, on petition, a Bill further regulating the sale and advertising of certain produce and turkeys (Senate, No. 478);

By the same Senator, for the same committee, on petition, a Bill to protect public water supply lands (Senate, No. 479);

By the same Senator, for the same committee, on petition (accompanied by bill, Senate, No. 485), a Bill clarifying certain farm commodities as agriculture in the Commonwealth (Senate, No. 2375);

By the same Senator, for the same committee, on petition (accompanied by bill, Senate, No. 543), a Bill to encourage and promote water conservation (Senate, No. 2376);

By the same Senator, for the same committee, on Senate, Nos. 471 and 556 and House, No. 1295, a Bill promoting environmental justice (Senate, No. 2377);

By Ms. Wilkerson, for the committee on State Administration and Regulatory Oversight; on petition, a Bill relative to the disposal of obsolete material and supplies (Senate, No. 1736);

By the same Senator, for the same committee, on petition, a Bill relative to authority of boards of registration (Senate, No. 1752); and

By the same Senator, for the same committee, on petition, a Bill relative to state funded activities (Senate, No. 1786);

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

By Ms. Resor, for the committee on Environment, Natural Resources and Agriculture, on petition, a Bill to strengthen waterways law enforcement (Senate, No. 546, changed in section 1 by striking out the number "2002", in line 2, and inserting in place thereof the number "2004"; and by striking out the number "8", in line 3, and inserting in place thereof the number "7"); and

By Ms. Wilkerson, for the committee on State Administration and Regulatory Oversight, on petition, a Bill relative to division of administrative law appeals (Senate, No. 1756);

**Read and, under Senate Rule 26, referred to the committee on Ethics and Rules.**

By Ms. Resor, for the committee on Environment, Natural Resources and Agriculture, ought NOT to pass, on the petition (accompanied by bill, Senate, No. 2351) of Mark C. Montigny for legislation to relocate certain harbor lines in the Fairhaven and New Bedford harbors;

**Referred, under Senate Rule 36, to the committee on Ethics and Rules.**

Mr. Buoniconti, for the committee on Ethics and Rules, reported that the following matter be placed in the Orders of the Day for the next session:

The House Bill relative to community preservation funds (House, No. 1680).

#### *Committees Discharged.*

Mr. Buoniconti, for the committees on Rules of the two branches, acting concurrently, reported, asking to be discharged from further consideration of the Senate Order relative to authorizing the joint committee on Children and Families to make an investigation and study of certain current Senate documents relative to children and families (Senate, No. 2374),- **and**

**recommending that the same be referred to the Senate committee on Ethics and Rules.**

**Under Senate Rule 36, the report was considered forthwith and accepted.**

There being no objection at two minutes past one o'clock P.M., the Chair (Mr. Rosenberg) declared a recess subject to the call of the Chair; and, at twenty minutes past one o'clock P.M., the Senate reassembled, the President in the Chair.

The following prayer was offered by Father Bernard McLaughlin, Chaplain of the Senate:

This is just a brief prayer. It's about two folks: one man and one woman. They were not related except that for a long period of time when things were going poorly for both of them, it seemed that they would always chant questions about life - the kind of questions kids ask. Then one of them died and the other one, along with both of their friends, began a solemn chant of questions which are frequently raised by young kids. The question was pretty much always, "is that all there is Alfie?"; I looked around and wondered if any one of us knew what the answer is. It is, after all, a pretty important question for all of us. Do you know what it's all about? The meaning of your life depends on it. Amen.

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

#### *Resolutions.*

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

Resolutions (filed by Mr. Baddour) commending the courage of Lauren Licciardi"; and

Resolutions (filed by Mr. Knapik) honoring Hank J. Porten the 2006 Citizenship Award recipient fifty-fifth Saint Patrick's Day Parade in Holyoke.

#### *Orders of the Day.*

The Orders of the Day were considered, as follows:

#### *Bills*

Relative to assault with bodily fluids upon correction officers (Senate, No. 1324, changed);

Authorizing the town of Concord to establish a post-retirement group health insurance trust fund (House, No. 2980);

Relative to the release of a conservation restriction in the town of Bedford (House, No. 4317); and

Establishing a special account for the Norfolk County Fire and Rescue Dispatch Center (House, No. 4374);  
**Were severally read a second time and ordered to a third reading.**

The Senate Bill relative to the operations and governance of credit unions (Senate, No. 2288),- was read a second time and, after remarks, was ordered to a third reading.

The Senate Bill supporting access and excellence in public higher education (Senate, No. 2364),- **was read a second time.**  
The proposed amendment, previously recommended by the committee on Ways and Means, substituting a new draft with the same title (Senate, No. 2371),- was considered.

Mr. Joyce moved that the bill be amended in section 25 by inserting, after the word "awarded", the following: "(iii) provided further, that \$500,000 shall be expended to the Blue Hills Regional Technical School in Canton for the purpose of purchasing technical equipment and the unexpected costs associated with regional transportation"; and in section 54, by striking out the figure "\$3,268,821" and inserting the figure "\$3,768,821".  
The amendment was *rejected*.

Mr. Moore moved that the bill be amended in section 7 by inserting, after subsection (d), the following new subsection:-  
(d) (1). To reinforce the critical importance of higher education to the strength of our democracy by preparing an informed and engaged citizenry, one that acquires the knowledge and skills needed to become politically involved and then participates actively in their community, commonwealth and country.  
The amendment was **adopted**.

Ms. Wilkerson and Messrs. Tolman, Timilty, Joyce, Montigny and Pacheco moved to amend the bill by striking out section 57.  
After debate, the amendment was **adopted**.

Ms. Jehlen moved that the bill be amended by adding the following new section:-

"SECTION \_\_\_\_ . Chapter 6 of the Acts of 2005, in item 1599-4124, the date of July 6, 2003 shall be changed to July 1, 2003."  
After remarks, the amendment was **adopted**.

Messrs. Creedon and Joyce moved that the bill be amended by adding the following new section:-

"SECTION \_\_\_\_ . Item 7508-0100 of section 2 of chapter 45 of the Acts of 2005 is hereby amended by inserting after the words "For Massasoit Community College", the following language:- "; provided, that \$400,000 be expended for development of a plan for future growth of the college, including, but not limited to, the creation of a Health and Science building"; and by striking out the figure "\$17,407,014" and inserting in place thereof the following new figure:- "\$17,807,014".  
The amendment was *rejected*.

Messrs. Morrissey and Creedon moved that the bill be amended in section 40 by inserting at the end of the first sentence of the third paragraph the following new language:- ", provided no merger, acquisition or the creation of a new school or new program offering advance graduate degrees shall be allowed without the approval of the General Court and the Governor."  
Pending the question on adoption of the amendment, Messrs. Morrissey, Creedon and Hart moved that the amendment be amended by striking out the amendment and inserting in place thereof the following: ", provided no merger or the acquisition of or the creation of a new school for the offering of a juris doctorate degree shall be allowed without the approval of the general court and the governor."  
After debate, the further amendment was *rejected*.

The pending amendment (Morrissey-Creedon) was then considered; and it was *rejected*.

Messrs. Joyce and Creedon moved that the bill be amended in section 25 by inserting, after item "(iii)", the following: "(iv) provided further, that \$500,000 shall be expended to the Southeastern Regional Technical School in South Easton for the purpose of purchasing technical equipment and the unexpected costs associated with regional transportation"; and in section 54, by striking out the figure "\$3,268,821" and inserting the figure "\$3,768,821".  
The amendment was *rejected*.

Mr. McGee moved to amend the bill by inserting at the end thereof the following:-

"SECTION \_\_\_\_ . Item 9700-0100 of section 2 of chapter 45 of the Acts of 2005 is hereby amended by striking out clause (5) and inserting in place thereof the following:-

(5) ensure the creation of a workforce system, to support education, training and compensation of the out-of-school time workforce; provided further, that the working group shall submit a report containing its recommendations to the governor, the secretary of administration and finance, the house and senate committees on ways and means, the joint committee on education and the joint committee on, children and families not later than June 1, 2006; provided further, that the joint committee on

education and the joint committee on children and families shall review the recommendations of the working group on after school and out-of-school time; and provided further, that the committees shall make recommendations not later than July 15, 2006 to the general court, along with any legislative or budgetary recommendations necessary to best support accessible, affordable, quality out-of-school time programming for school age children .....100,000".  
The amendment was *rejected*.

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

"SECTION XX. The Secretary of Administration and Finance, the Secretary of Health and Human Services and the Office of Consumer Affairs and Business Regulation are hereby authorized and directed to study and evaluate the current and future availability of medical service professionals in the Commonwealth in comparison to the relevant demand for said professionals presently and for the next ten years. In completing said study there shall be appointed by the Governor of the Commonwealth a commission which shall include the chief executive of those agencies named above or their designee, a representative of the Massachusetts Hospital Association, a representative of the Massachusetts Nurses Association, a member representing commercial insurers in the Commonwealth, a member of the Massachusetts Association of Health Maintenance Organizations, a member representing so-called teaching hospitals in Massachusetts, two members representing private institutions of higher learning involving the medical professions in Massachusetts, a member representing the University of Massachusetts Medical School, a member representing the Massachusetts College of Pharmacy, the Commissioner of the Department of Employment and Training or his designee, a representative of community colleges in the Commonwealth, and a representative of the American Red Cross.

Said study shall include, but not be limited to, the availability described above, strategies for recruitment and retention, and the employment of incentives such as reduced tuition or tuition forgiveness. The results of said study, together with any and all legislative recommendations and cost estimates, shall be submitted to the Clerks of the Senate and the House of Representatives and the House and Senate Committees on Ways and Means no later than ten months following the passage of this Act."  
The amendment was **adopted**.

Mr. Lees moved that the bill be amended by striking out section 2 and inserting in place thereof a new section:-

"SECTION 2. Subsection (b) of said section 18B of said chapter 6 of the General Laws, as so appearing, is hereby amended by inserting after the first sentence the following sentence:- One member of the council shall be appointed by and serve at the pleasure of the president of the senate, one member of the council shall be appointed by and serve at the pleasure of the minority leader of the senate, one member of the council shall be appointed by and serve at the pleasure of the speaker of the house of representatives and one member of the council shall be appointed by and serve at the pleasure of the minority leader of the house of representatives."; and by striking out section 3 and inserting in place thereof a new section:-

"SECTION 3. Said subsection (b) of section 18B of said chapter 6, as so appearing, is hereby further amended by inserting after the word 'governor', in line 14, the following words:- , or by the president of the senate or the minority leader of the senate or the speaker of the house of representatives or the minority leader of the house of representatives if a vacancy occurs in a position held by a member appointed by the president or the speaker or minority leaders."  
The amendment was **adopted**.

Mr. Lees moved that the bill be amended by striking out section 6 and inserting in place thereof a new section:-

"SECTION 6. Said chapter 6 is hereby further amended by inserting after said section 18B, as so appearing, the following section:-

Section 18C. (a) There shall be a public higher education trustees nominating council to advise the governor with respect to appointments to all the boards of trustees of community colleges and state colleges, other than the student and alumni trustees elected under section 21 of chapter 15A. The council shall consist of 1 member to be appointed by and serve at the pleasure of the president of the senate, 1 member to be appointed by and serve at the pleasure of the minority leader of the senate, 1 member to be appointed by and serve at the pleasure of the speaker of the house of representatives, 1 member to be appointed by and serve at the pleasure of the minority leader of the house of representatives, 2 members to be appointed by and serve at the pleasure of the governor, and 3 members of the board of higher education to be appointed by and serve at the pleasure of the board, 1 of whom shall be the chairman of the board of higher education. If a vacancy occurs in a position held by a member of the council, the respective appointing authority shall appoint a new member. Whenever a vacancy occurs, or is expected to occur on a board of trustees of any community college or state college, the governor shall notify the council. The council shall advertise vacancies on the boards of trustees of the state and community colleges at least 3 months before a term expires in order to broaden and deepen the pool of qualified candidates for such boards. The council shall submit to the governor a nominee who, in the judgment of the council, is qualified and willing to serve as a trustee.

The governor may appoint the nominee whose name is forwarded to him by the council. The appointment shall be made within 90 days of the submission of the names by the council. If the process is not completed within the 90-day period, then the board of

higher education shall make an interim appointment for up to 1 year. If the governor does not act before the end of said 1-year period, the board of higher education shall make an interim appointment for the full board of trustee term.

(b) The chairman of the board of higher education shall serve as the chair of the council. The council shall adopt and make public by-laws for the conduct of its affairs, and criteria for membership on said boards of trustees. The council shall widely publicize its mission, responsibilities, contact information, by-laws for the conduct of its affairs, description of the responsibilities and duties of trustees, criteria for membership on boards of trustees, and any vacancies on such boards, including, but not limited to, through the state's online website. The board of higher education shall provide resources to the council to assist in fulfilling its mission and responsibilities. All records and deliberations with respect to persons under consideration as nominees or prospective nominees shall be held in confidence by the council, but shall be available to the governor and the governor's representatives. Members of the council may be reimbursed for all expenses reasonably incurred in the performance of their duties.

(c) In considering candidates, the council shall seek persons of the highest quality who, by merit, experience, knowledge, skills, temperament, ability, integrity, sound judgment and proven leadership will provide sound policy direction and oversight for the applicable state college or community college. The presidents of the state and community colleges may recommend candidates for their respective boards of trustees to the council. Candidates shall be evaluated according to law and without regard to race, religion, sex, age, national or ethnic origin, sexual orientation or political affiliation. No member of the council may be considered for appointment to any board while a member of the council."

The amendment was **adopted**.

Mr. Lees moved that the bill be amended by striking out the first paragraph of section 8 and inserting in place thereof a new paragraph:-

"Section 2. There shall be an advisory committee on education policy, hereinafter called the committee. The committee shall be composed of the following: the commissioner of early education and care; the chairman of the board of early education and care; the commissioner of education; the chairman of the board of education; the chancellor of higher education; the chairman of the board of higher education; the house chairman of the joint committee on education; the senate chairman of the joint committee on education; the house chairman of the joint committee on higher education; the senate minority leader or his designee; the house of representatives minority leader or his designee; the senate chairman of the joint committee on higher education; the house chairman of the joint committee on labor and workforce development; the senate chairman of the joint committee on labor and workforce development; the president of the university of Massachusetts; and 8 members appointed by and serving at the pleasure of the governor, 1 of whom shall be a president of a state college, 1 of whom shall be a president of a community college, 4 of whom shall be representatives from the state's pre-kindergarten through grade 12 public education system, 1 of whom shall be a representative from the business community, and 1 of whom shall be a representative from organized labor. The committee shall serve as an advisory body to the board of early education and care, the board of education, and the board of higher education. It shall have the following powers and duties."

The amendment was **adopted**.

Mr. Lees moved that the bill be amended by striking out section 64 and inserting in place thereof a new section:-

"SECTION 64. There shall be a special commission to investigate and study the feasibility of eliminating the provisions of section 26 of chapter 15A of the General Laws relating to summer and evening courses and programs conducted at public higher education institutions being conducted at no expense to the commonwealth. The study shall include, but not be limited to, the cost to the commonwealth of the change. The commission shall consist of the house and senate chairs of the joint committee on higher education, who shall serve as co-chairs of the commission, the minority leader of the senate or his designee, the minority leader of the house of representatives or his designee, the president of the university of Massachusetts, 2 presidents of state colleges appointed by the president of the senate, 2 presidents of community colleges appointed by the speaker of the house of representatives, 2 members of the board of higher education appointed by the board, and 3 members appointed by the Massachusetts Teachers Association, in consultation with the Massachusetts Federation of Teachers, 1 of whom shall be a faculty member at the university of Massachusetts, 1 of whom shall be a faculty member at a state college, and 1 of whom shall be a faculty member at a community college. The commission shall submit a report and its recommendations, if any, together with any drafts of legislation necessary to carry such recommendations into effect, by filing the same with the joint committee on higher education on or before June 30, 2006."

The amendment was **adopted**.

Ms. Menard and Messrs; Pacheco, Montigny, Rosenberg and Tarr moved that the bill be amended by adding the following section:-

"SECTION XX. Subject to appropriation, in addition to the amounts provided for the ordinary maintenance of the state and community colleges in lines items 7109-0100, 7110-0100, 7112-0100, 7113-0100, 7114-0100, 7115-0100, 7116-0100, 7117-0100, 7118-0100, 7502-0100, 7503-0100, 7504-0100, 7505-0100, 7506-0100, 7507-0100, 7508-0100, 7509-0100, 7510-0100, 7511-0100, 7512-0100, 7514-0100, 7515-0100, 7516-0100, 7518-0100 in the general appropriations act for fiscal year 2006, the

total amount of such appropriations shall be increased as follows: in fiscal year 2007 such appropriations shall be increased by \$30,931,000, in fiscal year 2008 the appropriations shall be increased by an additional \$30,950,000, in fiscal year 2009 the appropriations shall be increased by an additional \$31,416,000, in fiscal year 2010 the appropriations shall be increased by an additional \$32,664,000, in fiscal year 2011 the appropriations shall be increased by an additional \$37,606,000, in fiscal year 2012 the appropriations shall be increased by an additional \$22,860,000, and in fiscal year 2013 the appropriations shall be increased by an additional \$22,645,000. The dollar amounts specified in this paragraph shall be adjusted for inflation, increases in enrollment, increases in unrestricted revenues including, but not limited to, fringe benefits paid by the commonwealth, and any collective bargaining increases.

Subject to appropriation, in addition to the amount provided for the ordinary maintenance of the university of Massachusetts in item 7100-0200 in the general appropriations act for fiscal year 2006, such amount shall be increased as follows: in fiscal year 2007 the appropriation shall be increased by \$26,657,808, in fiscal year 2008 the appropriation shall be increased by an additional \$26,657,808, in fiscal year 2009 the appropriation shall be increased by an additional \$26,657,808 in fiscal year 2010 the appropriation shall be increased by an additional \$26,657,808, in fiscal year 2011 the appropriation shall be increased by an additional \$26,657,808, in fiscal year 2012 the appropriation shall be increased by an additional \$26,657,808, and in fiscal year 2013 the appropriation shall be increased by an additional \$26,657,808. The dollar amounts specified in this paragraph shall be adjusted for inflation, increases in enrollment, increases in unrestricted revenues including, but not limited to, fringe benefits paid by the commonwealth, and any collective bargaining increases; and by inserting, in section 34, in the second sentence of the second paragraph, after the words "procedures set forth by the board of higher education", the following:- in conjunction with the presidents of the state and community colleges and the president of the university of Massachusetts."

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

Messrs. Hedlund, Tarr, Lees, Tisei, Knapik and Brown moved that the bill be amended inserting the following:-

"Section 34 is hereby amended by inserting the following at the end thereof:-

"For the purposes of this section, the term "residents of the commonwealth" shall include only citizens or residents with a duly attested immigration record."; and, in section 40, by inserting the following at the end thereof:-

"For the purposes of this section, the term 'residents of the commonwealth' shall include only citizens or residents with a duly attested immigration record."

Pending the question on adoption of the amendment, pending the question on adoption of the Ways and Means amendment, and pending the question on ordering the bill to a third reading, at four minutes before three o'clock P.M., at the request of Mr. Lees, for the purpose of a minority party caucus, the President declared a recess; and, at twelve minutes before four o'clock P.M., the Senate reassembled, the President in the Chair.

#### *Orders of the Day.*

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

The Senate Bill supporting access and excellence in public higher education (Senate, No. 2364),- was further considered, the main question being on ordering the bill to a third reading and the adoption of the Ways and Means amendment (Senate, No. 2371).

The pending amendment previously moved by Messrs. Hedlund, Tarr, Lees, Tisei, Knapik and Brown, that the bill be amended inserting the following:-

"Section 34 is hereby amended by inserting the following at the end thereof:-

"For the purposes of this section, the term "residents of the commonwealth" shall include only citizens or residents with a duly attested immigration record."; and, in section 40, by inserting the following at the end thereof:-

"For the purposes of this section, the term "residents of the commonwealth" shall include only citizens or residents with a duly attested immigration record."- was further considered.

After debate, the amendment was *rejected*.

Ms. Murray moved that the bill be amended in section 29, by striking out the words "Subject to appropriation, the commonwealth shall reimburse public higher education institutions for the cost of providing any waivers granted under this section" and inserting in place thereof the following words:-

"The commonwealth shall not impose any new waivers without corresponding appropriations sufficient to cover the cost of the waivers. This shall also apply to the John and Abigail Adams scholarship program."; by striking out in section 30, in line 15, the words "25 per cent of their reserve funds including" and inserting in place thereof the following:-

"25 per cent of the combined total of their unrestricted reserve funds and"; and by inserting after section 52 the following section:-

"SECTION 52A. Said section 2 of said chapter 45 is hereby further amended by inserting after item 7100-0200 the following item:-

7100-0201

For matching funds for endowed professorships in the fields of science and technology; provided, that such funds shall be matched on the basis of \$1 for every \$2 or more in private contributions .....5,000,000."

The amendment was **adopted**.

After remarks, the Ways and Means amendment, as amended, was then **adopted**.

The bill (Senate, No. 2371, amended) was then ordered to a third reading and read a third time.

The question on passing the bill to be engrossed was determined by a call of the yeas and nays, at eight minutes before four o'clock P.M., on motion of Mr. O'Leary, as follows, to wit (yeas 35 - nays 0) [Yeas and Nays No. 228]:

#### **YEAS.**

Antonioni, Robert A.	Lees, Brian P.
Augustus, Edward M., Jr.	McGee, Thomas M.
Baddour, Steven A.	Menard, Joan M.
Barrios, Jarrett T.	Montigny, Mark C.
Brewer, Stephen M.	Moore, Richard T.
Buoniconti, Stephen J.	Morrissey, Michael W.
Chandler, Harriette L.	Murray, Therese
Creedon, Robert S., Jr.	Nuciforo, Andrea F., Jr.
Fargo, Susan C.	O'Leary, Robert A.
Hart, John A., Jr.	Pacheco, Marc R.
Havern, Robert A.	Panagiotakos, Steven C.
Hedlund, Robert L.	Rosenberg, Stanley C.
Jehlen, Patricia D.	Spilka, Karen E.
Joyce, Brian A.	Tarr, Bruce E.
Knapik, Michael R.	Tucker, Susan C.
Timilty, James E.	Walsh, Marian
Tisei, Richard R.	Wilkerson, Dianne —
	<b>35.</b>
Tolman, Steven A.	

#### **NAYS — 0.**

#### **ABSENT OR NOT VOTING.**

Berry, Frederick E.	Creem, Cynthia Stone
Brown, Scott P.	Resor, Pamela — <b>4.</b>

The yeas and nays having been completed at three minutes before four o'clock P.M., the bill was passed to be engrossed with the amendments. [For text of Senate amendments, see Senate, No. 2380, printed as amended.]  
Sent to the House for concurrence.

The Senate Bill relative to standards for protective headgear for operators or passengers on motorcycles (Senate, No. 1344),- **was considered; the main question being on ordering it to a third reading.**

**The pending motion, previously moved by Mr. Tisei, to lay the matter on the table was considered; and it was negatived.**

**The pending amendment, previously moved by Mr. Moore, striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2368 was considered; and, after debate, it was adopted.**

**The bill (Senate, No. 1344, amended) was then ordered to a third reading.**

**Subsequently, there being no objection, the rules were suspended, on motion of Mr. Lees, and the bill was read a third time and was passed to be engrossed.**

**Sent to the House for concurrence.**

The Senate Bill to provide for the public inspection of records made or received by special state police officers at educational institutions and hospitals (Senate, No. 1735),- was considered.

Pending the question on ordering the bill to a third reading, on motion of Mr. Lees, the further consideration thereof was postponed until Wednesday, March 15.

There being no objection, during consideration of the Orders of the Day, the following matters were considered, as follows, to wit:-

*Report of a Committee.*

Mr. Buoniconti, for the committee on Ethics and Rules, reported that the following matter be placed in the Orders of the Day for the next session:

The House Bill designating the Attleboro District Courthouse as the James H. Sullivan Courthouse (House, No. 842).

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

**PAPERS FROM THE HOUSE.**

*Engrossed Bill — Land Taking for Conservation, Etc.*

An engrossed Bill authorizing the Division of Capital Asset Management and Maintenance to convey certain land in the town of Erving (see House, No. 1433) (which originated in the House), having been certified by the Senate Clerk to be rightly and truly prepared for final passage,— was put upon its final passage; and, this being a bill providing for the taking of land or other easements used for conservation purposes, etc., as defined by Article XCVII of the Amendments to the Constitution, the question on passing it to be enacted was determined by a call of the yeas and nays, at twenty-four minutes past four o'clock P.M., as follows, to wit (yeas 35 — nays 0) [Yeas and Nays No 229]:

**YEAS.**

Antonioni, Robert A.	Lees, Brian P.
Augustus, Edward M., Jr.	McGee, Thomas M.
Baddour, Steven A.	Menard, Joan M.
Barrios, Jarrett T.	Montigny, Mark C.
Brewer, Stephen M.	Moore, Richard T.
Buoniconti, Stephen J.	Morrissey, Michael W.
Chandler, Harriette L.	Murray, Therese
Creedon, Robert S., Jr.	Nuciforo, Andrea F., Jr.
Fargo, Susan C.	O'Leary, Robert A.
Hart, John A., Jr.	Pacheco, Marc R.
Havern, Robert A.	Panagiotakos, Steven C.
Hedlund, Robert L.	Rosenberg, Stanley C.
Jehlen, Patricia D.	Spilka, Karen E.
Joyce, Brian A.	Tarr, Bruce E.
Knapik, Michael R.	Tucker, Susan C.
Timilty, James E.	Walsh, Marian
Tisei, Richard R.	Wilkerson, Dianne —
	<b>35.</b>
Tolman, Steven A.	

**NAYS — 0.**

**ABSENT OR NOT VOTING.**

Berry, Frederick E.	Creem, Cynthia Stone
Brown, Scott P.	Resor, Pamela — <b>4.</b>

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

*Engrossed Bills.*



The following engrossed bills (all of which originated in the House), having been certified by the Senate Clerk to be rightly and truly prepared for final passage, were severally passed to be enacted and were signed by the President and laid before the Governor for his approbation, to wit:

Authorizing 2 ballot questions in the town of Arlington relative to the granting of licenses for the sale of alcoholic beverages not to be drunk on the premises (see House, No. 31);

Authorizing a ballot question in the town of Arlington relative to the granting of licenses for the sale of all alcoholic beverages in certain restaurants (see House, No. 32);

Designating a scenic road in the town of Falmouth (see House, No. 4135); and

Establishing a department of public facilities in the city of Malden (see House, No. 4458).

Petitions were referred, in concurrence, as follows:

Petition (accompanied by bill, House, No. 4691) of Christopher J. Donelan and Stephen M. Brewer relative to the financial conditions in the Athol-Royalston Regional School District;

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

Petition (accompanied by bill, House, No. 4690) of Bradford Hill for legislation to designate Benjamin Franklin as the official inventor of the Commonwealth;

Under suspension of Joint Rule 12, to the committee on State Administration and Regulatory Oversight.

#### *Reports of Committees.*

By Mr. Buoniconti, for the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the Senate petition of Marc R. Pacheco, Brian P. Lees, Dianne Wilkerson, Thomas J. O'Brien and other members of the General Court for legislation relative to certain musical performances and the protection of performing groups.

Senate Rule 36 was suspended, on motion of Mr. Buoniconti, and the report was considered forthwith. Joint Rule 12 was suspended; and the petition (accompanied by bill) was referred to the committee on Tourism, Arts and Cultural Development.

**Sent to the House for concurrence.**

By Mr. Buoniconti, for the committee on Senate Ethics and Rules, that the House Resolve providing for an investigation and study by a special commission relative to liquified natural gas siting and use in the Commonwealth (House, No. 4449),— ought to pass.

There being no objection, the rules were suspended, on motion of Ms. Menard, and the resolve was read a second time.

Pending the question on ordering the resolve to a third reading, Ms. Menard and Mr. Morrissey moved to amend the resolve by striking out the text and inserting in place thereof the text of Senate document numbered 2379.

The amendment was **adopted**.

The resolve, as amended, was then ordered to a third reading, read a third time and passed to be engrossed, in concurrence, with the amendment.

**Sent to the House for concurrence in the amendment.**

#### *Recess.*

There being no objection, at twenty minutes past four o'clock P.M., at the request of Mr. Lees, for the purpose of a minority caucus, the President declared a recess; and, at fourteen minutes past five o'clock P.M., the Senate reassembled, the President in the Chair.

#### *Orders of the Day.*

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

The Senate Bill promoting school nutrition (Senate, No. 2373),— was read a third time.

Pending the question on passing the bill to be engrossed, on motion of Mr. Moore, the further consideration thereof was postponed until Wednesday, March 15.

### **PAPERS FROM THE HOUSE.**

#### *Engrossed Bill Returned by Governor*

With His Objections Thereto.

The engrossed Bill relative to direct wine shipments (see House, No. 4498, amended), which, on Thursday, November 18, 2005, had been laid before His Excellency the Governor for his approbation,— came from the House the same having been returned by His Excellency the Governor, with his objections thereto in writing. [For message, see House, No. 4522] and having passed that branch, notwithstanding said objections. The message (House, No. 4522) was read; and the Senate proceeded to reconsider the bill, in accordance with the provisions of the Constitution.

After debate, the question on passing the bill, in concurrence, the objections of His Excellency the Governor to the contrary

notwithstanding, was determined by a call of the yeas and nays, as required by Chapter I, Section I, Article II, of the Constitution, at twenty minutes past five o'clock P.M., as follows, to wit (yeas 26 — nays 9) [Yeas and Nays No. 230]:

### **YEAS.**

Augustus, Edward M., Jr.	Menard, Joan M.
Baddour, Steven A.	Montigny, Mark C.
Brewer, Stephen M.	Moore, Richard T.
Buoniconti, Stephen J.	Morrissey, Michael W.
Chandler, Harriette L.	Murray, Therese
Creedon, Robert S., Jr.	Pacheco, Marc R.
Hart, John A., Jr.	Panagiotakos, Steven C.
Havern, Robert A.	Spilka, Karen E.
Jehlen, Patricia D.	Tarr, Bruce E.
Joyce, Brian A.	Timilty, James E.
Knapik, Michael R.	Tisei, Richard R.
Lees, Brian P.	Tolman, Steven A.
McGee, Thomas M.	Wilkerson, Dianne —

**26.**

### **NAYS.**

Antonioni, Robert A.	O'Leary, Robert A.
Barrios, Jarrett T.	Rosenberg, Stanley C.
Fargo, Susan C.	Tucker, Susan C.
Hedlund, Robert L.	Walsh, Marian —

**9.**

Nuciforo, Andrea F., Jr.

### **ABSENT OR NOT VOTING.**

Berry, Frederick E.	Creem, Cynthia Stone
Brown, Scott P.	Resor, Pamela —

**4.**

The yeas and nays having been completed at twenty-five minutes past five o'clock P.M., the bill was passed, in concurrence, notwithstanding the objections of His Excellency the Governor, two-thirds of the members present and voting having approved the same.

The Senate Bill to reduce gang violence (Senate, No. 2242, 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 of House document numbered 4626.

Senate Rule 36 was suspended, on motion of Mr. Baddour, and the House amendment was considered forthwith.

Pending the question on concurring in the House amendment, Messrs. Barrios and Hart moved that the Senate concur in the House amendment with further amendments by inserting before the enacting clause the following emergency preamble:—

“Whereas, The deferred operation of this act would tend to defeat its purpose, which is to forthwith reduce gang violence in the commonwealth, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety and convenience.”;

In section 1, by inserting after the word “auditor”, in line 20, the following words:— “a chief of police appointed by the Massachusetts Chiefs of Police Association.”;

In said section 1, in section 2 of the proposed chapter 263A of the General Laws, by striking out the last 2 sentences, inserted by House amendment; and

In said section 1, in the third sentence of section 3 of the proposed chapter 263A of the General Laws, by striking out the words “vote of two”, inserted by House amendment, and inserting in place thereof the following words:— “vote of 3”;

In section 11, by inserting after the word “program”, at the end thereof, the following words:— “including, but not limited to, the number of memoranda of understanding issued by each district attorney pursuant to chapter 263A of the General Laws.”;

In said section 1, by striking out the proposed section 12 of chapter 263A of the General Laws, inserted by House amendment, and inserting in place thereof the following 2 sections:—

“Section 12. Records of the board and all records relating to petitions and filed with the board shall be confidential and shall not be public records. Section 11A and section 11A1/2 of chapter 30A shall not apply to meetings, discussions or deliberations of the board.

Section 13. (a) A prosecuting officer may disclose or refuse to disclose the identity or location of a protected witness, or any other matter concerning a protected witness or the program, after balancing the danger such disclosure may pose to the protected witness, the detriment it may cause to the general effectiveness of the program, and the benefit it may afford to the public or the person seeking discovery, except that a prosecuting officer shall, upon the request of a federal, state or local law enforcement official, or pursuant to a court order, disclose to such official the identity, location and criminal records relating to the protected witness when the prosecuting officer knows, or the request from such official indicates, that the protected witness is under criminal investigation for, or has been arrested for, or charged with, a felony,

(b) Whoever, without the express written authorization of the prosecuting officer, knowingly discloses any information received from the prosecuting officer or generated in connection with witness protection services and which poses a risk of harm to a program participant; of disclosure of any person’s participation in such program; or of jeopardizing the objectives of the program shall be punished by imprisonment in the house of correction for not more than 2½ years or by a fine of not more than \$5,000, or by both such fine and imprisonment. This section shall not apply to any members of the board; members of the attorney general’s office; members of the district attorneys’ offices; law enforcement; or agents thereof, acting in the lawful discharge of their duties.”;

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

“SECTION 2. Section 1 of chapter 268, as appearing in the 2004 Official Edition, is hereby amended by adding the following paragraph:—

An indictment or complaint for violation of this section alleging that, in any proceedings before or ancillary to any court or grand jury proceedings, the defendant under oath has knowingly made 2 or more declarations, which are inconsistent to the degree that 1 of them is necessarily false, need not specify which declaration is false if: (1) each declaration was material to the point in question and; (2) at least one declaration was made within the period of the statute of limitations for the offense charged under this section. If, in the same continuous court or grand jury proceeding in which a declaration is made, the person making the declaration admits such declaration to be false, such admission shall bar prosecution under this section if, at the time the admission is made, the declaration has not substantially affected the proceeding, or it has not become manifest that such falsity has been or will be exposed. It shall be a defense to an indictment or complaint made pursuant to this section that the defendant, at the time he made each declaration, believed each such declaration to be true.”;

In section 3, by striking out after the words “Section 13B.”, in lines 4 through 22, inclusive, and by inserting in place thereof the following words:—

Whoever, directly or indirectly, willfully

(a) threatens, or attempts or causes physical injury, emotional injury, economic injury or property damage to;

(b) conveys a gift, offer or promise of anything of value to; or

(c) misleads, intimidates or harasses another person who is:

(i) a witness or potential witness at any stage of a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any type;

(ii) a person who is or was aware of information, records, documents or objects that relate to a violation of a criminal statute, or a violation of conditions of probation, parole or bail;

(iii) a judge, juror, grand juror, prosecutor, police officer, federal agent, investigator, defense attorney, clerk, court officer, probation officer or parole officer;

(iv) a person who is or was furthering a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any type; or

(v) a person who is or was attending or had made known his intention to attend a grand jury proceeding, trial or other criminal proceeding of any type with the intent to impede, obstruct, delay, harm, punish or otherwise interfere thereby with a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any type shall”;

By striking out section 4 and inserting in place thereof the following section:—

“SECTION 4. Said chapter 268, as so appearing, is hereby further amended by inserting after section 13C the following section:—

Section 13D. (a) Whoever knowingly distributes or possesses with intent to distribute any transcript of grand jury testimony or any substantially verbatim description of grand jury testimony with the intent to impede, obstruct, delay or otherwise interfere with any criminal proceeding, or the participation of any victim, witness or juror in any stage of a trial, grand jury, or other criminal proceeding, or the continued participation of any person furnishing information to a criminal investigator relating to a violation of any criminal statute, shall be punished by imprisonment in a house of correction for not more than 2½ years or in the state prison for not more than 5 years, or by a fine of not more than \$5,000, or both. Nothing in this subsection shall abridge any right protected by the First Amendment to the United States Constitution.

(b) Nothing in this section shall be construed so as to prohibit any person performing an official function in relation to the grand jury from disclosing a grand jury transcript or description thereof pursuant to Massachusetts Rule of Procedure or Federal Rule of Criminal procedure 6.

(c) Any attorney representing a defendant in a criminal proceeding, including court appointed counsel, who receives a grand jury transcript or a description thereof related to such proceeding from a prosecutor, may provide the transcript or description to his client or any investigator employed by such attorney or another attorney employed by, or appointed by the court to represent, his client, unless such transfer would be in violation of a protective order from a court of competent jurisdiction. Such attorney may further disclose a grand jury transcript or description thereof related to such proceeding to assist in the legal defense of another defendant in a criminal proceeding, unless such transfer would be in violation of a protective order from a court of competent jurisdiction.

(d) Upon motion of the commonwealth and after hearing, a court may issue a protective order prohibiting defense counsel from distributing grand jury transcripts to a criminal defendant, if the commonwealth demonstrates that the defendant is accused of a violent crime, as defined in section 121 of chapter 140, and that there is a reason to believe, based on specific and articulable facts including, but not limited to, the defendant's past history of violence and the nature of the charges against the defendant, that the defendant poses a threat to a witness or victim. The defendant shall have a right to cross examine any commonwealth witness. In making a determination relative to the issuance of a protective order under this section, the court shall consider whether the defendant has an exceptional need to receive such grand jury transcripts.

(e) Any grand jury transcript or document citing or describing grand jury testimony filed with any court shall be filed and maintained under seal, unless the paper is filed in a criminal prosecution for perjury before a grand jury”;

In section 6, by striking out, in lines 19 and 20, the words “not less than two and”;

By striking out section 7 and inserting in place thereof the following section:—

“SECTION 7. Said section 10 of said chapter 269, as so appearing, is hereby further amended by adding the following 2 paragraphs:—

(n) Whoever violates paragraph (a) or paragraph (c), by means of a loaded firearm, loaded sawed off shotgun or loaded machine gun shall be further punished by imprisonment in the house of correction for not more than 2½ years, which sentence shall begin from and after the expiration of the sentence for the violation of paragraph (a) or paragraph (c).

(o) For purposes of this section, ‘loaded’ shall mean that ammunition is contained in the weapon or within a feeding device attached thereto.

For purposes of this section, ‘ammunition’ shall mean cartridges or cartridge cases, primers (igniter), bullets or propellant powder designed for use in any firearm, rifle or shotgun.”;

In section 8, by inserting after the word “associations”, in line 6, the following words:— “or conduct”; and

By striking out section 12, inserted by House amendment.

After remarks, the further amendments were adopted.

Pending the question on concurring in the House amendment, as amended, Ms. Wilkerson and Messrs. Hart, McGee, Buoniconti, Tolman, Montigny and Creedon moved that the House amendment be still further amended in section 10, in item 8000-0038, by striking out the figure “\$750,000” and inserting in place thereof the following figure:— “\$2,000,000”; and in section 1, by adding the following words:—

“Section 11. The board shall establish a liaison with the United States Marshal’s office in order to facilitate the legal processes over which the federal government has sole authority. The liaison shall coordinate all requests for federal assistance relating to

witness protection.

The board shall pursue all federal sources that may be available for implementing this chapter. For that purpose, the board shall establish a liaison with the United States Department of Justice.

The board shall, in conjunction with the executive office of administration and finance and the senate and house ways and means committees, establish procedures to maximize federal funding for witness protection services.”

After remarks, the amendments were **adopted**.

**Sent to the House for concurrence in the further amendments.**

*Moment of Silence.*

At the request of the President, the members, guests and employees stood in a moment of silence and reflection for Frances Deats, the sister of Senator Patricia D. Jehlen who had passed away earlier today.

*Order Adopted.*

On motion of Mr. Lees,—

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

On motion of Mr. Lees, at twenty-six minutes before six o'clock P.M., the Senate adjourned to meet on the following day at eleven o'clock A.M.