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## UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



### JOURNAL OF THE SENATE.

*Tuesday, July 1, 2008.*

Met according to adjournment at one o'clock P.M. (Mr. Baddour in the Chair).

#### *Distinguished Guests.*

There being no objection, during consideration of the Orders of the Day, the Chair (Ms. Menard) handed the gavel to Mr. Brewer for the purpose of an introduction. Mr. Brewer then introduced three officers of the United States Navy. The Senate recognized Petty Officer 3rd Class Patrick Nofio, Petty Officer 2nd Class Alexander Finke and Petty Officer 3rd Class Shane Smith. The officers were applauded for their service to our country and withdrew from the Chamber.

#### *Report.*

A report of the committee on Post Audit and Oversight (pursuant to Section 63 of Chapter 3 of the General Laws, as most recently amended by Chapter 557 of the Acts of 1986) submitting a report entitled Running on Empty; Massachusetts Faces Record Energy Costs. (Senate, No. 2783) (received Tuesday, July 1, 2008),— **was placed on file.**

#### *Reports of a Committee.*

By Mr. Moore, for the committee on Health Care Financing, that the recommitted Senate bills Relative to the adult foster care program (Senate, No. 417) (Estimated cost — more than \$100,000); and Relative to promoting a transparent, fair and equitable pricing structure in the insurance industry (Senate, No. 562) (Estimated cost — \$100,000);

**Severally ought to pass.**

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

By Mr. Moore, for the committee on Health Care Financing, that the recommitted Senate bills Relative to adult day transportation (Senate, No. 2571) (Estimated cost — less than \$100,000); and Relative to dental assistants (Senate, No. 2707) (Estimated cost — less than \$100,000);

**Severally ought to pass.**

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

#### *Committees Discharged.*

Mr. Morrissey, for the committee on Consumer Protection and Professional Licensure, reported, asking to be discharged from further consideration of the petition (accompanied by bill, Senate, No. 2693) of Benjamin B. Downing for legislation relative to service quality standards,— **and recommending that the same be referred to the committee on Telecommunications, Utilities and Energy.**

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

**Sent to the House for concurrence.**

Mr. Downing, 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 Labor and Workforce Development to make an investigation and study of a certain current Senate document relative to allowing students in vocational technical high schools to be involved in plumbing projects (Senate, No. 2774),— **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.**

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

A message from His Excellency the Governor recommending legislation relative to providing the terms of certain bonds to be issued by the Commonwealth to finance investment in and expansion of the life sciences industry in the Commonwealth (House, No. 4903),— **was referred, in concurrence, to the committee on Bonding, Capital Expenditures and State Assets.**

A petition (accompanied by bill, House, No. 4898) of William M. Straus (by vote of the town) authorizing the town of Fairhaven to issue a common victualer beer and wine license to Jevon Enterprises,— **was referred, in concurrence, under suspension of joint Rule 12, to the committee on Consumer Protection and Professional Licensure.**

#### *Bills*

Establishing and funding the Massachusetts Broadband Institute (House, No. 4864, amended,— on House bill No. 4715);

Establishing a sick leave bank for Mary Mercurio, an employee of the Department of Social Services (House, No. 4868,— on petition); and

Establishing a sick leave bank for Sarah Carmichael, an employee of the Department of Youth Services (House, No. 4882,— on House, No. 4855);

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

#### *Bills*

Relative to the placement of twins in schools (House, No. 469,— on House, No. 460);

Designating Mitochondrial Disease Awareness Week (House, No. 3246,— on petition);

Designating Route 116 as a scenic byway corridor (House, No. 3550,— on petition);

Relative to red and blue flashing, rotating or oscillating lights (House, No. 3615,— on petition);

Relative to mental health parity (House, No. 4423,— on House, No. 1871); and

Relative to clarifying certain banking laws (House, No. 4901,— on House, No. 1044);

**Were severally read and, under Senate Rule 26, referred to the committee on Senate Ethics and Rules.**

#### *Bills*

Authorizing the city of Cambridge to abate certain fiscal year 2003 real property taxes (House, No. 4081,— on petition) [Local approval received];

Conveying land from the town of Plainfield to the Plainfield Congregational Church (House, No. 4474,— on petition) [Local approval received]; and

That the town of Walpole be authorized to release a portion of a conservation restriction within said town (House, No. 4902,— on House, No. 4491) [Local approval received on House, No. 4491];

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

A report of the committee on Labor and Workforce Development, asking to be discharged from further consideration of the petition (accompanied by bill, House, No. 4834) of Barbara A. L'Italien and others (by vote of the town) for legislation to exempt the town of North Andover from certain provisions of the prevailing wage law, and recommending that the same be referred to the committee on Municipalities and Regional Government,— **was considered forthwith, under Senate Rule 36, and accepted, in concurrence.**

#### *Recess.*

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

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

At twenty minutes before two o'clock P.M., Mr. Tisei doubted the presence of a quorum.

The President, having determined that a quorum was not in attendance, then directed the Sergeant-at-Arms to secure the presence of a quorum.

**Subsequently, at sixteen minutes before two o'clock P.M., a quorum was declared present.**

#### **PAPER FROM THE HOUSE.**

*Emergency Preamble Adopted.*

An engrossed Bill establishing a sick leave bank for Tracey Albrecht, an employee of the Trial Court (see House, No. 4843, amended), having been certified by the Senate Clerk to be rightly and truly prepared for final passage and containing an emergency preamble,— **was laid before the Senate; and, a separate vote being taken in accordance with the requirements of Article LXVII of the Amendments to the Constitution, the preamble was adopted in concurrence, by a vote of 11 to 0. The bill was signed by the President and sent to the House for enactment.**

*Orders of the Day.*

The Orders of the Day were considered, as follows:

*Bills*

Authorizing the city of Lynn to grant an additional license for the sale of wine and malt beverages not to be drunk on the premises (House, No. 4378); and

Relative to the board of library trustees of the town of Bridgewater (House, No. 4531);

**Were severally read a second time and ordered to a third reading.**

*The Senate bills*

Authorizing the Division of Capital Asset Management and Maintenance to grant a sewer easement in certain land in the town of Belchertown (Senate, No. 2355, amended) (its title having been changed by the committee on Bills in the Third Reading);

Authorizing the city of Fitchburg to lease certain park land to the Wallace Civic Center and Planetarium (Senate, No. 2589) (its title having been changed by the committee on Bills in the Third Reading); and

Relative to safety at the John Adams Courthouse (Senate, No. 2777);

**Were severally read a third time and passed to be engrossed.**

**Severally sent to the House for concurrence.**

The Senate Bill directing the Department of Highways to erect and maintain certain signs (Senate, No. 2069) (its title having been changed by the committee on Bills in the Third Reading),— **was read a third time and passed to be engrossed.**

**Sent to the House for concurrence.**

The Senate Bill relative to Rutland Heights State Hospital (Senate, No. 2353, amended),— **was read a third time.**

Pending the question on passing the bill to be engrossed, Mr. Tarr moved that the bill be amended by adding the following 4 sections:

“SECTION 2. Section 2A of said chapter 28 of the acts of 1996 is hereby repealed.

SECTION 1, Section 2 of chapter 28 of the acts of 1996 is hereby amended by striking out, in item 2000-6966, the figure ‘\$65,000,000’ and inserting in place thereof the following figure: ‘\$150,000,000’.

SECTION 3. Section 3 of said chapter 28 of the acts of 1996 is hereby amended by striking out, in lines 4 and 5, the words ‘one hundred eighty-three million eight hundred and fifty thousand dollars’ and inserting in place thereof the following figure: ‘\$268,850,000’.

SECTION 4. Sections 5 and 6 of said chapter 28 of the acts of 1996 are hereby repealed. In section 1, by inserting after the word ‘shall’, in line 14, the following words:— ‘, subject to hospital protocols consistent with applicable federal laws and regulations,’ by inserting in section 1 after the figure ‘1,400,000’, the following words:— ‘of said \$10,000,000’.”

**This amendment was adopted.**

**The bill, as further amended, was then passed to be engrossed.**

**Sent to the House for concurrence.**

The Senate Bill relative to water protection (Senate, No. 2776),— **was read a third time.**

**Pending the question on passing the bill to be engrossed, Mr. Tarr moved that the bill be amended in section 1, by striking out clause (2).**

***After debate, the amendment was rejected.***

Mr. Tarr moved that the bill be amended in section 1, by striking out, in line 11, the figure “35” and inserting in place thereof the following figure:— “50”

***The amendment was rejected.***

Mr. Tarr moved that the bill be amended in section 1, by adding the following paragraph:—

“Projects currently funded by the trust may petition and be eligible for a reduction of their interest rate to zero upon a showing of hardship, which may include, but shall not be limited to, the following factors:

(1) a substantial increase in the cost of the project since the award of the loan;

(2) a substantial increase in the costs paid by ratepayers due to the cost of the project; or

(3) a showing of reasonable efforts by the municipality, sewer district or commission to control the costs of the project”

***The amendment was rejected.***

After remarks, the question on passing the bill to be engrossed was determined by a call of the yeas and nays, at twenty-three minutes past two o’clock P.M., on motion of Mr. O’Leary, as follows, to wit (*yeas 37 — nays 0*) [**Yeas and Nays No. 258**]:

<b>YEAS.</b>	
Antonioni, Robert A.	Brown, Scott P.
Augustus, Edward M., Jr.	Buoniconti, Stephen J.
Baddour, Steven A.	Candaras, Gale D..
Berry, Frederick E.	Chandler, Harriette L.
Brewer, Stephen M.	Creedon, Robert S., Jr.
Creem, Cynthia Stone	O’Leary, Robert A.
Downing, Benjamin B.	Pacheco, Marc R.
Fargo, Susan C.	Panagiotakos, Steven C.
Galluccio, Anthony D.	Petrucelli, Anthony
Hart, John A., Jr.	Rosenberg, Stanley C.
Hedlund, Robert L.	Spilka, Karen E.
Jehlen, Patricia D..	Tarr, Bruce E.
Joyce, Brian A.	Timilty, James E.
Knapik, Michael R.	Tisei, Richard R.
McGee, Thomas M.	Tolman, Steven A.
Menard, Joan M.	Tucker, Susan C.
Montigny, Mark C.	Walsh, Marian
Moore, Richard T.	Wilkerson, Dianne — <b>37.</b>
Morrissey, Michael W.	
<b>NAYS — 0.</b>	
<b>ABSENT OR NOT VOTING.</b>	
Marzilli, Jim	Resor, Pamela — <b>2.</b>

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

#### **PAPER FROM THE HOUSE.**

*Committee of Conference Report.*

There being no objection, during consideration of the Orders of the Day, a report of the committee on conference on the disagreeing votes of the two branches, with reference to the Senate amendment to the House Bill relative to child abuse and neglect (House, No. 4333, amended) (amended by the Senate by striking out all after the enacting clause and inserting in place thereof the text contained in Senate document numbered 2520), reported, a “Bill protecting children in the care of the Commonwealth” (House, No. 4905),— **came from the House, and was read.**

Senate Rule 36 was suspended on motion of Ms. Spilka, and the report was considered forthwith.

The question on accepting the report, in concurrence, was determined by a call of the yeas and nays, at one minute before three o’clock P.M., on motion of Ms. Spilka, as follows, to wit (*yeas 37 — nays 0*) [**Yeas and Nays No. 259**]:

<b>YEAS.</b>	
Antonioni, Robert A.	Brown, Scott P.
Augustus, Edward M.,	Buoniconti, Stephen J.

Jr.	
Baddour, Steven A.	Candaras, Gale D..
Berry, Frederick E.	Chandler, Harriette L.
Brewer, Stephen M.	Creedon, Robert S., Jr.
Creem, Cynthia Stone	O’Leary, Robert A.
Downing, Benjamin B.	Pacheco, Marc R.
Fargo, Susan C.	Panagiotakos, Steven C.
Galluccio, Anthony D.	Petrucelli, Anthony
Hart, John A., Jr.	Rosenberg, Stanley C.
Hedlund, Robert L.	Spilka, Karen E.
Jehlen, Patricia D..	Tarr, Bruce E.
Joyce, Brian A.	Timilty, James E.
Knapik, Michael R.	Tisei, Richard R.
McGee, Thomas M.	Tolman, Steven A.
Menard, Joan M.	Tucker, Susan C.
Montigny, Mark C.	Walsh, Marian
Moore, Richard T.	Wilkerson, Dianne — <b>37.</b>
Morrissey, Michael W.	
<b>NAYS — 0.</b>	
<b>ABSENT OR NOT VOTING.</b>	
Marzilli, Jim	Resor, Pamela — <b>2.</b>

The yeas and nays having been completed at three minutes past three o’clock P.M., the report was accepted, in concurrence.

*Orders of the Day.*

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

The Senate Bill relative to homeowners insurance (Senate, No. 2778),— **was read a third time.**

Pending the question on passing the bill to be engrossed, Mr. Hedlund moved that the bill be amended by striking out section 7.  
*The amendment was rejected.*

Messrs. O’Leary, Moore, Morrissey and Montigny moved that the bill be amended by inserting at the end thereof the following new sections:—

SECTION . The General Laws are hereby amended by inserting after Chapter 175J the following chapter:

**CHAPTER 175K.  
THE MASSACHUSETTS WINDSTORM  
CATASTROPHE FUND.**

Section 1. The general court finds that:

(a) The private sector is not currently able to maintain a stable, orderly market for property insurance coverage of residential and commercial properties in coastal areas and other areas subject to damage to property from hurricanes, tornadoes, and other windstorms.

(b) As a consequence of the reduction in availability of private sector property insurance coverage, the number of properties covered by the Massachusetts FAIR Plan has risen dramatically in recent years, placing all Massachusetts property owners and their insurers at risk.

(c) Significant losses from hurricanes, tornadoes, and other windstorms will have a negative and destabilizing effect on the entire Massachusetts economy.

- (d) The purpose of this act is to restore a stable, orderly, and competitive property insurance market and to safeguard the Massachusetts economy by creating a fund to provide a stable source of reimbursement to both the FAIR Plan and private sector insurers for a portion of their losses from catastrophic windstorm events.
- (e) It is essential to the functioning of a governmental program to restore market stability and increase insurance capacity so that revenues received by the program be exempt from federal taxation. It is therefore the legislative intent of this chapter that the program be structured as a trust fund under the direction and control of a board composed of statewide elected officials and that the program operate exclusively for the purpose of protecting and advancing the commonwealth's interest in market stability and insurance capacity in the commonwealth.

Section 2. As used in this chapter, the following terms shall have the following meanings:

- (a) "Actuarially indicated", with respect to premiums paid by insurers for reimbursement provided by the fund, an amount determined according to principles of actuarial science to be adequate, but not excessive, in the aggregate, to pay current and future obligations and expenses of the fund, based on the aggregate statewide average annual loss to all insurers from covered events. In calculating the aggregate statewide average annual loss from covered events, the fund shall use an average of the results of at least two catastrophic loss models generally accepted within the actuarial community. The terms "actuarially indicated" includes additional amounts if needed to pay debt service on revenue bonds issued under this chapter and to provide required debt service coverage in excess of the amounts required to pay actual debt service on revenue bonds issued under this chapter. The "actuarially indicated" premium for each insurer shall be determined according to principles of actuarial science to reflect each insurer's relative exposure to hurricane losses.
- (b) "Board", the Governing Board of the Massachusetts Windstorm Catastrophe Fund.
- (c) "Bond", any bond, debenture, note, or other evidence of financial indebtedness issued under this chapter.
- (d) "Corporation", the Massachusetts Windstorm Catastrophe Fund Finance Corporation created by subsection (c) of section 6.
- (e) "Covered event", any storm causing losses as defined in subsection (k) to residential or commercial property.
- (f) "Covered policy", any insurance policy covering residential or commercial property in the commonwealth issued by an authorized insurer or the FAIR Plan.
- (g) "Debt service", the amount required in any fiscal year to pay the principal of, redemption premium, if any, and interest on revenue bonds and any amounts required by the terms of documents authorizing, securing, or providing liquidity for revenue bonds necessary to maintain in effect any such liquidity or security arrangements.
- (h) "Debt service coverage", the amount, if any, required by the documents under which revenue bonds are issued, which amount is to be received in any fiscal year in excess of the amount required to pay debt service for that fiscal year.
- (i) "Fund", the Massachusetts Windstorm Catastrophe Fund created by this chapter.
- (j) "Insurer", any authorized insurer writing residential or commercial property insurance in the commonwealth, including the Massachusetts FAIR Plan.
- (k) "Losses", direct incurred losses under covered policies attributable to the peril of windstorm, including damage from wind, wind-borne debris, or wind-borne water, and including consequential damages, but excluding damage from flood or rising water, except that the term "losses" shall not include losses for fair rental value, loss of use, or business interruption losses. The term "losses" also includes an allowance for loss adjustment expenses, which shall be calculated at a percentage specified in the reimbursement contract no lower than 5 per cent of losses and no greater than 8 percent of losses.
- (l) "Retention", the amount of losses below for which an insurer is not entitled to reimbursement from the fund. An insurer's retention shall be calculated as follows:
- (1) The fund shall calculate and report to each insurer the retention multiples for each contract year. For the contract year beginning January 1, 2009, the retention multiple shall be equal to \$600 million divided by the total estimated reimbursement premium for the contract year; for subsequent years, the retention multiple shall be equal to \$600 million, adjusted based upon the reported exposure from the prior contract year to reflect the percentage growth in exposure to the fund for covered policies since 2009, divided by the total estimated reimbursement premium for the contract year.
- (2) An insurer shall determine its retention by multiplying its reimbursement premium, as determined under section 5, by the applicable retention multiple.

Section 3. (a) There shall be within the treasury of the commonwealth an independent trust fund to be known as the Massachusetts Windstorm Catastrophe Fund.

- (b) The fund shall be administered by the Governing Board of the Massachusetts Windstorm Catastrophe Fund. The board shall consist of the governor, the attorney general, the state auditor, the state secretary, and the state treasurer and receiver general. The governor shall chair the board. The affirmative vote of at least 3 members of the board is required for any official action under this chapter, except for determination of alternative coverage levels under section 4 and determination of the reimbursement premium formula under section 5, which require the affirmative vote of all 5 members of the board.
- (c) Moneys in the fund may not be expended, loaned, or appropriated except (i) to pay obligations of the fund arising out of reimbursement contracts entered into under section 4, (ii) to pay debt service on revenue bonds issued under section 6, and (iii) to pay the costs of the mitigation program under section 7, costs of procuring reinsurance, and the costs of administration of the fund. The board shall invest the moneys in the fund in the manner provided by law for other funds of the commonwealth. Except as otherwise provided in this chapter, earnings from all investments shall be retained in the fund.
- (d) Managerial and administrative functions shall be performed by public employees employed by the board. In addition, the board may contract with professionals or service providers for specialized services upon a determination that the provision of

such specialized services under contract is in the best interest of the commonwealth. The board may adopt rules that are reasonable and necessary to implement this chapter, including rules specifying the interest due on any delinquent remittances, which interest may not exceed the fund's rate of return plus 5 per cent. The board may, by rule, provide for the exemption from sections 4 and 5 of insurers writing covered policies with less than \$5 million in aggregate exposure for covered policies if the exemption does not affect the actuarial soundness of the fund.

Section 4. (a) Beginning January 1, 2009, the fund shall annually enter into a contract with each insurer to provide to the insurer the reimbursement described in subsections (b) and (d), in exchange for the reimbursement premium paid into the fund under section 5. As a condition of doing business in the commonwealth, each insurer shall enter into such a contract. The contract period shall be the calendar year.

(b)(1) The contract shall contain a promise by the fund to reimburse the insurer for 90 per cent of its losses from each covered event in excess of the insurer's retention, up to the maximum reimbursement determined under paragraph (3) of subsection (d).

(2) The governing board may provide participating insurers other than the Massachusetts FAIR Plan with the option to select a coverage level lower than the 90 per cent level specified in paragraph (1), but no lower than 45 per cent, in exchange for a proportionally lower reimbursement premium. The board shall specify such optional coverage levels at the same time as it approves the reimbursement premium formula under section 5. The optional coverage levels must be approved by unanimous vote of the membership of the board.

(3) The contract shall provide that reimbursement amounts shall not be reduced by reinsurance paid or payable to the insurer from other sources.

(c)(1) The contract shall also provide that the obligation of the fund with respect to all contracts covering a particular contract year shall not exceed \$4.86 billion for that contract year, except that, beginning with the 2009 contract year, the \$4.86 billion annual limit shall be adjusted based upon the reported exposure from the prior contract year to reflect the percentage change in exposure to the fund for covered policies since 2008.

(2) To facilitate coordination between fund reimbursements and reinsurance, the fund shall, beginning on December 1, 2008, and annually thereafter, provide each insurer with the data necessary to enable the insurer to make a reasonable projection of its retention and maximum projected payout from the fund for losses for the ensuing contract year. For all regulatory and reinsurance purposes, an insurer may estimate its projected payout from the fund for losses as its share of the total fund premium for the current contract year multiplied by the maximum aggregate fund payout for losses as determined under paragraph (1).

(d) The contract shall:

(1) Require each insurer to report its losses from each covered event on a schedule specified by the fund.

(2) Require the fund to determine and pay, as soon as practicable after receiving initial reports of reimbursable losses, the initial amount of reimbursement due, and to determine and pay adjustments to this amount based on later loss information, subject to such review and verification as the fund considers appropriate. The adjustments to reimbursement amounts shall require the fund to pay, or the insurer to return, amounts reflecting the most recent calculation of losses.

(3) Specify that the insurer's reimbursement with respect to a contract year may not exceed the total claims-paying capacity of the fund, as determined under subsection (c), multiplied by the insurer's share of the total reimbursement premium paid to the fund for the contract year.

(4) Provide that if an insurer demonstrates to the fund that it is likely to qualify for reimbursement under the contract, and demonstrates to the fund that the immediate receipt of moneys from the fund is likely to prevent the insurer from becoming insolvent or is otherwise in the public interest, the fund shall advance the insurer, at market interest rates, the amounts necessary to enable the insurer to timely pay claims; however, an advance under this paragraph may not exceed 50 per cent of the fund's estimate of the reimbursement due the insurer. The insurer's reimbursement shall be reduced by an amount equal to the amount of the advance and interest thereon.

(5) Provide that in the event of the insolvency of an insurer, the fund shall pay directly to the Receiver as defined in Section 180A of Chapter 175 ("Receiver") for the benefit of Massachusetts policyholders of the insurer the net amount of all reimbursement moneys owed to the insurer. As used in this paragraph, the term "net amount of all reimbursement moneys" means that amount which remains after reimbursement for:

(i) Preliminary or duplicate payments owed to private reinsurers or other inuring reinsurance payments to private reinsurers that satisfy statutory or contractual obligations of the insolvent insurer attributable to covered events to such reinsurers; or (ii) Funds owed to a bank or other financial institution to cover obligations of the insolvent insurer under a credit agreement that assists the insolvent insurer in paying claims attributable to covered events.

The private reinsurers, banks, or other financial institutions shall be reimbursed or otherwise paid before payment to the Receiver, notwithstanding any law to the contrary. The Receiver shall pay all claims up to the maximum amount permitted by law; thereafter, the Receiver shall use any remaining reimbursement moneys paid to it under this chapter for pro rata payments of claims in excess of such maximum amount. This paragraph does not apply to the Massachusetts FAIR Plan.

(e) In order to ensure that insurers have properly reported the insured values on which the reimbursement premium is based and to ensure that insurers have properly reported the losses for which reimbursements have been made, the fund shall inspect, examine, and verify the records of each insurer's covered policies at such times as the fund considers appropriate and according to standards established by rule for the specific purpose of validating the accuracy of exposures and losses required to be reported under the terms and conditions of the reimbursement contract. The costs of the examinations shall be borne by the fund.

However, in order to remove any incentive for an insurer to delay preparations for an examination, the fund shall be reimbursed by the insurer for any examination expenses incurred in addition to the usual and customary costs of the examination, which

additional expenses were incurred as a result of an insurer's failure, despite proper notice, to be prepared for the examination or as a result of an insurer's failure to provide requested information while the examination is in progress. If the fund finds any insurer's records or other necessary information to be inadequate or inadequately posted, recorded, or maintained, the fund may employ experts to reconstruct, rewrite, record, post, or maintain such records or information, at the expense of the insurer being examined, if that insurer has failed to maintain, complete, or correct the records or deficiencies after the fund has given the insurer notice and a reasonable opportunity to do so.

Section 5. (a) Each reimbursement contract shall require the insurer to annually pay to the Fund an actuarially indicated premium for the reimbursement.

(b) The board shall select an independent consultant to develop a formula for determining the actuarially indicated premium to be paid to the fund. The formula shall specify, for each zip code or other limited geographical area, the amount of premium to be paid by an insurer for each \$1,000 of insured value under covered policies in that zip code or other area. In establishing premiums, the board shall consider any factors that tend to enhance the actuarial sophistication of ratemaking for the fund, including deductibles, type of construction, type of coverage provided, relative concentration of risks, a factor providing for more rapid cash buildup in the fund until the fund capacity for a single year is fully funded, and other factors considered by the board to be appropriate. The formula may provide for a procedure to determine the premiums to be paid by new insurers that begin writing covered policies after the beginning of a contract year, taking into consideration when the insurer starts writing covered policies, the potential exposure of the insurer, the potential exposure of the fund, the administrative costs to the insurer and to the fund, and any other factors deemed appropriate by the board. The formula must be approved by unanimous vote of the membership of the board. The board may, at any time, revise the formula pursuant to the procedure provided in this subsection. If the board fails to approve the formula before the first day of the contract year, the formula used in the previous year shall apply.

(c) No later than November 1 of each year, each insurer shall notify the fund of its insured values under covered policies by zip code, as of September 1 of that year. On the basis of these reports, the fund shall calculate the premium due from each insurer for the ensuing contract year, based on the formula adopted under subsection (b). Each insurer shall pay the required annual premium pursuant to a periodic payment plan specified in the contract. The fund shall collect interest on late reimbursement premium payments consistent with the assumptions made in developing the premium formula in accordance with subsection (b).

(d) All premiums paid to the fund under reimbursement contracts shall be treated as premium for approved reinsurance for all accounting, regulatory, premium tax, and retaliatory tax purposes. An insurer's rates may reflect reimbursement premiums paid to the fund, and may, as to any particular geographic area or construction type, be structured to reflect the actual reimbursement premium attributable to that geographic area and construction type.

Section 6. (a) (1) Upon the occurrence of a covered event and a determination that the unencumbered balance of the fund is or will be insufficient to pay reimbursement at the levels promised in the reimbursement contracts, the board may take the necessary steps under subsection (c) for the issuance of revenue bonds for the benefit of the fund. The proceeds of these revenue bonds may be used to make reimbursement payments under reimbursement contracts; to refinance or replace previously existing borrowings or financial arrangements; to pay interest on bonds; to fund reserves for the bonds; to pay expenses incident to the issuance or sale of any bond issued under this section, including costs of validating, printing, and delivering the bonds, costs of printing the official statement, costs of publishing notices of sale of the bonds, and related administrative expenses; or for such other purposes related to the financial obligations of the fund as the board may determine. The term of the bonds may not exceed 30 years. The board may pledge or authorize the corporation to pledge all or a portion of all revenues under section 5 and under subsection (b) to secure these revenue bonds, and the board may execute such agreements between the board and the issuer of any revenue bonds and providers of other financing arrangements under subsection (b) of section 7 as the board considers necessary to evidence, secure, preserve, and protect this pledge. If reimbursement premiums received under section 5 or earnings on these premiums are used to pay debt service on revenue bonds, the premiums and earnings shall be used only after the use of the moneys derived from assessments under subsection (b). The funds, credit, property, or taxing power of the commonwealth or political subdivisions of the commonwealth shall not be pledged for the payment of these bonds. The board may also enter into agreements under subsection (c) for the purpose of issuing revenue bonds in the absence of a covered event upon a determination that this action would maximize the ability of the fund to meet future obligations.

(2) The issuance of bonds under this section is for the public purpose of paying the proceeds of the bonds to insurers, thereby enabling insurers to pay the claims of policyholders to assure that policyholders are able to pay the cost of construction, reconstruction, repair, restoration, and other costs associated with damage to property of policyholders of covered policies after the occurrence of a covered event.

(b) (1) If the board determines that the unencumbered balance of the fund is insufficient to pay the obligations, costs, and expenses of the fund and the corporation, including repayment of revenue bonds and that portion of the debt service coverage not met by reimbursement premiums, the board shall direct the insurance commissioner to levy, by order, an emergency assessment on policyholders, measured by direct written premiums for all property and casualty lines of business in the commonwealth, including the property and casualty business of surplus lines insurers. For purposes of emergency assessments under this section, the term "property and casualty business" includes all lines of business identified on Form 2, Exhibit of Premiums and Losses, in the annual statement required of authorized insurers and any rule adopted under this section, except for those lines identified as accident and health insurance and except for policies written under the National Flood Insurance Program. The assessment shall be specified as a percentage of future premium collections and is subject to annual adjustments by the board to reflect changes in premiums subject to assessments collected under this paragraph in order to meet debt obligations. The same percentage shall



apply to all policies in lines of business subject to the assessment issued or renewed during the 12-month period beginning on the effective date of the assessment.

(2) The assessment on policyholders under this subsection shall be paid by the policyholder to the insurer that issued the policy. Each insurer shall collect from each policyholder the full amount of the assessment payable in respect to the policyholder's policy. All premium notices or invoices issued after the effective date of this act shall include a statement of the amount of the assessment, if any, listed separately from the amount of the premium.

(3) The aggregate annual assessment on policyholders under this subsection shall not exceed 6 per cent of premium. An annual assessment under this subsection shall continue as long as the revenue bonds issued with respect to which the assessment was imposed are outstanding, including any bonds the proceeds of which were used to refund the revenue bonds, unless adequate provision has been made for the payment of the bonds under the documents authorizing issuance of the bonds.

(4) The insurer shall collect the assessment from the policyholder at the same time as it collects the premium payment for each policy and shall remit the assessment collected to the fund or corporation as provided in the order issued by the insurance commissioner. The insurance commissioner shall verify the accurate and timely collection and remittance of emergency assessments and shall report the information to the board in a form and at a time specified by the board. Each insurer collecting assessments shall provide the information with respect to premiums and collections that may be required by the insurance commissioner for verification of compliance with this subsection.

(5) With respect to assessments of surplus lines premiums, each surplus lines agent shall collect the assessment from the policyholder and remit the assessment as specified by order of the insurance commissioner.

(6) Any assessment authority not used for a particular contract year may be used for a subsequent contract year, but the combined percentage level of all assessments may not exceed the maximum specified in paragraph (2). After assessments have been levied, if the board determines that the unencumbered balance of the fund and assessment proceeds are insufficient to pay the obligations, costs, and expenses of the fund and the corporation, including repayment of revenue bonds and that portion of the debt service coverage not met by reimbursement premiums, the board shall direct the insurance commissioner to levy an additional emergency assessment up to an amount not exceeding the amount of unused assessment authority from a previous contract year or years.

(7) The emergency assessments authorized by this section are the legal obligation of the policyholder. The emergency assessments are not premiums and are not subject to any taxes, fees, or commissions. The amounts imposed on policyholders under this section are not subject to any retaliatory tax provisions or similar provisions. An insurer may treat the failure of an insured to pay an assessment as a failure to pay the premium. An insurer is not liable for uncollectible assessments.

(8) When an insurer is required to return an unearned premium, it shall also return any assessment collected from the policyholder that is attributable to the unearned premium. A credit adjustment to the collected assessment may be made by the insurer with regard to future remittances that are payable to the fund or corporation, but the insurer is not entitled to a refund.

(c) (1) The General Court further finds that:

(i) The public benefits corporation created under this subsection will provide a mechanism necessary for the cost-effective and efficient issuance of bonds. This mechanism will eliminate unnecessary costs in the bond issuance process, thereby increasing the amounts available to pay reimbursement for losses to property sustained as a result of hurricane damage.

(ii) The purpose of these bonds is to fund reimbursements through the Massachusetts Windstorm Catastrophe fund to pay for the costs of construction, reconstruction, repair, restoration, and other costs associated with damage to properties of policyholders of covered policies due to the occurrence of a covered event.

(iii) The efficacy of the financing mechanism will be enhanced by the corporation's ownership of the assessments, by the insulation of the assessments from possible bankruptcy proceedings, and by covenants of the state with the corporation's bondholders.

(2)(i) There shall be a public benefits corporation, which is an instrumentality of the commonwealth, to be known as the Massachusetts Windstorm Catastrophe Fund Finance Corporation.

(ii) The corporation shall operate under the Governing Board of the Massachusetts Windstorm Catastrophe Fund.

(iii) The corporation shall have all of the powers of corporations organized under chapter 156D, subject to this subsection.

(iv) The corporation may issue bonds and engage in other financial transactions that are necessary to provide sufficient funds to achieve the purposes of this chapter.

(v) The corporation may invest funds as provided by law for other funds of the commonwealth.

(vi) There shall be no liability on the part of, and no cause of action shall arise against, any board members or employees of the corporation for any actions taken by them in the performance of their duties under this subsection.

(vii) The commonwealth hereby covenants with holders of bonds of the corporation that the commonwealth will not repeal or abrogate the power of the board to direct the insurance commissioner to levy the assessments and to collect the proceeds of the revenues pledged to the payment of these bonds as long as any such bonds remain outstanding unless adequate provision has been made for the payment of these bonds pursuant to the documents authorizing the issuance of the bonds.

(4) The bonds of the corporation are not a debt of the commonwealth or of any political subdivision, and neither the commonwealth nor any political subdivision is liable on these bonds. The corporation does not have the power to pledge the credit, the revenues, or the taxing power of the commonwealth or of any political subdivision. The credit, revenues, or taxing power of the commonwealth or of any political subdivision shall not be considered to be pledged to the payment of any bonds of the corporation.

(5)(i) The property, revenues, and other assets of the corporation; the transactions and operations of the corporation and the income from such transactions and operations; and all bonds issued under this subsection and interest on these bonds are exempt

from taxation by the commonwealth.

(ii) All bonds of the corporation shall be and constitute legal investments without limitation for all public bodies of the commonwealth; for all banks, trust companies, savings banks, savings associations, savings and loan associations, and investment companies; for all administrators, executors, trustees, and other fiduciaries; for all insurance companies and associations and other persons carrying on an insurance business; and for all other persons who are now or may hereafter be authorized to invest in bonds or other obligations of the commonwealth and shall be and constitute eligible securities to be deposited as collateral for the security of any commonwealth, county, municipal, or other public funds. This paragraph shall be considered as additional and supplemental authority and shall not be limited without specific reference to this paragraph.

(6) The corporation and its corporate existence shall continue until terminated by law, but no such law shall take effect as long as the corporation has bonds outstanding unless adequate provision has been made for the payment of those bonds pursuant to the documents authorizing the issuance of those bonds. Upon termination of the existence of the corporation, all of its rights and properties in excess of its obligations shall pass to and be vested in the commonwealth.

(d) (1) As long as the corporation has any bonds outstanding, neither the fund nor the corporation shall have the authority to file a voluntary petition under chapter 9 of the federal Bankruptcy Code or the corresponding chapter or sections that may be in effect, from time to time, and neither any public officer nor any organization, entity, or other person shall authorize the fund or the corporation to be or become a debtor under chapter 9 of the federal Bankruptcy Code or such corresponding chapter or sections as may be in effect, from time to time, during any such period.

(2) The commonwealth hereby covenants with holders of bonds of the corporation that the commonwealth will not limit or alter the denial of authority under this subsection or the rights under this chapter vested in the fund or the corporation to fulfill the terms of any agreements made with such bondholders or in any way impair the rights and remedies of those bondholders as long as any bonds remain outstanding unless adequate provision has been made for the payment of those bonds pursuant to the documents authorizing the issuance of the bonds.

(3) Notwithstanding any other law, any pledge of or other security interest in revenue, money, accounts, contract rights, general intangibles, or other personal property made or created by the fund or the corporation shall be valid, binding, and perfected from the time the pledge is made or other security interest attaches without any physical delivery of the collateral or further act and the lien of the pledge or other security interest shall be valid, binding, and perfected against all parties having claims of any kind in tort, contract, or otherwise against the fund or the corporation irrespective of whether or not the parties have notice of the claims. No instrument by which such a pledge or security interest is created nor any financing statement need be recorded or filed.

(e) When the board makes a determination that emergency assessments are to be levied, the board shall also adopt a plan for the refund of assessment proceeds, which plan will be activated only after all bonds of the corporation have been retired and the unencumbered balance of the fund exceeds the maximum payout of the fund as specified in paragraph (1) of subsection (c) of section 4. The plan shall provide for rebates to then-current policyholders of assessable policies in proportion to premiums paid by the policyholder in the year preceding the year in which rebates are paid out.

Section 7. (a) The fund may procure reinsurance for the purpose of maximizing the capacity of the fund.

(b) In addition to borrowing under section 6, the fund may also borrow from, or enter into other financing arrangements with, any market sources at prevailing interest rates.

(c) Each fiscal year, the sum of \$5 million shall be appropriated from the investment income of the fund for the purpose of providing funding for local governments, public agencies, public and private educational institutions, and nonprofit organizations to support programs intended to improve windstorm preparedness, reduce potential losses in the event of a windstorm, provide research into means to reduce such losses, educate or inform the public as to means to reduce windstorm losses, assist the public in determining the appropriateness of particular upgrades to structures or in the financing of such upgrades, or protect local infrastructure from potential damage from a windstorm. If the investment income of the fund from the year preceding the appropriation exceeds \$20 million, the amount available for appropriation under this subsection shall be no less than \$5 million and no more than 25 per cent of the investment income of the fund from the prior year. Moneys shall first be available for appropriation under this subsection for fiscal year 2009-2010.

(d) The fund may allow insurers to comply with reporting requirements and reporting format requirements by using alternative methods of reporting if the proper administration of the fund is not thereby impaired and if the alternative methods produce data which is consistent with the purposes of this chapter.

(e) In order to assure the equitable operation of the fund, the fund may impose a reasonable fee on an insurer to recover costs involved in reprocessing inaccurate, incomplete, or untimely exposure data submitted by the insurer.

Section 8. (a) The Massachusetts Windstorm Catastrophe Fund Advisory Council is created for the purpose of providing advice and information to the board. The advisory council shall consist of 14 members appointed as provided in this section.

(b) The board shall appoint the following 8 members: a property/casualty actuary, a structural engineer, a meteorologist, a representative of personal lines insurers, a representative of commercial lines insurers, a representative of insurance agents, a representative of reinsurers, and a representative of mortgage lenders, all of whom shall serve at the pleasure of the board.

(c) Each member of the board shall appoint 1 person as a consumer representative, who shall serve at the pleasure of the board member responsible for the appointment.

(d) The insurance commissioner shall serve as an ex-officio member and shall chair the advisory council.

Section 9. Any violation of this chapter or of rules adopted under this chapter shall constitute a violation of the insurance code.

Section 10. The board may take any action necessary to enforce the rules, and the provisions and requirements of the reimbursement contract, required by and adopted pursuant to this chapter.

Section 11. Upon the creation of a federal or multi-state catastrophic insurance or reinsurance program intended to serve purposes similar to the purposes of the fund created by this chapter, the board may recommend legislative action for coordination with the federal or multi-state program, for termination of the fund, or for such other actions as the board finds appropriate in the circumstances.

Section 12. The fund and the duties of the board under this chapter may be terminated only by law. Upon termination of the fund, all assets of the fund shall revert to the commonwealth.

Section 13. The board shall promptly seek a determination from the Internal Revenue Service establishing that the fund is exempt from federal taxation and that bonds issued on behalf of the fund may be issued on a tax-free basis. In the event of an unfavorable determination, the board shall recommend appropriate amendments to this chapter.

SECTION . For the purpose of defraying the startup costs of the Massachusetts Windstorm Catastrophe Fund and for the purpose of providing an initial capital contribution to the fund from the commonwealth, the sum of \$7.5 million is appropriated to the fund for the fiscal year 2008-2009, and the sum of \$7.5 million is appropriated to the fund for the fiscal year 2009-2010.

*After remarks, the amendment was rejected.*

Ms. Menard in the Chair, Messrs. O'Leary, Moore and Montigny moved that the bill be amended by inserting at the end thereof the following new section:—

Section . There shall be established a commission to recommend rules and regulations pertaining to the creation of the Massachusetts Catastrophe Fund, hereinafter referred to as the "Fund". The commission shall consist of: the state treasurer or his designee; the commissioner of insurance or his designee, the attorney general or his designee; a representative from the Massachusetts Property Insurance Underwriting Association; and a representative of the Consumer Federation of America. The Fund shall be established in the State Treasury as a special fund to be structured and operated consistent with model legislation adopted by the National Conference of Insurance Legislators for this purpose. The Fund shall provide reinsurance and shall include specific provisions to enhance prevention and mitigation measures, strengthen first responders, improve recovery and rebuilding processes, and educate homeowners and other property owners on issues surrounding catastrophe management. The Fund shall be created to operate on a tax-exempt and nonprofit basis to maximize savings for consumers and to make private insurance more available and affordable for consumers of homeowners insurance in the state of Massachusetts. All savings shall be passed on to consumers. The Fund shall also be structured and operated to attract new carriers and generate additional capacity to the state and to make the market more competitive, stable and financially strong. The Fund shall require that all insurers writing covered policies of homeowners insurance conduct a thorough actuarial review of their homeowners insurance rates associated with catastrophe coverage for the perils covered by the Fund consistent with the Casualty Actuarial Society Statement of Principles Regarding Property and Casualty Insurance Ratemaking and shall adjust their rates to take into account all reinsurance expense savings and all reductions in loss costs due to the Fund. The Fund shall also provide for mandatory participation with minimum retention levels by insurers; determine reinsurance premiums on an actuarially indicated basis to prevent regional subsidization. The commission shall file a report of its findings, including any legislative or regulatory recommendations, with the clerks of the house of representatives and the senate, the joint committee on financial services and the house and senate committees on ways and means by December 1, 2008.

**During consideration, at a quarter past three o'clock P.M., Mr. Tisei doubted the presence of a quorum. The Chair (Ms. Menard) having determined that a quorum was not in attendance, then directed the Sergeant-at-Arms to secure the presence of a quorum.**

**Subsequently, at seventeen minutes past three o'clock P.M., a quorum was declared present.**

*After debate, the amendment was rejected.*

Messrs. O'Leary, Moore, Montigny and Tarr moved that the bill be amended by inserting at the end thereof the following new section:—

Section . Upon the enactment of federal law providing for the creation of a National Catastrophe Reinsurance Fund (hereinafter referred to as the "National Fund") that provides a financial backstop to state catastrophe funds designed to provide national reinsurance to state catastrophe funds, the legislature shall authorize, by specific legislation, the creation of the Massachusetts Homeowners Catastrophe Fund (hereinafter referred to as the "Fund") established in the State Treasury as a special fund to be structured and operated consistent with model legislation adopted by the National Conference of Insurance Legislators for this purpose. The Fund shall provide reinsurance and shall include specific provisions to enhance prevention and mitigation measures, strengthen first responders, improve recovery and rebuilding processes, and educate homeowners and other property owners on issues surrounding catastrophe management. The Fund may be created as soon as practicable to qualify for participation in the National Fund and to provide premium savings to consumers. The Fund shall be created to operate on a tax-exempt and nonprofit basis to maximize savings for consumers and to make private insurance more available and affordable for consumers of homeowners insurance in the state of Massachusetts. All savings shall be passed on to consumers. The Fund shall also be

structured and operated to attract new carriers and generate additional capacity to the state and to make the market more competitive, stable and financially strong. The Fund shall require that all insurers writing covered policies of homeowners insurance to conduct a thorough actuarial review of their homeowners insurance rates associated with catastrophe coverage for the perils covered by the Fund consistent with the Casualty Actuarial Society Statement of Principles Regarding Property and Casualty Insurance Ratemaking and shall adjust their rates to take into account all reinsurance expense savings and all reductions in loss costs due to the Fund. The Fund shall also provide for mandatory participation with minimum retention levels by insurers; determine reinsurance premiums on an actuarially indicated basis to prevent regional subsidization.

**The President in the Chair, at twenty-five minutes before four o'clock P.M., Mr. Tisei doubted the presence of a quorum. The President, having determined that a quorum was not in attendance, then directed the Sergeant-at-Arms to secure the presence of a quorum.**

**Subsequently, at nineteen minutes before four o'clock P.M., a quorum was declared present.**

*After further debate, the amendment was rejected.*

Messrs. O'Leary, Moore and Montigny moved that the bill be amended by inserting at the end thereof the following new sections:—

Section . Section 6 of Chapter 174A is hereby amended by inserting, in line 23, after the word "commissioner." the following words:—

"The commissioner may in his discretion, and shall on the motion of the attorney general, initiate a hearing on any such filing prior to its effective date after at least ten days' notice. If the commissioner determines after a hearing that any classification, rule or rates, rating plan or modification of any of the foregoing used by an insurer does not comply with this chapter or is violative of public policy he shall order that such classification or rule or rate or rating plan or any modification thereof be disapproved, and with respect to any such rate, such order may include a provision for premium adjustment."

Section . Section 6 of Chapter 175A, as appearing in the 2006 Official Edition, is hereby amended by inserting, in line 21, after the word "effective." the following words:—

"The commissioner may in his discretion, and shall on the motion of the attorney general, initiate a hearing on any such filing prior to its effective date after at least ten days' notice. If the commissioner determines after a hearing that any classification, rule or rates, rating plan or modification of any of the foregoing used by an insurer does not comply with this chapter or is violative of public policy he shall order that such classification or rule or rate or rating plan or any modification thereof be disapproved, and with respect to any such rate, such order may include a provision for premium adjustment."

*The amendment was rejected.*

Messrs. O'Leary, Moore, Montigny and Hedlund moved that the bill be amended in section 2, by striking out, in line 20, the figure "3" and inserting in place thereof the following figure "2".

*The amendment was rejected.*

Messrs. O'Leary, Moore, Montigny and Hedlund moved that the bill be amended by inserting at the end thereof the following new section:—

Section . Section 5 of chapter 175C of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out in section c the following sentence:—

Notwithstanding clause (2), the commissioner shall consider the effects of predicted hurricane losses and the cost of catastrophe reinsurance on the rates charged by voluntary market insurers and the cost of catastrophe reinsurance and the predicted hurricane losses on the association approving rates for homeowners insurance in all territories.

**During consideration, at ten minutes before four o'clock P.M., Mr. Tisei doubted the presence of a quorum. The President, having determined that a quorum was not in attendance, then directed the Sergeant-at-Arms to secure the presence of a quorum.**

**Subsequently, at nine minutes before four o'clock P.M., a quorum was declared present.**

*The amendment was then rejected.*

Mr. O'Leary moved that the bill be amended by inserting after section 9 the following section:—

"Section 9A. The Massachusetts Property Insurance Underwriting Association shall not increase rates for the association homeowners insurance policies in large share territories before March 1, 2009"

**The amendment was adopted.**

Mr. O'Leary moved that the bill be amended by striking out section 9 and inserting in place thereof the following section:—

"SECTION 9. Said chapter 175C is hereby further amended by adding the following section:—

Section 10. The association shall pay a dividend on homeowners insurance premiums for coastal properties occupied as primary residences having a Coverage A limit not greater than the median Coverage A for the territory in which the property is located. This dividend shall be paid in a year which is the third consecutive year in which there have been no hurricane-related losses in the territory and this dividend shall be a third of all hurricane loss premiums, less the cost of reinsurance purchased by the association. This dividend shall not be paid in a year when such payment shall cause the association to realize a net loss for that year, and shall only be made in a year in which the association has purchased adequate reinsurance for hurricane losses, as determined by the commissioner. The possibility of a dividend shall not be considered by the commissioner in approving rates

proposed by the association.”

The amendment was adopted.

Mr. Rosenberg in the Chair, the question on passing the bill to be engrossed was determined by a call of the yeas and nays, at four minutes before four o'clock P.M., on motion of Mr. O'Leary, as follows, to wit (*yeas 37 — nays 0*) [**Yeas and Nays No. 260**]:

<b>YEAS.</b>	
Antonioni, Robert A.	Brown, Scott P.
Augustus, Edward M., Jr.	Buoniconti, Stephen J.
Baddour, Steven A.	Candaras, Gale D..
Berry, Frederick E.	Chandler, Harriette L.
Brewer, Stephen M.	Creedon, Robert S., Jr.
Creem, Cynthia Stone	O'Leary, Robert A.
Downing, Benjamin B.	Pacheco, Marc R.
Fargo, Susan C.	Panagiotakos, Steven C.
Galluccio, Anthony D.	Petrucelli, Anthony
Hart, John A., Jr.	Rosenberg, Stanley C.
Hedlund, Robert L.	Spilka, Karen E.
Jehlen, Patricia D..	Tarr, Bruce E.
Joyce, Brian A.	Timilty, James E.
Knapik, Michael R.	Tisei, Richard R.
McGee, Thomas M.	Tolman, Steven A.
Menard, Joan M.	Tucker, Susan C.
Montigny, Mark C.	Walsh, Marian
Moore, Richard T.	Wilkerson, Dianne — <b>37.</b>
Morrissey, Michael W.	
<b>NAYS — 0.</b>	
<b>ABSENT OR NOT VOTING.</b>	
Marzilli, Jim	Resor, Pamela — <b>2.</b>

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

*Recess.*

There being no objection, at six minutes past four o'clock P.M., the President declared a further recess, pursuant to the provisions of Senate Rule 13B, for a majority and minority caucus; and, at twenty-six minutes before five o'clock P.M., the Senate reassembled, the President in the Chair.

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

*Committee of Conference Report.*

There being no objection, during consideration of the Orders of the Day, the following matters were considered, as follows:  
A report of the committee of conference on the disagreeing votes of the two branches, with reference to the Senate amendment to the House Bill improving tax fairness and business competitiveness (on residue of House, No. 4672) amended by the Senate by

striking out all after the enacting cause and inserting in place thereof the text contained in Senate document numbered 2685), reported in part, a “Bill relative to tax fairness and business competitiveness” (House, No. 4904),— came from the House,— **was read.**

**Senate Rule 36 was suspended, on motion of Ms. Creem, and the report was considered forthwith.**

During consideration, at ten minutes before five o’clock P.M., Mr. Tisei doubted the presence of a quorum. The President, having determined that a quorum was not in attendance, then directed the Sergeant-at-Arms to secure the presence of a quorum.

Subsequently, Mr. Rosenberg in the Chair, at nine minutes before five o’clock P.M., a quorum was declared present.

After debate, the question on accepting the report was then determined by a call of the yeas and nays, at twenty-eight minutes before six o’clock P.M., on motion of Mr. Tisei, as follows to wit (*yeas 30 — nays 7*) [**Yeas and Nays No. 261**]:

<b>YEAS.</b>	
Antonioni, Robert A.	McGee, Thomas M.
Augustus, Edward M., Jr.	Menard, Joan M.
Baddour, Steven A.	Montigny, Mark C.
Berry, Frederick E.	Moore, Richard T.
Brewer, Stephen M.	O’Leary, Robert A.
Buoniconti, Stephen J.	Pacheco, Marc R.
Candaras, Gale D..	Panagiotakos, Steven C.
Chandler, Harriette L.	Petrucelli, Anthony
Creedon, Robert S., Jr.	Rosenberg, Stanley C.
Creem, Cynthia Stone	Spilka, Karen E.
Downing, Benjamin B.	Timilty, James E.
Fargo, Susan C.	Tolman, Steven A.
Galluccio, Anthony D.	Tucker, Susan C.
Hart, John A., Jr.	Walsh, Marian
Jehlen, Patricia D..	Wilkerson, Dianne — <b>30.</b>
<b>NAYS.</b>	
Brown, Scott P.	Morrissey, Michael W.
Hedlund, Robert L.	Tarr, Bruce E.
Joyce, Brian A.	Tisei, Richard R. — <b>7.</b>
Knapik, Michael R.	
<b>ABSENT OR NOT VOTING.</b>	
Marzilli, Jim	Resor, Pamela — <b>2.</b>

The President in the Chair, the yeas and nays having been completed at twenty-three minutes before six o’clock P.M., the report was accepted, in concurrence.

*Emergency Preamble Adopted.*

An engrossed Bill protecting children in the care of the Commonwealth (see House, No. 4905), having been certified by the Senate Clerk to be rightly and truly prepared for final passage and containing an emergency preamble,— was laid before the Senate; and, a separate vote being taken in accordance with the requirements of Article LXVII of the Amendments to the Constitution, the preamble was adopted in concurrence, by a vote of 7 to 0.

The bill was signed by the President and sent to the House for enactment.

*Order Adopted.*

Messrs. Berry and Tisei offered the following order, to wit:

*Whereas*, On July 1, 2008, the Honorable Jim Marzilli, the Senator from the Fourth Middlesex District, was indicted by a Middlesex County Grand Jury and will be arraigned in Lowell Superior Court during the week of July 7, 2008; and

*Whereas*, the court case is open and the Senate wishes to take no action that would in any manner prejudice or interfere with the administration of justice in the Trial Courts; and

*Whereas*, Senate Rule 12A provides for referring questions of conduct of members to the Committee on Ethics and Rules by order of the Senate;

Therefore, be it

*Ordered*, that the question of the conduct of the Senator from the Fourth Middlesex District in this matter be referred to the Committee on Ethics and Rules for its consideration. Except as provided in Rule 12A, all proceedings of the Committee shall be confidential. The Committee shall make no report until the Superior Court criminal matter has concluded.

**Under the rules, referred to the committee on Ethics and Rules.**

**Subsequently, Mr. Downing for the said committee, reported, recommending that the order ought to be adopted.**

The rules were suspended, on motion of Ms. Menard, and the order was considered forthwith.

The question on adoption of the order was determined by a call of the yeas and nays, at seventeen minutes before six o'clock P.M., on motion of Mr. Tisei, as follows, to wit (*yeas 38 — nays 0*) [**Yeas and Nays No. 262**]:

YEAS.	
Antonioni, Robert A.	Brown, Scott P.
Augustus, Edward M., Jr.	Buoniconti, Stephen J.
Baddour, Steven A.	Candaras, Gale D..
Berry, Frederick E.	Chandler, Harriette L.
Brewer, Stephen M.	Creedon, Robert S., Jr.
Creem, Cynthia Stone	Murray, Therese
Downing, Benjamin B.	O'Leary, Robert A.
Fargo, Susan C.	Pacheco, Marc R.
Galluccio, Anthony D.	Panagiotakos, Steven C.
Hart, John A., Jr.	Petrucelli, Anthony
Hedlund, Robert L.	Rosenberg, Stanley C.
Jehlen, Patricia D..	Spilka, Karen E.
Joyce, Brian A.	Tarr, Bruce E.
Knapik, Michael R.	Timilty, James E.
McGee, Thomas M.	Tisei, Richard R.
Menard, Joan M.	Tolman, Steven A.
Montigny, Mark C.	Tucker, Susan C.
Moore, Richard T.	Walsh, Marian
Morrissey, Michael W.	Wilkerson, Dianne — 38.
NAYS — 0.	
ABSENT OR NOT VOTING.	
Marzilli, Jim	Resor, Pamela — 2.

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

*Orders of the Day.*

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

The Senate Bill directing the teachers' retirement board to include additional compensation in calculating the retirement allowance of Nancy Swanson (Senate, No. 2765),— **was considered; and it was passed to be engrossed.**

**Sent to the House for concurrence.**

The Senate Bill to establish the interstate compact for juveniles (Senate, No. 2178, amended),— **was read a third time.**

Pending the question on passing the bill to be engrossed, Mr. Creedon moved that the bill be amended in section 2, by striking out the last sentence and inserting in place thereof the following sentence:— “the commissioner of probation shall serve as the compact administrator and the commissioner to the interstate commission for juveniles.”; and in section 3, in the proposed definition of “Commissioner”, in section 2 of chapter 120 of the General Laws, by striking out the words “appointed pursuant to section 3”.

**This amendment was adopted.**

**The bill, as further amended, was then passed to be engrossed.**

**Sent to the House for concurrence.**

The Senate Bill relative to pandemic and disaster preparation and response in the Commonwealth (Senate, No. 2775),— **was read a third time.**

Pending the question on passing the bill to be engrossed, Mr. Tarr moved that the bill be amended in section 21 by adding the following phrase:— “provided, that notwithstanding any general or special law to the contrary, the department shall not promulgate or implement any reduction in licensed acute care, medical-surgical, critical care or other beds licensed pursuant to Chapter 111 of the General Laws if that reduction would adversely impact the pandemic preparedness of any hospital that provides 1 or more essential health services as defined by the department pursuant to section 51G of said chapter 111.”.

**This amendment was rejected.**

**The bill was then passed to be engrossed.**

**Sent to the House for concurrence.**

The Senate Bill promoting for the public higher education capital improvement needs of the Commonwealth (Senate, No. 2779),— **was read a third time.**

After remarks, and pending the question on passing the bill to be engrossed, Ms. Wilkerson and Mr. Montigny moved that the bill be amended by inserting after section 10 the following section:—

“Section 10A. Section 29A of chapter 193 of the acts of 2004 is hereby repealed.”

**The amendment was adopted.**

Mr. Montigny moved that the bill be amended by inserting after section 3 the following section:—

“SECTION 3A Section 18 of chapter 773 of the acts of 1960 is hereby repealed.”; and by inserting after section 10 the following section:—

“SECTION 10A. Notwithstanding any general or special law to the contrary, chapters 7, 30, 149 and 149A of the General Laws shall apply to all bidding, advertising, procurement and construction at the University of Massachusetts and at state and community colleges in the same manner as the procurement and construction laws apply to other state agencies and all capital projects shall be overseen by the division of capital asset management and maintenance.”

*After debate, the amendment was rejected.*

Mr. Montigny moved that the bill be amended by inserting after section 13 the following section:—

“SECTION 13A. Notwithstanding any general or special law to the contrary, a private entity engaged in a construction, development, renovation, remodeling, reconstruction, rehabilitation or redevelopment project receiving funds pursuant to this act shall properly classify individuals employed on the project and shall comply with all laws concerning workers' compensation insurance coverage, unemployment insurance, social security taxes and income taxes with respect to all such employees. All construction contractors engaged by an entity on any such project shall furnish documentation to the appointing authority showing that all employees employed on the project have hospitalization and medical benefits that meet the minimum requirements of the connector board established in chapter 176Q of the General Laws.”

**The amendment was adopted.**

Messrs. Panagiotakos and Montigny, Ms. Chandler, Messrs. Brewer, Timilty and Brown moved to amend the bill in section 2, by striking out, in line 33, the figure “\$6,525,548” and inserting in place thereof the following figure:— “\$46,525,548”;

In said section 2, by inserting after the word “College”, in line 37, the following words:— “; provided further, that not less than \$3,200,000 shall be expended for the renovation of Building 2 of the former Texas Instruments campus in the city of Attleboro for the Bristol Community College campus in said city of Attleboro”;

In said Section 2, by inserting after the word “College”, in line 98, the following words:— “; provided further, that not less than \$15,931,331 shall be expended for additional classroom space at Quinsigamond Community College; provided further, that not less than \$5,500,000 shall be expended for reconstruction and improvements to parking lots at Mount Wachusett Community College”;



In said section 2, by striking out, in line 128, the figure “\$109,633,169” and inserting in place thereof the following figure:—  
“\$106,433,169”;

In said section 2, by inserting after the word “campus”, in line 188, the following words:— “; provided further, that not less than \$250,000 shall be expended on planning and design services, including obtaining cost estimates, revenue estimates, construction drawings and specifications, feasibility studies, surveys and site analyses to determine the feasibility, approximate size, scope, location, and economic development of graduate student dormitories and artist loft dormitories for the University of Massachusetts, Dartmouth; provided further, that not less than \$20,000,000 shall be expended on a marine science facility for the School of Marine Science and Technology at the University of Massachusetts, Dartmouth; provided further, that the marine science facility shall be located on an appropriate waterfront site in the city of New Bedford which may include, but shall not be limited to, the state pier, land located in the inner harbor of the port of New Bedford, or land adjacent to Fort Taber park”;

In said Section 2, by striking out, in line 193, the figure “\$30,000,000” and inserting in place thereof the following figure:—  
“\$30,000,000”; and

In section 13, by striking out, in line 336, the Figure “6” and inserting in place thereof the following figure:— “10”.

**The amendment was adopted.**

After remarks, the question on passing the bill to be engrossed was determined by a call of the yeas and nays, at sixteen minutes past six o’clock P.M., on motion of Mr. Montigny, as follows, to wit (*yeas 37 — nays 0*) [**Yeas and Nays No. 263**]:

<b>YEAS.</b>	
Antonioni, Robert A.	Brown, Scott P.
Augustus, Edward M., Jr.	Buoniconti, Stephen J.
Baddour, Steven A.	Candaras, Gale D..
Berry, Frederick E.	Chandler, Harriette L.
Brewer, Stephen M.	Creedon, Robert S., Jr.
Creem, Cynthia Stone	O’Leary, Robert A.
Downing, Benjamin B.	Pacheco, Marc R.
Fargo, Susan C.	Panagiotakos, Steven C.
Galluccio, Anthony D.	Petrucelli, Anthony
Hart, John A., Jr.	Rosenberg, Stanley C.
Hedlund, Robert L.	Spilka, Karen E.
Jehlen, Patricia D..	Tarr, Bruce E.
Joyce, Brian A.	Timilty, James E.
Knapik, Michael R.	Tisei, Richard R.
McGee, Thomas M.	Tolman, Steven A.
Menard, Joan M.	Tucker, Susan C.
Montigny, Mark C.	Walsh, Marian
Moore, Richard T.	Wilkerson, Dianne — <b>37.</b>
Morrissey, Michael W.	
<b>NAYS — 0.</b>	
<b>ABSENT OR NOT VOTING.</b>	
Marzilli, Jim	Resor, Pamela — <b>2.</b>

**The yeas and nays having been completed at twenty-one minutes past six o'clock P.M., the bill (Senate, No. 2779, amended) was passed to be engrossed [For text of bill, printed as amended, see Senate, No. 2785].  
Sent to the House for concurrence.**

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

##### *Engrossed Bills.*

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

Authorizing increased fees for special details performed by public employees in the city of Somerville (see Senate, No. 2170); Designating a certain bridge in the towns of Marshfield and Scituate as the Francis R. Powers Memorial Bridge (see House, No. 4809); and

Establishing a sick leave bank for Tracey Albrecht, an employee of the Trial Court (see House, No. 4843, amended).

##### *Matters Taken Out of the Orders of the Day.*

There being no objection, the following matters were taken out of the Notice Section of the Calendar and considered as follows: The Senate Bill exempting a certain structure from certain harbor lines in the South Boston section of the city of Boston (Senate, No. 501) (its title having been changed by the committee on Bills in the Third Reading),— **was read a third time and passed to be engrossed.**

**Sent to the House for concurrence.**

The Senate Bill authorizing a change of use of certain land in the town of Leicester (Senate, No. 2689) (its title having been changed by the committee on Bills in the Third Reading),— **was read a third time and passed to be engrossed.**

**Sent to the House for concurrence.**

The Senate Bill relative to public health regionalization in the Commonwealth (Senate, No. 2672),— was read a third time.

Pending the question on passing the bill to be engrossed, Ms. Fargo moved that the bill be amended by substituting a new draft entitled "An Act relative to public health regionalization" (Senate, No. 2784).

Pending the question on adoption of the amendment, Mr. Moore moved that the amendment be further amended in Section 1 by inserting after the first paragraph the following paragraph:—

"Nothing in this section shall be construed to prohibit a board of health that is not part of a regional health district from appointing as its health agent, a health agent employed by another municipality pursuant to section 30, and setting the salary and terms of employment thereof if such health agent has received written approval from the original appointing authority and the health agent is either: (a) a physician, having graduated from an accredited approved school of medicine and registered, or eligible for registration, to practice medicine in the commonwealth, with 1 year of full-time graduate public health academic training or 2 years of full-time experience in public health; or (b) a lay person with professional academic training equivalent to a bachelor's degree and with 5 years of administrative experience and supervision of generalized public health programs or a registered sanitarian, certified pursuant to section 8700 of chapter 112. If a lay health officer is employed, a registered physician shall also be employed to perform such medical functions as are required."

**The further amendment was adopted.**

**The pending amendment (Fargo) was then adopted, as amended.**

**The bill (Senate, No. 2784, amended) was then passed to be engrossed.**

**Sent to the House for concurrence.**

##### *Report of a Committee.*

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

The House Bill establishing self determination for persons with disabilities (House, No. 4525) (the committee on Ethics and Rules having recommended that the bill be amended substituting a resolve entitled "Resolve providing for an investigation and study by the Commissioner of Mental Retardation on a self-determination model for persons with disabilities" (Senate, No. 2781).

**There being no objection, the rules were suspended, on motion of Ms. Spilka, and the bill was read a second time and was amended, as recommended by the committee on Ethics and Rules.**

**The resolve (Senate, No. 2781) was then ordered to a third reading, read a third time and passed to be engrossed.**

**Sent to the House for concurrence.**

##### *Recess.*

There being no objection, at twenty-five minutes before seven o'clock P.M., the President declared a recess subject to the call of the Chair; and, at nineteen minutes before seven o'clock P.M., the Senate reassembled, Ms. Menard in the Chair (having been appointed by the President under authority conferred in Senate Rule 4 to perform the duties of the Chair)

**PAPERS FROM THE HOUSE.**

*Emergency Preamble Adopted.*

An engrossed Bill relative to tax fairness and business competitiveness (see House, No. 4904), having been certified by the Senate Clerk to be rightly and truly prepared for final passage and containing an emergency preamble,— **was laid before the Senate; and, a separate vote being taken in accordance with the requirements of Article LXVII of the Amendments to the Constitution, the preamble was adopted in concurrence, by a vote of 3 to 0.**  
**The bill was signed by the Acting President (Ms. Menard) and sent to the House for enactment.**

*Engrossed Bills.*

The President in the Chair, the following engrossed bills (both 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:  
Relative to tax fairness and business competitiveness (see House, No. 4904); and  
Protecting children in the care of the Commonwealth (see House, No. 4905).

*Order Adopted.*

On motion of Mr. Brown,—

*Ordered*, that when the Senate adjourns today, it adjourn to meet again on Thursday next at eleven o'clock A.M., in a full formal session without a calendar.

On motion of Ms. Menard, at five minutes past seven o'clock P.M., the Senate adjourned to meet on the following Thursday at eleven o'clock A.M.