

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.

Thursday, October 6, 2011.

Met at eighteen minutes past one o'clock P.M.

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

Distinguished Guests.

There being no objection, the President handed the gavel to Mr. Richard T. Moore for the purpose of an introduction. Mr. Richard T. Moore then introduced, in the rear of the Chamber, a group of state legislators visiting from Germany. For over 20 years, The National Conference of State Legislatures and The Partnership of Parliaments (POP) have organized a legislative exchange for lawmakers between the two countries. POP is a non-profit, non-partisan organization whose members in the German state legislatures take an active role in shaping POP programs for the benefit of all of its members. It was founded in 1983 and currently includes approximately 400 members across each state of the Federal Republic of Germany and in Austria. The group consisted of Friedrich Löhr, Consul General – Federal Republic of Germany, Jürgen Barth, MdL, (Social Democratic Party, SPD), Saxony-Anhalt, Hans-Josef Bracht, MdL (Christian Democratic Party, CDU), Caucus Whip, Rhineland-Palatinate, Dr. Liane Deicke, MdL, (SPD), Free State of Saxony, Peter Schowtka, MdL, (CDU), Free State of Saxony, Sören Schumacher, MdHB (SPD), City State of Hamburg, and Karin Stempel, MdL, (CDU), Free State of Saxony. They were accompanied by interpreter Ms. Birgit Scherer-Wiedmeyer and Ms. Christy Delafield, the NCSL Program Specialist. They were welcomed with applause and withdrew from the Chamber.

Petitions.

Petitions were severally presented, and referred, as follows, to wit:

By Ms. Murray, a petition (accompanied by bill, Senate, No. 2030) of Therese Murray (by vote of the town) for legislation to establish an other post-employment benefits fund [Local approval received];

Under Senate Rule 20, to the committee on Public Service.

Sent to the House for concurrence.

By Mr. Richard T. Moore, a petition (subject to Joint Rule 12) of Richard T. Moore, John V. Fernandes, Bruce E. Tarr, George N. Peterson, Jr., and other members of the General Court for legislation to enhance community safety; and

By Mr. Wolf, a petition (subject to Joint Rule 12) of Daniel A. Wolf and Timothy R. Madden for legislation to correct pension inequity for James G. Clothier;

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

PAPERS FROM THE HOUSE.

A Bill making appropriations for the fiscal year 2011 and 2012 to provide for supplementing certain existing appropriations and for certain other activities and projects (House, No. 3737,-- on House, No. 3735),-- **was read and, under Senate Rule 27, referred to the committee on Ways and Means.**

A Bill authorizing the town of Hanover to grant an additional license for the sale of wine and malt beverages to be drunk on the premises (House, No. 3721,-- on petition) [Local approval received];,-- **was read and, under Senate Rule 26, placed in the Orders of the Day for the next session.**

Emergency Preamble Adopted.

An engrossed Bill authorizing the Division of Capital Asset Management and Maintenance to grant an easement over an access road in Upton State Forest (see House, No. 3706), 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 14 to 0.**

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

Resolutions.

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

Resolutions (filed by Ms. Clark) “congratulating the Stoneham Lodge of Elks #2211 on the fiftieth anniversary of its establishment”;

Resolutions (filed by Mr. Hedlund) “congratulating Michael Keefe on his elevation to the rank of Eagle Scout”;

Resolutions (filed by Ms. Murray) “honoring the Boston Bruins on their 2011 Stanley Cup Victory”; and

Resolutions (filed by Mr. Pacheco) “congratulating the North Bristol County Association of Realtors on the occasion of its sixtieth anniversary.”

PAPERS FROM THE HOUSE

Engrossed Bills.

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 the town of Burlington Representative Town Meeting form of government (see House, No. 3501); and

Authorizing the town of West Tisbury to place a certain question on the ballot relative to the issuance of licenses for the sale of wines and malt beverages in restaurants, inns and hotels and the issuance of 1 day licenses for the sale of wines and malt beverages at events (s see House, No. 3687, amended).

Petitions were severally referred, in concurrence, as follows, to wit:

Petition (accompanied by bill, House, No. 3739) of George T. Ross, Elisabeth A. Poirier, Bradley H. Jones, Jr. and other members of the General Court for legislation to categorize bath salts, so-called, as a class C substance;

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

Petition (accompanied by bill, House, No. 3740) of George T. Ross, Elisabeth A. Poirier and James E. Timilty for legislation to designate a certain bridge on County Street in the city of Attleboro as the Lynn Goodchild and Shawn Nassaney September 11th Memorial Bridge;

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

Reports of Committees.

By Mr. Berry, for the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the Senate petition of Robert L. Hedlund, Stephen Kulik, Barry R. Finegold, Chris Walsh and other members of the General Court for legislation to promote craft brewing in Massachusetts.

The rules were suspended, on motion of Mr. Brewer, and the report was considered forthwith. Joint Rule 12 was suspended; and the petition (accompanied by bill) was referred to the committee on the Consumer Protection and Professional Licensure.

By Mr. Berry, for the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the Senate petition of Robert Hedlund and Garrett J. Bradley for legislation to expand the Attorney General's power of intervention. **The rules were suspended, on motion of Mr. Brewer, and the report was considered forthwith. Joint Rule 12 was**

suspended; and the petition (accompanied by bill) was referred to the committee on the Judiciary. Severally sent to the House for concurrence.

Matters Taken Out of the Notice Section of the Calendar.

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

The Senate Bill authorizing the city of Salem to issue additional licenses for the sale of alcoholic beverages (Senate, No. 1944),-- **was read a third time.**

Pending the question on passing the bill to be engrossed, Mr. Berry moved that the bill be amended by substituting a new draft with the same title (Senate, No. 2031).

The amendment was adopted.

The bill (Senate, No. 2031) was then passed to be engrossed.

Sent to the House for concurrence.

The Senate Bill amending the charter of the town of Holden (Senate, No. 1984) (its title having been change 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.

Reports of a Committee

By Mr. Brewer, for the committee on Ways and Means, that the House Bill establishing a sick leave bank for Terri A. Demars, an employee of the Department of State Police (House, No. 3646),-- **ought to pass.**

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

By Mr. Brewer, for the committee on Ways and Means, that the House Bill making appropriations for the fiscal year 2011 and 2012 to provide for supplementing certain existing appropriations and for certain other activities and projects (House, No. 3737),--

- ought to pass with an amendment in Section 2, in line 72, by striking out the caption;

In said Section 2, by striking out item 7008-0900;

In said Section 2, in line 76, by striking out the caption;

In said Section 2 by striking out item 7035-0006;

In Section 2A, in item 1599-4343, by striking out, in line 142, the figure "414" and inserting in place thereof the following figure:- "419";

In said Section 2A, in item 1599-4430, by striking out, in line 161, the figure "229" and inserting in place thereof the following figure:- "5000";

In Section 2.C.I, in the preamble, by striking out the last sentence;

In said Section 2.C.I, by inserting after item 1599-0016 the following item:-

"1599-4227\$319,328";

In Section 3 by inserting after the preamble the following item:-

"1599-0026.....\$50,000";

In Section 3, by inserting after item 4200-0300 the following item under the following caption:-

**"EXECUTIVE OFFICE OF HOUSING AND ECONOMIC DEVELOPMENT
Massachusetts Marketing Partnership**

7008-0900.....\$52,000";

In Section 61, by adding the following words:- "; and provided further, that nothing in this item shall be construed to prevent the closure of any court in order to relocate that court to the J. Michael Ruane Judicial Center in the city of Salem";

By inserting after Section 66 the following section:-

"SECTION 66A. Item 1599-0026 of section 2 of chapter 68 of the acts of 2011 is hereby amended by striking out the words

"\$4,000,000 shall be transferred to the division of local services and shall be expended for a multi-year competitive grants program to provide financial support for one-time or transition costs related to regionalization and other efficiency initiatives, with allowable applicants to include municipalities, regional schools, school districts considering forming a regional school district or regionalizing services, regional planning agencies and councils of governments; provided further, that regional planning agencies may also serve as the administrative or fiscal agent on behalf of municipalities" and inserting in place thereof the following words:- "\$4,050,000 shall be transferred to the division of local services and shall be expended for a multi-year competitive grants program to provide financial support for 1-time or transition costs related to regionalization and other efficiency initiatives, with allowable applicants to include municipalities, regional schools, school districts considering forming a regional school district or regionalizing services, regional planning agencies and councils of governments; provided further, that regional planning agencies may also serve as the administrative or fiscal agent on behalf of municipalities; provided further, that funds may be expended to reimburse municipalities for tuition and transportation costs under section 7C of chapter 74 of the

General Laws; provided further, that any reimbursements for tuition under the preceding proviso shall be in addition to tuition reimbursements received from the department of elementary and secondary education and shall not exceed the difference between the amount of tuition paid in fiscal year 2012 and any tuition reimbursements received from the department”;
In Section 70, by inserting after the word system, in line 769, the following words:- “and provided further, that MassHealth shall make no changes to reimbursement for nursing home leave of absence days from the standards in effect on July 1, 2011”;
By striking out Section 76;
In Section 94, by inserting after the word “Human”, in line 973, the following word:- “Service”; and
By striking out sections 98 and 99.

Pending the question on adoption of the Ways and Means amendment, Mr. Michael O. Moore moved that the bill be amended in section 2, by inserting after the item 1599-4227 the following item:
“2511-xxxx For the apiary inspection program.....\$20,000”.
After remarks, the amendment was *rejected*.

Ms. Chang-Diaz moved that the bill be amended by inserting the following item:-
“7002-0012 For a youth-at-risk program targeted at reducing juvenile delinquency in high risk areas; provided that these funds may be expended for the development and implementation of a year-round employment program for at-risk youth as well as existing year-round employment programs ... \$9,000,000”.
The amendment was *rejected*.

Mr. Tarr moved to amend the bill in Section 2A, by striking line item 4000-0114 in its entirety and inserting in place thereof the following line item:-
“1599-6901 For a reserve to adjust the wages, compensation or salary and associated employee-related costs to personnel who are employed by private human service providers that deliver human and social services under contracts with departments within the executive office of health and human services and the executive office of elder affairs.....\$1,000,000”.
After debate, the amendment was *rejected*.

Mr. Tarr moved that the bill be amended by inserting, after section __, the following new sections:-
“SECTION __. Section 27 of chapter 149 of the General Laws, as amended by chapter 80 of the acts of 2008, is hereby further amended by inserting at the end thereof the following sentence: - ‘If, however, an employer shows by clear and convincing evidence to the court that the act or omission giving rise to such action was in good faith and that the employer had reasonable grounds for believing that its act or omission was not a violation, the court may, in its sound discretion, award no liquidated damages or award any amount thereof not to exceed three times the amount of the employee’s lost wages and benefits.’
SECTION __. Section 27F of said chapter 149 is hereby further amended by inserting at the end thereof the following sentence:- ‘If, however, an employer shows by clear and convincing evidence to the court that the act or omission giving rise to such action was in good faith and that the employer had reasonable grounds for believing that its act or omission was not a violation, the court may, in its sound discretion, award no liquidated damages or award any amount thereof not to exceed three times the amount of the employee’s lost wages and benefits.’
SECTION __. Section 27G of said chapter 149 is hereby further amended by inserting at the end thereof the following sentence:- ‘If, however, an employer shows by clear and convincing evidence to the court that the act or omission giving rise to such action was in good faith and that the employer had reasonable grounds for believing that its act or omission was not a violation, the court may, in its sound discretion, award no liquidated damages or award any amount thereof not to exceed three times the amount of the employee’s lost wages and benefits.’
SECTION __. Section 27H of said chapter 149 is hereby further amended by inserting at the end thereof the following sentence:- ‘If, however, an employer shows by clear and convincing evidence to the court that the act or omission giving rise to such action was in good faith and that the employer had reasonable grounds for believing that its act or omission was not a violation, the court may, in its sound discretion, award no liquidated damages or award any amount thereof not to exceed three times the amount of the employee’s lost wages and benefits.’
SECTION __. Section 150 of said chapter 149 is hereby amended by inserting at the end thereof the following sentence:- ‘If, however, an employer shows by clear and convincing evidence to the court that the act or omission giving rise to such action was in good faith and that the employer had reasonable grounds for believing that its act or omission was not a violation, the court may, in its sound discretion, award no liquidated damages or award any amount thereof not to exceed three times the amount of the employee’s lost wages and benefits.’
SECTION __. Section 1B of chapter 151 of the General Laws is hereby amended by inserting, after the fourth sentence of the first paragraph, the following sentence:- ‘If, however, an employer shows by clear and convincing evidence to the court that the act or omission giving rise to such action was in good faith and that the employer had reasonable grounds for believing that its act or omission was not a violation, the court may, in its sound discretion, award no liquidated damages or award any amount thereof not to exceed three times the amount of the employee’s lost overtime and compensation.’
SECTION __. Section 20 of said chapter 151 is hereby amended by inserting, after the third sentence of the first paragraph, the following sentence:- ‘If, however, an employer shows by clear and convincing evidence to the court that the act or omission giving rise to such action was in good faith and that the employer had reasonable grounds for believing that its act or omission was not a violation, the court may, in its sound discretion, award no liquidated damages or award any amount thereof not to

exceed three times the amount of the loss of minimum wage.’”

After debate, the question on adoption of the amendment was determined by a call of the yeas and nays, at twenty-one minutes past two o’clock P.M., on motion of Mr. Tarr, as follows, to wit (*yeas 5 – nays 31*) [**Yeas and Nays No. 83**]:

YEAS

Baddour, Steven A. Ross, Richard J.
Hedlund, Robert L. Tarr, Bruce E. — **5.**
Knapik, Michael R.

NAYS

Berry, Frederick E. Joyce, Brian A.
Brewer, Stephen M. Keenan, John F.
Candaras, Gale D. Kennedy, Thomas P.
Chandler, Harriette L. McGee, Thomas M.
Clark, Katherine M. Montigny, Mark C.
Creem, Cynthia Stone Moore, Michael O.
DiDomenico, Sal N. Moore, Richard T.
Donnelly, Kenneth J. Pacheco, Marc R.
Donoghue, Eileen M. Petruccelli, Anthony
Downing, Benjamin Rodrigues, Michael
B. J.
Eldridge, James B. Rosenberg, Stanley
C.
Fargo, Susan C. Spilka, Karen E.
Finegold, Barry R. Timilty, James E
Flanagan, Jennifer L. Welch, James T.
Hart, John A., Jr. Wolf, Daniel A. —
31.
Jehlen, Patricia D.

ABSENT OR NOT VOTING

Chang-Diaz, Sonia Tolman, Steven A.
— **3.**
Rush, Michael F.

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

Mr. Hedlund moved that the bill be amended in section 2, in item 7066-0021, by striking the figures "500,000" and inserting in place thereof the following figures:- "2,000,000".

After debate, the question on adoption of the amendment was determined by a call of the yeas and nays, at twenty-one minutes before three o’clock P.M., on motion of Mr. Hedlund, as follows, to wit (*yeas 6 – nays 30*) [**Yeas and Nays No. 84**]:

YEAS

Fargo, Susan C. Pacheco, Marc R.
Hedlund, Robert L. Ross, Richard J.
Knapik, Michael R. Tarr, Bruce E. — **6.**

NAYS

Baddour, Steven A. Jehlen, Patricia D.
Berry, Frederick E. Joyce, Brian A.
Brewer, Stephen M. Keenan, John F.
Candaras, Gale D. Kennedy, Thomas P.
Chandler, Harriette McGee, Thomas M.

L.
 Clark, Katherine M. Montigny, Mark C.
 Creem, Cynthia Moore, Michael O.
 Stone
 DiDomenico, Sal N. Moore, Richard T.
 Donnelly, Kenneth Petruccelli, Anthony
 J.
 Donoghue, Eileen Rodrigues, Michael J.
 M.
 Downing, Benjamin Rosenberg, Stanley C.
 B.
 Eldridge, James B. Spilka, Karen E.
 Finegold, Barry R. Timilty, James E
 Flanagan, Jennifer Welch, James T.
 L.
 Hart, John A., Jr. Wolf, Daniel A. — **30.**
ABSENT OR NOT VOTING
 Chang-Diaz, Sonia Tolman, Steven A. —
3.
 Rush, Michael F.

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

Mr. Knapik moved that the bill be amended by inserting after section__ the following new section:
 “SECTION __. And provided further that not less than \$20 million will be made available for Community DSH Hospitals so designated by the Administration as of June 30, 2011; and not recognized as a DSH hospital in Group A category of hospitals as so designated in the prior 1115 Waiver that ended June 30, 2011 and not included for funding in the recently revised proposal by the Administration for the 1115 Waiver renewal currently under negotiation between the Federal Centers for Medicaid and Medicare and the Massachusetts Executive Office of Health and Human Services. Said money shall be distributed through a formula that recognizes the volume of both Medicaid and Medicare utilization in said hospitals.”
 After debate, the amendment was *rejected*.

Ms. Clark moved that the bill be amended by inserting, after section 95 the following section:-
 “SECTION 95A. Notwithstanding any general or special law to the contrary, for the purposes of providing advanced funding to eligible entities that administer the federal Low Income Home Energy Assistance Program described in item 7004-2033 of chapter 68 of the acts of the 2011, the department of housing and community development may allow eligible organizations and entities to begin start up operations of the federal Low Income Home Energy Assistance Program described in item 7004-2033 not later than 30 days after the effective date of this act.
 The department and eligible entities may expend a portion of these funds for approved administrative costs consistent with the current or prior year’s state plan submitted by the department in accordance with the federal program and, after November 1, may expend a portion of these funds to assist certified low-income elders, working families and other households with the purchase of home heating oil, propane and natural gas and electricity and other primary or secondary heating sources; provided that funds expended for this purpose shall only be transferred from the Low Income Housing Tax Credit Fund established in Section 87; and provided further, that said advanced funding shall be subject to federal reimbursement of funds described in item 7004-2033.”
 The amendment was **adopted**.

Ms. Flanagan and Mr. Tarr moved that the bill be amended in section 61, by striking out the words, "no courthouse shall be closed, nor any session within a courthouse, and no proposed courthouse or session closure by the chief justice for administration and management of the trial court shall take effect until such closure is approved by the court administrator; provided, however, that prior to any such closure the court administrator appointed pursuant to chapter 211B of the General Laws shall file with the joint committee on the judiciary, the house and senate committees on ways and means, and the clerks of the house and senate 90 days prior to the temporary closure or temporary relocation of courthouses or sessions a plan to close certain courthouses or certain sessions which shall include the specific reasons for such closure, the cost savings, a plan to provide services to citizens affected by such closure; the transfer of personnel, the reallocation of resources, the impact on other courthouses resulting from the temporary closure of said court or session and other factors that may affect implementation of any closure.” and inserting in place thereof the following words:- “no courthouse shall be closed or relocated nor any session within a courthouse, and no

proposed courthouse or session closure by the chief justice for administration and management of the trial court shall take effect until such closure or relocation is approved by the court administrator; provided, however, that prior to any such closure or relocation the court administrator appointed pursuant to chapter 211B of the General Laws shall file with the joint committee on the judiciary, the house and senate committees on ways and means and the clerks of the house and senate 90 days prior to the closure or relocation of courthouses or sessions a plan to close certain courthouses or certain sessions which shall include the specific reason for such closure or relocation; the costs savings, a plan to provide services to citizens affected by such closure; the transfer of personnel, the reallocation of resources, the impact on other courthouses resulting from the temporary closure of said court or session and other factors that may affect implementation of any; and provided further, that nothing in this item shall be construed to prevent the closure of any court in order to relocate that court to the J. Michael Ruane Judicial Center in the city of Salem.”.

The amendment was **adopted**.

Mr. Hedlund, Ms. Flanagan and Messrs. Tarr, Knapik, Ross and Pacheco moved that the bill be amended by inserting, after Section 92, the following new Section:-

“SECTION 92A. Notwithstanding any general or special law to the contrary, there shall be a special commission to study and report on the use of electronic benefit transfer (EBT) cards in the Commonwealth. The commission shall consist of the commissioner of the department of transitional assistance, or her designee; the inspector general, or his designee; 2 members of the house of representatives, 1 of whom shall be appointed by the speaker of the house, and 1 of whom shall be appointed by the minority leader of the house; 2 members of the senate, 1 of whom shall be appointed by the senate president, and 1 of whom shall be appointed by the senate minority leader; and 2 persons to be appointed by the governor who shall be advocates for low-income individuals receiving benefits through the department of transitional assistance. The scope of the commission shall include, but not be limited to, researching and evaluating the following: the use of EBT cards for the purchase of products other than those products for which they are intended to be used, such as firearms, tobacco, lottery tickets, and alcohol; the types of stores where cards are used; the proportion of one month’s EBT cash assistance that is withdrawn from ATM machines rather than used in stores to directly purchase products; and the costs associated with requiring the department to include, on the front of each newly issued and re-issued EBT card, as well as all existing EBT cards, a photograph of the cardholder. The commission shall research, assess, and develop recommendations regarding the best method of preventing the inappropriate use of electronic benefit transfer cards, including implementing a monthly limit to the amount of EBT cash assistance that a recipient of cash assistance can withdraw from ATMs, as well as the feasibility of prohibiting the purchase of certain items by restricting the ability of EBT cards to be used in purchasing said items. Finally, the commission shall study and research the implementation of requiring stores to apply to accept EBT cards. The commission shall prepare a final report of the findings and recommendations together with recommendations for legislation to implement those recommendations by filing the same with the clerks of the senate and house not later than April 1, 2012.”

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

Mr. Pacheco moved that the bill be amended in section 20 by inserting after the word “programs” the following words:- “and who were first licensed by the division of insurance on November 9, 1987 to operate as a health maintenance organization under chapter 176G”; and in section 21 by inserting after the word “programs” the following words:- “and who were first licensed by the division of insurance on November 9, 1987 to operate as a health maintenance organization under chapter 176G”.

The amendment was **adopted**.

Mr. Brewer moved that the bill be amended in Section 66A by striking out the words “tuition reimbursements received from the department of elementary and secondary education and shall not exceed the difference between the amount of tuition paid in fiscal year 2012 and any tuition reimbursements received from the department” and inserting in place thereof the following words:- “allowable federal grants used to cover reimbursement costs and approved by the department of elementary and secondary education for expenditure in fiscal year 2012”.

The amendment was **adopted**.

The pending Ways and Means amendment was then considered, and it was adopted.

The bill, as amended, was then ordered to a third reading and read a third time.

After debate, the question on passing the bill to be engrossed, was determined by a call of the yeas and nays, at twenty-eight minutes past three o’clock P.M., on motion of Ms. Flanagan, as follows, to wit (*yeas 36 – nays 0*) [**Yeas and Nays No. 85**]:

YEAS

Baddour, Steven A. Joyce, Brian A.
Berry, Frederick E. Keenan, John F.
Brewer, Stephen M. Kennedy, Thomas P.
Candaras, Gale D. Knapik, Michael R.
Chandler, Harriette McGee, Thomas M.
L.
Clark, Katherine M. Montigny, Mark C.

Creem, Cynthia Stone	Moore, Michael O.
DiDomenico, Sal N.	Moore, Richard T.
Donnelly, Kenneth J.	Pacheco, Marc R.
Donoghue, Eileen M.	Petrucelli, Anthony
Downing, Benjamin B.	Rodrigues, Michael J.
Eldridge, James B.	Rosenberg, Stanley C.
Fargo, Susan C.	Ross, Richard J.
Finegold, Barry R.	Spilka, Karen E.
Flanagan, Jennifer L.	Tarr, Bruce E.
Hart, John A., Jr.	Timilty, James E
Hedlund, Robert L.	Welch, James T.
Jehlen, Patricia D.	Wolf, Daniel A. — 36.

NAYS — 0.

ABSENT OR NOT VOTING

Chang-Diaz, Sonia	Tolman, Steven A. — 3.
Rush, Michael F.	

The yeas and nays having been completed at twenty-nine minutes before four o'clock P.M., the bill was passed to be engrossed, in concurrence, with the amendments. Subsequently, Mr. Brewer moved reconsideration of the vote on passing the bill to be engrossed; and this motion prevailed.

Pending the recurring question on passing the bill to be engrossed, Ms. Flanagan and Mr. Tarr moved that the bill be amended in section 61, by striking out the words, “no courthouse shall be closed, nor any session within a courthouse, and no proposed courthouse or session closure by the chief justice for administration and management of the trial court shall take effect until such closure is approved by the court administrator; provided, however, that prior to any such closure the court administrator appointed pursuant to chapter 211B of the General Laws shall file with the joint committee on the judiciary, the house and senate committees on ways and means, and the clerks of the house and senate 90 days prior to the temporary closure or temporary relocation of courthouses or sessions a plan to close certain courthouses or certain sessions which shall include the specific reasons for such closure, the cost savings, a plan to provide services to citizens affected by such closure; the transfer of personnel, the reallocation of resources, the impact on other courthouses resulting from the temporary closure of said court or session and other factors that may affect implementation of any closure.” and inserting in place thereof the following words:- “no courthouse shall be closed or relocated nor any session within a courthouse, and no proposed courthouse or session closure by the chief justice for administration and management of the trial court shall take effect until such closure or relocation is approved by the court administrator; provided, however, that prior to any such closure or relocation the court administrator appointed pursuant to chapter 211B of the General Laws shall file with the joint committee on the judiciary, the house and senate committees on ways and means and the clerks of the house and senate 90 days prior to the closure or relocation of courthouses or sessions a plan to close certain courthouses or certain sessions which shall include the specific reason for such closure or relocation; the costs savings, a plan to provide services to citizens affected by such closure; the transfer of personnel, the reallocation of resources, the impact on other courthouses resulting from the temporary closure of said court or session and other factors that may affect implementation of any; and provided further, that nothing in this item shall be construed to prevent the closure of any court in order to relocate that court to the J. Michael Ruane Judicial Center in the city of Salem.”.

The amendment was **adopted**.

Mr. Brewer moved that the bill be amended in Section 66A by striking out the words “tuition reimbursements received from the department of elementary and secondary education and shall not exceed the difference between the amount of tuition paid in fiscal year 2012 and any tuition reimbursements received from the department” and inserting in place thereof the following words:- “allowable federal grants used to cover reimbursement costs and approved by the department of elementary and

secondary education for expenditure in fiscal year 2012".
The amendment was **adopted**.

The recurring question on passing the bill to be engrossed, was determined by a call of the yeas and nays, at nineteen minutes before four o'clock P.M., on motion of Ms. Flanagan, as follows, to wit (*yeas 36 – nays 0*) [**Yeas and Nays No. 86**]:

YEAS

Baddour, Steven A.	Joyce, Brian A.
Berry, Frederick E.	Keenan, John F.
Brewer, Stephen M.	Kennedy, Thomas P.
Candaras, Gale D.	Knapik, Michael R.
Chandler, Harriette L.	McGee, Thomas M.
Clark, Katherine M.	Montigny, Mark C.
Creem, Cynthia Stone	Moore, Michael O.
DiDomenico, Sal N.	Moore, Richard T.
Donnelly, Kenneth J.	Pacheco, Marc R.
Donoghue, Eileen M.	Petrucelli, Anthony
Downing, Benjamin B.	Rodrigues, Michael J.
Eldridge, James B.	Rosenberg, Stanley C.
Fargo, Susan C.	Ross, Richard J.
Finegold, Barry R.	Spilka, Karen E.
Flanagan, Jennifer L.	Tarr, Bruce E.
Hart, John A., Jr.	Timilty, James E.
Hedlund, Robert L.	Welch, James T.
Jehlen, Patricia D.	Wolf, Daniel A. — 36.

NAYS — 0.

ABSENT OR NOT VOTING

Chang-Diaz, Sonia	Tolman, Steven A. — 3.
Rush, Michael F.	

The yeas and nays having been completed at sixteen minutes before four o'clock P.M., the bill was passed to be engrossed, in concurrence, with the amendments.

Sent to the House for concurrence in the amendments.

Orders of the Day

The Orders of the Day were considered as follows:

Bills

Relative to eligibility of ward councilors-elect in the city of Gardner to assume office (printed as Senate, No. 1936); and
Authorizing the city of Medford to increase fees for special details performed by public employees in the city (House, No. 3530);
Were severally read a second time and ordered to a third reading.

There being no objection, the Senate Resolutions (offered by Mr. Tolman) memorializing the Congress of the United States to support legislation that reforms the Toxic Substances Control Act of 1976,-- **was taken out of order and considered, the question being adoption.**

After remarks and pending the question on adoption of the resolutions, on motion of Mr. Knapik the further consideration thereof was postponed until Tuesday, October 11.

The House Bill establishing expanded gaming in the Commonwealth (House, No. 3711),-- **was considered, the main question being on ordering it to a third reading.**

The pending motion, previously moved by Ms. Spilka, to lay the matter on the table was considered; and it was negatived. The pending Ways and Means amendment, striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2015,-- was then considered.

Messrs. Tarr, Knapik and Ross moved that the bill be amended in line 2728 of section 18, by inserting at the end of section 2DDDD of chapter 29 the following:- “provided further, of said amount credited to said fund, fifty per cent shall be transferred to the race house development fund established in section 60 of chapter 23K and shall be allocated by the commission in the manner delineated in said section. The gaming commission created in chapter 23K shall make an annual report to the secretary for administration and finance and the clerks of the house of representatives and the senate detailing the economic benefit derived from investing in the race horse development fund, to include but not be limited to, the following:- the number of jobs and small businesses created and maintained within the racehorse agricultural network including breeding farms, boarding farms, feed producing farms, hay and straw producing farms, equine centers, horse ownership, horse training, veterinarians, dentists, farriers, and similar businesses and jobs created and maintained in the post-racing horse industries including show horses, equestrian jumping, polo, child therapy centers and riding academies; the number of green jobs associated with the racing and post-racing employment in the commonwealth; agricultural development programs relating to the racing and post-racing industries, farm acreage, annual value of equine feed and bedding crops, the amount of open space acreage protected, and the amount of real estate, payroll, and sale taxes paid annually by said businesses and their employees”. After debate, the amendment was *rejected*.

Messrs. Tarr, Knapik and Richard T. Moore moved that the bill be amended in Section 16, by striking clause (h) of subsection 59 and inserting in place thereof the following:-

“(h) 10 percent shall be transferred to the General Fund to cover the costs associated with the Jobs Incentive Tax Credit Program, established in Section 64A of this act;” and by inserting, after Section 64, the following new Section:-

“Section 64A. Section 67D of chapter 62C of the General Laws is hereby amended by inserting after subsection (g) the following new sections:-

(h) when used in section (i)-(n), the following words shall have the following meaning:

‘Application year’, the calendar year for which a business submits the information required for a determination as to a jobs incentive credit.

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

‘Commissioner’, the commissioner of revenue.

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

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

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

‘Jobs incentive credit’, a business employment incentive credit for companies as provided for in this section.

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

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

‘Credit years’, in the case of a business that is determined to be eligible for a jobs incentive credit, the 3 calendar years following the application year.

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

(i) A business that creates an eligible job in the commonwealth during its application year shall be entitled to a jobs incentive credit, spread equally over three calendar years, if its weighted average employment for such application year reflects a net increase over the company’s weighted average employment for the prior calendar year. The total jobs incentive credit shall be

equal to 50 per cent of the amount paid by the company as salary attributable to eligible jobs created by the company in such year to the extent that the salary was subject to Massachusetts withholding pursuant to chapter 62B for such year, multiplied by the applicable Massachusetts income tax rate for such salary, and such credit shall be applied toward the company's liability imposed by Chapter 62B, Section 2. A company shall take a jobs incentive credit for no more than 50 jobs created over its weighted average employment for the prior calendar year. For companies creating greater than 50 jobs over the weighted average employment for the prior calendar year, the total tax credit, which will be taken in three equal installments subject to the terms and conditions in the following sections, shall be determined by the salary of the first 50 eligible jobs created. For the purposes of this provision, an eligible job shall be deemed created in the commonwealth on the first day for which Massachusetts withholding is required in connection with the compensation paid to the employee.

(j) The jobs incentive credit shall be taken by a business in 3 equal installments in each of the 3 calendar years commencing with the calendar year subsequent to the application year. If, for the first or second credit year, the company's weighted average employment falls below its weighted average for the application year, the company shall be disqualified from taking its second installment credit. It may still take its third installment credit if its weighted average employment for its second credit year is above its weighted average employment for the application year.

(k) A company that seeks a jobs incentive credit shall apply to the commissioner to receive permission to take such a credit on a form prescribed by the commissioner. This form shall reference the necessary information concerning the eligible jobs created by the company in the Commonwealth during the application year and also the company's weighted average employment for such year and the prior calendar year. The commissioner shall advise the company of his determination in writing.

(l) Not later than March 1 of each calendar year for which a company has been approved to take a job incentives credit, the company shall submit to the commissioner, in a form prescribed by the commissioner, the information necessary to evaluate the company's prior year weighted employment average.

(m) A company that has previously been approved to take a job incentive credit is entitled to re-apply for an additional credit for a second or third application year. In such cases, the company may be entitled to take a job incentive credit that relates to different application years in the same calendar year. When a company has previously been granted permission to take a jobs incentive credit for 3 application years, it shall not request an additional jobs incentive credit. In no case shall a company take a jobs incentive credit after June 30, 2015, when all provisions in (i)-(m) shall sunset and no longer be in effect.

(n) Following the termination of the jobs incentive tax credit program, the commissioner of the department of revenue, in consultation with one or more institutes of higher learning, shall conduct a cost benefit analysis of said program, which shall take into consideration the total number of permanent in-state jobs created under the program, the total amount of tax credits provided, and any other factors that would be useful in measuring the success of the program. The commissioner shall prepare a report on the findings, which shall be filed with the clerk of the house of representatives and the clerk of the senate, the chairs of the house and senate committees on ways and means, and the house and senate chairs of the joint committee on revenue no later than September 30, 2015. Said report shall include the commissioner's findings as to the feasibility of extending the jobs incentive tax credit program beyond the sunset date, along with any recommendations for revising the program to make it more effective in enhancing the creation of jobs."

After debate, the question on adoption of the amendment was determined by a call of the yeas and nays, at fourteen minutes past four o'clock P.M., on motion of Mr. Tarr, as follows, to wit (*yeas 4 – nays 32*) [**Yeas and Nays No. 87**]:

YEAS

Knapik, Michael R. Ross, Richard J.
Moore, Richard T. Tarr, Bruce E. —4.

NAYS

Baddour, Steven A. Hedlund, Robert L.
Berry, Frederick E. Jehlen, Patricia D.
Brewer, Stephen M. Joyce, Brian A.
Candaras, Gale D. Keenan, John F.
Chandler, Harriette L. Kennedy, Thomas P.
Clark, Katherine M. McGee, Thomas M.
Creem, Cynthia Montigny, Mark C.
Stone
DiDomenico, Sal N. Moore, Michael O.
Donnelly, Kenneth J. Pacheco, Marc R.
Donoghue, Eileen M. Petruccelli, Anthony

Downing, Benjamin B.	Rodrigues, Michael J.
Eldridge, James B.	Rosenberg, Stanley C.
Fargo, Susan C.	Spilka, Karen E.
Finegold, Barry R.	Timilty, James E
Flanagan, Jennifer L.	Welch, James T.
Hart, John A., Jr.	Wolf, Daniel A. — 32.
ABSENT OR NOT VOTING	
Chang-Diaz, Sonia	Tolman, Steven A. — 3.
Rush, Michael F.	

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

Messrs. Tarr, Hedlund, Knapik and Ross moved that the bill be amended in Section 59, by inserting at the end thereof the following:-

“Notwithstanding the preceding, 100 percent of the revenue received from a category 2 licensee and 100 percent of the revenue received from a category 1 licensee shall be transferred to the Commonwealth Stabilization Fund until such time as all licensees have been in continuous operation for a period of five years. Beginning in the sixth year of operation, all subsequent revenues received from a category 2 licensee and a category 1 licensee shall be transferred according to the funding schedule outlined above.”

After debate, the question on adoption of the amendment was determined by a call of the yeas and nays, at twenty-seven minutes before five o'clock P.M., on motion of Mr. Knapik, as follows, to wit (*yeas 4 – nays 32*) [**Yeas and Nays No. 88**]:

YEAS

Hedlund, Robert L.	Ross, Richard J.
Knapik, Michael R.	Tarr, Bruce E. — 4.

NAYS

Baddour, Steven A.	Jehlen, Patricia D.
Berry, Frederick E.	Joyce, Brian A.
Brewer, Stephen M.	Keenan, John F.
Candaras, Gale D.	Kennedy, Thomas P.
Chandler, Harriette L.	McGee, Thomas M.
Clark, Katherine M.	Montigny, Mark C.
Creem, Cynthia	Moore, Michael O.
Stone	
DiDomenico, Sal N.	Moore, Richard T.
Donnelly, Kenneth J.	Pacheco, Marc R.
Donoghue, Eileen M.	Petrucelli, Anthony
Downing, Benjamin B.	Rodrigues, Michael J.
Eldridge, James B.	Rosenberg, Stanley C.
Fargo, Susan C.	Spilka, Karen E.
Finegold, Barry R.	Timilty, James E
Flanagan, Jennifer L.	Welch, James T.

Hart, John A., Jr. Wolf, Daniel A. — 32.

ABSENT OR NOT VOTING

Chang-Diaz, Sonia Tolman, Steven A. —
3.

Rush, Michael F.

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

Ms. Creem, Ms. Jehlen and Mr. Eldridge moved that the bill be amended in section 16, by striking out, in subsection (a) of section 55 of proposed Chapter 23K of the general laws, in line 2330, the figure "25" and inserting in place thereof the following figure:- "40"; and in section 16, by striking out, in subsection (b) of section 55 of proposed Chapter 23K of the general laws, in line 2332, the figure "40" and inserting in place the figure:- "60".

The amendment was *rejected*.

Ms. Clark moved to amend the bill in section 16, by striking out, in line 2430, in section 59 of proposed chapter 23K, the figure "10" and inserting in place thereof the following figure:- "8"; and in section 16, by inserting, in section 59 after the words "Public Health Trust Fund" the following subsection:-

"(I) provided further that 2 per cent of the revenues shall be transferred by the Fund to a nonprofit organization chosen by the Fund to assist social service and human service programs dedicated to improving the well-being of children, youth, and families, and to perform studies throughout the commonwealth and evaluations necessary to ensure the proper and most effective strategies to implement said outcomes; provided, however, that the nonprofit organization must demonstrate to the Fund that it has the capacity to administer this function; provided further, that funding shall be appropriated through a competitive grant process to be developed and administered by the Fund".

The amendment was *rejected*.

Mr. Donnelly moved that the bill be amended by striking out section 28 and inserting in place thereof the following section:-

"The seventh paragraph of section 2 of chapter 62B of the General Laws, as so appearing, is hereby amended by striking out the first 2 sentences and inserting in place thereof the following 2 sentences:- Every person, including the United States, the commonwealth or any other state, or any political subdivision or instrumentality of the foregoing, making any payment of lottery or wagering winnings, which are subject to tax under chapter 62 and which are subject to withholding under section 3402(q) of the Internal Revenue Code shall deduct and withhold from such payment an amount equal to 5 per cent of such payment. For the purposes of this chapter and chapter 62C, such payment of winnings shall be treated as if it were wages paid by an employer to an employee."

The amendment was *rejected*.

Ms. Jehlen moved that the bill be amended by striking out Section 55 (a) and inserting in place thereof the following section:-

"SECTION 55. (a) A category 1 licensee shall pay a daily tax of 49 percent on gross gaming revenue generated by slot machines and a daily tax of 25 percent on all other gross gaming revenue."

After remarks, the amendment was *rejected*.

Messrs. Tarr, Hedlund, Knapik and Ross moved that the bill be amended in section 16, by striking in section 59 of chapter 23K of the general laws subsection 59(2)(h) and inserting in place thereof the following:-

"(h) 10 per cent shall be transferred to the Tax Reduction Fund established in section 2I of chapter 29 of the General Laws;"; and by inserting after section __, the following new section:-

"Section __. Section 2I of chapter 29 of the General Laws, as appearing in the 2008 official edition, is hereby amended by inserting after the words 'two H' the following words:- and of section 59 of chapter 23K."

After debate, the amendment was *rejected*.

Messrs. Tarr, Hedlund, Knapik and Ross moved that the bill be amended in section 91, by striking subsection (4) in its entirety and replacing it with the following subsection:-

"(4) 15.5 per cent to the Commonwealth Stabilization Fund established in section 2H of chapter 29; by striking subsection (5) in its entirety and replacing it with the following subsection:-

"(5) 19.5 per cent to the debt reduction fund established under section 59(2)(i)"; by striking subsection (7) in its entirety and replacing it with the following:-

"(7) 20 per cent to the Unemployment Trust Fund"; and by striking the word "5" in subsection (8) and inserting in place thereof the following word:- "8".

The amendment was *rejected*.

Messrs. Tarr, Hedlund, Knapik and Ross moved that the bill be amended in section 91, by striking subsection (4) in its entirety and replacing it with the following subsection:-

"(4) 10 per cent to the Commonwealth Stabilization Fund established in section 2H of chapter 29"; by striking subsection (5) in

its entirety and replacing it with the following subsection:-

“(5) 10 per cent to the debt reduction fund established under section 59(2)(i)”;

by striking subsection (7) in its entirety and replacing it with the following:-

“(7) 10 per cent to the Unemployment Trust Fund”;

by inserting after subsection (8) the following new subsection:-

“(9) 25 per cent to the Tax Reduction Fund established in section 21 of chapter 29.”;

and by inserting after section __, the following new section:-

“Section __. Section 21 of chapter 29 of the General Laws, as appearing in the 2008 official edition, is hereby amended by inserting after the words ‘two H’ the following words:- and of the Gaming Licensing Fund.”.

The amendment was *rejected*.

Messrs. Tarr, Hedlund, Knapik and Ross moved that the bill be amended by inserting after section __, the following new section:-

“Section __. Notwithstanding any general or special law to the contrary, funds shall not be expended from the general fund to supplant, or compensate for a deficiency from the amounts projected or anticipated to be available from Category 1 or Category 2 gaming, as provided by this act, or to fund any fund, account, or obligation created by the provisions of this act, unless expressly authorized herein.”

After debate, the amendment was *rejected*.

Mr. Donnelly moved to amend the bill by striking out section 21(a)(4) of the proposed chapter 23K and inserting in place thereof the following:- “make, or cause to be made, capital expenditures to its gaming establishment in a minimum aggregate amount equal to the lesser of \$15 million or 3.5 per cent per year of the net gaming revenues derived from the establishment;”.

The amendment was *rejected*.

Messrs. Tarr, Hedlund, Knapik and Ross moved that the bill be amended in section 16, in Chapter 23K of the General Laws, by striking clause (1) section 59 in its entirety and inserting in place thereof the following:-

“(1) 50 per cent of the revenue received from a category 2 licensee shall be transferred to the Sales Tax Fund of the commonwealth, established in Section 2DDDD of Section 18 of this act. The remaining 50 per cent shall be transferred to the General Fund of the Commonwealth.”;

In Section 16, in Chapter 23K of the General Laws, by striking clause (2) of section 59 in its entirety and inserting in place thereof the following:-

“(2) 100 per cent of the revenue received from a category 1 licensee shall be transferred as follows:

(a) 10 per cent of collected revenues to the Community Mitigation Fund established in section 61;

(b) 5 per cent to the Public Health Trust Fund

(c) 42.5 per cent of collected revenues to the Sales Tax Fund.

(d) 42.5 per cent to the General Fund of the Commonwealth”;

In Section 18, in Chapter 29 of the General Laws, by striking section 2DDDD in its entirety and replacing it with the following:-

“Section 2DDDD. There shall be established and set up on the books of the commonwealth a separate fund to be known as the Sales Tax Fund. The fund shall be credited with any monies transferred from the Gaming Revenue Fund established in section 59 of chapter 23K, monies from the Gaming Licensing Fund, and any monies credited to or transferred to the fund from any other fund or source. The comptroller shall be the trustee of the fund.

(a) When the fund reaches a value of \$450,000,000, the excise imposed pursuant to section 2 of chapter 64H shall be taxed at 5.625 per cent. On the first day that the excise upon sales is taxed at a rate subject to this provision, the comptroller shall remit all monies credited to the Sales Tax Fund to the General Fund.

(b) Subject to (a), when the fund reaches a value of \$450,000,000, the excise imposed pursuant to section 2 of chapter 64H shall be taxed at 5 per cent. On the first day that the excise upon sales is taxed at a rate subject to this provision, the comptroller shall remit all monies credited to the Sales Tax Fund to the General Fund.

(c) when the excise upon sales is taxed at a rate of 5 per cent, the comptroller may make all necessary transfers among the fund to ensure that the monies in the fund are transferred as follows:-

One-half of the amount remitted to the General Fund, subject to appropriation, shall be used for debt reduction through a program of debt defeasance and accelerated debt payments; provided, that said program shall be developed jointly by the state treasurer and the secretary for administration and finance and shall be implemented in compliance with state finance law; provided further, that said program shall prioritize the reduction of risk in the commonwealth’s debt portfolio; provided further, that the state treasurer and the secretary for administration and finance shall provide a written description of the program to the finance advisory board established in section 97 of chapter 6 of the General Laws for the board’s review and comment before the program is implemented, and shall file a copy of that description with the house and senate committees on ways and means and the house and senate committees on bonding, capital expenditures and state assets when it is submitted to the finance advisory board; one-half of the amount remitted to the General Fund of the commonwealth.”;

In section 91, by striking the section in its entirety and replacing it with the following section:-

“SECTION 91. (a) There shall be established and set up on the books of the commonwealth a Gaming Licensing Fund which shall receive all licensing fees collected from applicants in receipt of a category 1 or category 2 license under chapter 23K of the General Laws. The fund shall expire on December 31, 2015. The commission shall be the trustee of the fund and shall transfer 50 per cent of the monies in the fund to the Sales Tax Fund and 50 per cent to the General Fund of the Commonwealth.

(b) Upon receipt by the Massachusetts gaming commission of license fees from licensees, interim transfers and payments shall be made on a pro rata basis from the Gaming Licensing Fund, provided, however, that no transfer or payment shall occur until the

fund reimburses \$20,000,000 to the Commonwealth Stabilization Fund as required by subsection (c) of section 92 of this act.”; and

By inserting, after Section 102, the following new sections:-

“SECTION 102A. Section 2 of Chapter 64H of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting after ‘6.25 per cent’, the following:- ‘subject to section 2DDDD of chapter 29,’.”

After debate, the question on adoption of the amendment was determined by a call of the yeas and nays, at two minutes before five o’clock P.M., on motion of Mr. Tarr, as follows, to wit (yeas 9 – nays 27) [Yeas and Nays No. 89]:

YEAS

Baddour, Steven A. Moore, Richard T.
Donoghue, Eileen M. Ross, Richard J.
Hedlund, Robert L. Tarr, Bruce E.
Knapik, Michael R. Timilty, James E. — 9.
Moore, Michael O.

NAYS

Berry, Frederick E. Jehlen, Patricia D.
Brewer, Stephen M. Joyce, Brian A.
Candaras, Gale D. Keenan, John F.
Chandler, Harriette L. Kennedy, Thomas P.
Clark, Katherine M. McGee, Thomas M.
Creem, Cynthia Stone Montigny, Mark C.
DiDomenico, Sal N. Pacheco, Marc R.
Donnelly, Kenneth J. Petruccelli, Anthony
Downing, Benjamin B. Rodrigues, Michael J.
Eldridge, James B. Rosenberg, Stanley C.
Fargo, Susan C. Spilka, Karen E.
Finegold, Barry R. Welch, James T.
Flanagan, Jennifer L. Wolf, Daniel A. — 27.
Hart, John A., Jr.

ABSENT OR NOT VOTING

Chang-Diaz, Sonia Tolman, Steven A. — 3.
Rush, Michael F.

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

Ms. Flanagan, Ms. Chandler and Messrs. Keenan and DiDomenico moved that the bill be amended in section 16, by inserting in subsection (e) of section 56 of proposed chapter 23K of the General Laws, after the words “compulsive gambling”, in line 2363, the following words:- “and other addiction services”; and in section 16, by inserting in section 58 of said proposed chapter 23K, after the words “addiction services,” in line 2405, the following words:- “substance abuse services,”

After remarks, the amendment was adopted.

Mr. Keenan and Ms. Jehlen moved that the bill be amended in section 16 by deleting in subsection (a) of section 19 the number “3” and inserting the number “2”; and by striking out the final sentence of subsection (a) of section 19.

After remarks, the amendment was rejected.

Messrs. Tarr and Knapik moved that the bill be amended by inserting, after Section __, the following new Section:-

“SECTION __. Beginning in the fifth year after the first year that the Gaming Local Aid Fund, created under section 63 of chapter 23K receives funds pursuant to chapter 59(e) of chapter 23K, in any year that the combination of funds in the Gaming Local Aid Fund and the Local Aid Stabilization Fund, created in Section 93 of this Act, totals more than \$100,000,000, an amount of not more than \$20,000,000 of the funds in the Local Aid Stabilization Fund shall be set aside to be added to the unrestricted local aid distributions to cities and towns that, through the normal distribution calculations, do not receive unrestricted local aid in an amount equal to at least ten percent of the revenues generated in such community for the Massachusetts State Lottery. If the amount so reserved is insufficient to bring all such communities up to ten percent of Lottery revenues generated, within such community then the reserved revenues shall be prorated among such communities to bring each as close to ten percent of revenues as possible. Regardless of the total combination of funds in the Gaming Local Aid Fund and the Local Aid Stabilization Fund, this section shall not apply in any year in which additional funds are added to the Gaming Local Aid Fund pursuant to section 59(f) of chapter 23K.”

After remarks, the amendment was rejected.

Mr. Keenan moved that the bill be amended in section 16 by striking section 59 in its entirety and inserting in place thereof the following:

“Section 59. There shall be established and set up on the books of the commonwealth a Gaming Revenue Fund, hereinafter the fund, which shall receive revenues collected from the tax on gross gaming revenue received from gaming licensees. The commission shall be the trustee of the fund and shall transfer monies in the fund as follows:

(1) 100 per cent of the revenue deposited shall be transferred as follows:

(a) 1 per cent in the first fiscal year in which funds are deposited in the Gaming Revenue Fund, and 2 per cent of revenues each

fiscal year thereafter, to the Massachusetts cultural council of which one-quarter of the revenues received shall be dedicated to the organization support program of the Massachusetts cultural council and three-quarters of revenues shall be dedicated to support not-for-profit or municipally-owned performing arts centers impacted as a result of the operation of gaming facilities; provided, however, that funds dedicated to such performing arts centers shall be to subsidize fees paid to touring shows or artists; provided further, that funding shall be appropriated through a competitive grant process to be developed and administered by the Massachusetts cultural council;

(b) ¼ per cent in the first fiscal year in which funds are deposited in the Gaming Revenue Fund, and 1/2 per cent each fiscal year thereafter to the Massachusetts Tourism Fund to fund tourist promotion agencies under clause (c) of section 35J of chapter 10.

(c) 3.25 per cent in the first fiscal year in which funds are deposited in the Gaming Revenue Fund, and 6.5 per cent each fiscal year thereafter, to the Community Mitigation Fund established in section 61;

(d) 1 per cent in the first fiscal year in which funds are deposited in the Gaming Revenue Fund, and 2 per cent each fiscal year thereafter to the Local Capital Projects Fund, established in section 2EEEE of chapter 29;

(e) 12.5 per cent in the first fiscal year in which funds are deposited in the Gaming Revenue Fund, and 25 per cent each fiscal year thereafter to the Gaming Local Aid Fund, established in section 63;

(f) 55 per cent in the first fiscal year in which funds are deposited in the Gaming Revenue Fund, and 10 per cent each fiscal year thereafter to the Commonwealth Stabilization Fund established in section 2H of chapter 29; provided, however, that in any fiscal year in which the amount appropriated in item 7061-0008 of the general appropriation act, paid from the General Fund, or the amount of unrestricted general government aid paid from the General Fund, including lottery aid distribution to cities and towns as paid from the General Fund under clause (c) of the second paragraph of section 35 of said chapter 10 and the amount of additional funds distributed to cities and towns as additional assistance paid from the General Fund, is less than that of the previous fiscal year, up to 1/2 of the funds otherwise directed to the Commonwealth Stabilization Fund under this section, up to an amount equal to the deficiency between said appropriations for the current and previous fiscal years, shall be transferred to the Gaming Local Aid Fund in addition to the 25 per cent under clause (e);

(g) 7 per cent in the first fiscal year in which funds are deposited in the Gaming Revenue Fund and 14 per cent each fiscal year thereafter to the Education Fund, established in section 64;

(h) 5 per cent in the first fiscal year in which funds are deposited in the Gaming Revenue Fund and 10 per cent each fiscal year thereafter shall be transferred to the Economic Development Fund, established in section 2DDDD of chapter 29;

(i) 5 per cent in the first fiscal year in which funds are deposited in the Gaming Revenue Fund and 10 per cent each fiscal year thereafter shall be used for debt reduction through a program of debt defeasance and accelerated debt payments; provided, however, that this program shall be developed jointly by the state treasurer and the secretary of administration and finance and shall be implemented in compliance with state finance law; provided further, that this program shall prioritize the reduction of risk in the commonwealth's debt portfolio; and provided further, that the state secretary and state treasurer shall provide a written description of the program to the finance advisory board established in section 97 of chapter 6 for the board's review and comment before the program is implemented and shall file a copy of that description with the house and senate committees on ways and means and the house and senate committees on bonding, capital expenditures and state assets when it is submitted to the finance advisory board;

(j) 7.5 per cent in the first fiscal year in which funds are deposited in the Gaming Revenue Fund and 15 per cent each fiscal year thereafter shall be transferred to the Transportation Infrastructure and Development Fund, established in section 62; and

(k) 2.5 per cent in the first fiscal year in which funds are deposited in the Gaming Revenue Fund and 5 per cent each fiscal year thereafter to the Public Health Trust Fund”.

The amendment was rejected.

Mr. Eldridge moved that the bill be amended in line 2332, in the proposed new Section 55, by inserting, the following new subsection:-

“(x) In addition to the tax imposed under subsection (a), a category 1 licensee shall pay a daily assessment of 5 per cent of their gross gaming revenue to Community Mitigation Fund established in Section 61.”

After remarks, the question on adoption of the amendment was determined by a call of the yeas and nays, at a quarter past five o'clock P.M., on motion of Mr. Eldridge, as follows, to wit (yeas 9 – nays 27) [Yeas and Nays No. 90]:

YEAS

Creem, Cynthia Stone Montigny, Mark C.

Downing, Benjamin B. Pacheco, Marc R.

Eldridge, James B. Spilka, Karen E.

Fargo, Susan C. Wolf, Daniel A. — 9.

Jehlen, Patricia D.

NAYS

Baddour, Steven A. Keenan, John F.

Berry, Frederick E. Kennedy, Thomas P.

Brewer, Stephen M. Knapik, Michael R.

Candaras, Gale D. McGee, Thomas M.

Chandler, Harriette L. Moore, Michael O.

Clark, Katherine M. Moore, Richard T.

DiDomenico, Sal N. Petrucci, Anthony

Donnelly, Kenneth J. Rodrigues, Michael J.

Donoghue, Eileen M. Rosenberg, Stanley C.
Finegold, Barry R. Ross, Richard J.
Flanagan, Jennifer L. Tarr, Bruce E.
Hart, John A., Jr. Timilty, James E.
Hedlund, Robert L. Welch, James T. — 27.
Joyce, Brian A.
ABSENT OR NOT VOTING
Chang-Diaz, Sonia Tolman, Steven A. — 3.
Rush, Michael F.

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

Mr. Eldridge moved that the bill be amended in line 1679 by inserting after the words "gaming licensee" the following new subsection:-

"(g) On an annual basis, each gaming licensee shall report to the commission the number of debt collection processes on patrons that are initiated, and the total amount recovered by the licensee. Notwithstanding any general or special laws to the contrary, this report shall be considered public record."

The amendment was rejected.

Mr. Keenan moved that the bill be amended in section 16 by striking the final sentence in subsection (b) of section 57 and inserting in its place thereof the following:-

"The commission shall annually prepare and file on or before April 1 of each year a budget for all accounts and trust funds under its care with the secretary of administration and finance, the chairs of the house and senate committees on ways and means, and the chairs of the joint committee on economic development and emerging technologies. The form of said budget shall determined by generally accepted accounting principles as promulgated for governments by the Governmental Accounting Standards Board and approved by the secretary of administration and finance. The commission shall post its proposed budget on its official website and shall publish notification of the filing of the budget in a newspaper of general circulation on or before April 1 of each year."

The amendment was rejected.

Messrs. Hedlund, Ross and Tarr moved that the bill be amended by striking section 19 in its entirety, and inserting in its place the following new sections:-

"Section 19. (a) The commission may issue not more than 1 category 1 license for a period of 7 years following the effective date of this legislation. The commission may not consider or approve an application for any additional gaming licenses until the first licensee's facility has been in operation for a minimum of 5 years, provided further that the commission may not issue any additional category 1 licenses until a cost/benefit analysis has been performed by a qualified independent party chosen by the governor, treasurer and attorney general, and that the analysis demonstrates that an additional license will result in at least a 50% increase in net revenue for the Commonwealth, and that the benefits of an additional license outweigh any negative impacts such as, but not limited to, public health costs, cultural facilities, and small businesses, and provided further that no more than 1 license may be awarded per region, and regions shall be established as follows:

- (1) region A: suffolk, middlesex, essex, norfolk and worcester counties;
- (2) region B: hampshire, hampden, franklin and berkshire counties; and
- (3) region C: bristol, plymouth, nantucket, dukes and barnstable counties.

Gaming licenses shall only be issued to applicants who are qualified under the criteria set forth in this chapter, as determined by the commission. Within any region, if the commission is not convinced that there is an applicant that has both met the eligibility criteria and provided convincing evidence that the applicant will provide value to the region in which the gaming establishment is proposed to be located and to the commonwealth, no gaming license shall be awarded in that region.

(b) No more than 3 category 1 licenses shall be issued by the commission.

(c) No gaming licensee shall transfer a gaming license or any direct or indirect interest in the gaming license or a gaming establishment without the majority approval of the commission. A person seeking to acquire a gaming license through a transfer shall qualify for licensure under this chapter. The commission shall reject a gaming license transfer or a transfer of interest in the gaming establishment to an unsuitable person and may reject a proposed transfer that, in the opinion of the commission, would be disadvantageous to the interests of the commonwealth.

(d) The commission shall take into consideration the physical distance in selecting the locations of the gaming establishments as they relate to each other and how they maximize benefits to the commonwealth.

(e) If a category 1 license is awarded to an applicant with a simulcasting license under chapter 128C as of July 1, 2011, a condition of the gaming license shall be to maintain the simulcasting license under said chapter 128C. Upon failure to conduct simulcast wagering, the commission shall suspend the category 1 license.

(f) If a category 1 license is awarded to an applicant with live racing under chapter 128A as of July 1, 2011, a condition of the gaming license shall be to maintain and complete the annual live racing season under said chapter 128A. Upon failure to conduct live racing the commission shall suspend the category 1 license.

(g) For the purposes of subsections (e) and (f), an applicant for a gaming license shall be considered to be the holder of a license under chapter 128A or chapter 128C if the applicant: (i) owns 50.1 or more per cent of the common stock of the company which obtained a license under said chapter 128A or 128C; and (ii) is a person who owns more than 5 per cent of the common stock of

the applicant company, directly or indirectly, or is an institutional investor in the gaming license.”

The amendment was rejected.

Messrs. Hedlund, Ross and Tarr moved that the bill be amended in section 10(a) of the proposed chapter 23K in section 16, after the word “license” by striking the following words:- “that the commission shall determine whether it will include the purchase price or lease price of the land where the gaming establishment will be located or any infrastructure designed to support the site, including, but not limited to, drainage, utility support, roadways, interchanges, fill and soil or groundwater or surface water contamination issues, and inserting place thereof the following:- the required real estate, capitalized interest, risk management fees and infrastructure improvements,”.

The amendment was rejected.

Mr. Keenan moved that the bill be amended in section 16 by striking in line 884 the words “Gaming Revenue Fund” and inserting in place thereof the following:- “Commonwealth Stabilization Fund, as established in section 2H of chapter 29”; by striking section 91 in its entirety and inserting in its place thereof the following:-

“SECTION 91: All licensing fees collected from applicants in receipt of a license shall be deposited by the gaming commission into the Commonwealth Stabilization Fund established in section 2H of chapter 29 of the General Laws.”; and in section 92 by striking subsection (c) in its entirety.

The amendment was rejected.

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

“SECTION XXX: Notwithstanding any provision of this bill to the contrary, the Commission shall issue no category two licenses.”

After debate, the question on adoption of the amendment was determined by a call of the yeas and nays, at a half past five o’clock P.M., on motion of Ms. Creem, as follows, to wit (yeas 12 – nays 24) [Yeas and Nays No. 91]:

YEAS

Creem, Cynthia Stone Hedlund, Robert L.
Donnelly, Kenneth J. Jehlen, Patricia D.
Downing, Benjamin B. Keenan, John F.
Eldridge, James B. Montigny, Mark C.
Fargo, Susan C. Spilka, Karen E.
Finegold, Barry R. Wolf, Daniel A. — 12.

NAYS

Baddour, Steven A. Knapik, Michael R.
Berry, Frederick E. McGee, Thomas M.
Brewer, Stephen M. Moore, Michael O.
Candaras, Gale D. Moore, Richard T.
Chandler, Harriette L. Pacheco, Marc R.
Clark, Katherine M. Petruccelli, Anthony
DiDomenico, Sal N. Rodrigues, Michael J.
Donoghue, Eileen M. Rosenberg, Stanley C.
Flanagan, Jennifer L. Ross, Richard J.
Hart, John A., Jr. Tarr, Bruce E.
Joyce, Brian A. Timilty, James E.
Kennedy, Thomas P. Welch, James T. — 24.

ABSENT OR NOT VOTING

Chang-Diaz, Sonia Tolman, Steven A. — 3.
Rush, Michael F.

The yeas and nays having been completed at twenty-seven minutes before six o’clock P.M., the amendment was rejected.

After remarks, Mr. Baddour, moved that the title of each of the remaining amendments be printed in the Calendar and further moved that the Senate postponed further consideration of the bill until Tuesday, October 11, 2011; and the motions prevailed.

Order Adopted.

On motion of Mr. Brewer,--

Ordered, That when the Senate adjourns today, it adjourn to meet again on Tuesday next at one o’clock P.M., in a full formal session with a calendar.

On motion of Ms. Candaras, as twenty-four minutes before six o’clock P.M., the Senate adjourned to meet again on Tuesday next at one o’clock P.M.