

# HOUSE . . . . . No. 4076

Message from His Excellency the Governor recommending legislation Relating To  
Economic Recovery Through Broadband Initiatives In Massachusetts. April 24, 2009.

## The Commonwealth of Massachusetts



DEVAL L. PATRICK  
GOVERNOR

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EXECUTIVE DEPARTMENT  
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April 24, 2009

To the Honorable Senate and House of Representatives:

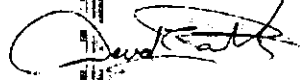
I am filing for your consideration the attached legislative proposal, entitled, "An Act Relating To Economic Recovery Through Broadband Initiatives In Massachusetts."

This is the third in a series of bills intended to ensure that Massachusetts accesses the maximum amount of federal funding available in the economic stimulus bill, the American Recovery and Reinvestment Act ("ARRA") of 2009. This legislative proposal enables the Commonwealth to take full advantage of ARRA funding for broadband deployment initiatives. By passing legislation in 2008 to create the Massachusetts Broadband Institute ("MBI") with the mission of providing affordable and available broadband access statewide, we are well-positioned to reap the benefits of these federal funds.

This bill takes us one step closer to achieving the MBI mission. In sum, this legislation: (1) authorizes the MBI to use its funds to acquire indefeasible rights of uses of fiber facilities and FCC licenses; (2) clarifies that petitions relative to the zoning of a communications or cable facility will be reviewed by DTC and petitions relative to all other types of public service facilities will be reviewed by the DPU; (3) clarifies that the MBI may be exempt from local zoning by-laws or ordinances so long as the MBI is acting within the confines of its essential government functions; and (4) authorizes a transfer of MHD property to the MBI to enable certain broadband initiatives.

It is important that we adopt these proposals immediately, to ensure the state takes every possible action to bring economic recovery home. I urge your early and favorable consideration of this bill, which will facilitate the implementation of the federal stimulus plan and the Commonwealth's ongoing efforts to provide broadband to all corners of the state.

Respectfully submitted,



DEVAL L. PATRICK,  
*Governor.*

**The Commonwealth of Massachusetts**

In the Year Two Thousand and Nine.

**AN ACT RELATING TO ECONOMIC RECOVERY THROUGH BROADBAND INITIATIVES IN MASSACHUSETTS.**

*Whereas*, the deferred operation of this act would tend to defeat its purpose, which is forthwith to access available federal funds and ensure Massachusetts' immediate economic recovery by increasing broadband access and infrastructure, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Section 6B of chapter 40J of the General Laws, as appearing in section 6 of chapter 231 of the acts  
2 of 2008, is hereby amended by inserting in subsection (d) after the words "private-sector entities", the following  
3 words;- ; provided, that for purposes of this section, acquisition of either of the following shall be considered to be  
4 acquisition of an ownership interest in broadband infrastructure: (i) an indefeasible right of use of facilities used for  
5 the transmission of intelligence by electricity for a period of no less than 20 years, or for such lesser term and  
6 subject to such other conditions as the secretary of the executive office of administration and finance may determine  
7 to be appropriate to protect the public interest; or (ii) a license or other agreement to use electromagnetic spectrum  
8 licensed by the federal government.

9  
10 DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY PUBLIC SERVICE CORPORATIONS

11  
12  
13 SECTION 2. Section 3 of Chapter 40A of the General Laws, as appearing in the 2006 edition, is hereby amended  
14 by striking out the second paragraph, and inserting in place thereof the following paragraph:-

15  
16 No zoning ordinance or by-law shall regulate or restrict the interior area of a single family residential  
17 building nor shall any such ordinance or by-law prohibit, regulate or restrict the use of land or structures for  
18 religious purposes or for educational purposes on land owned or leased by the commonwealth or any of its agencies,

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19 subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation;  
20 provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and  
21 height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage  
22 requirements. Lands or structures used, or to be used by a public service corporation may be exempted in particular  
23 respects from the operation of a zoning ordinance or by-law if, upon petition of the corporation, the department of  
24 telecommunications and cable or the department of public utilities, after notice given pursuant to section 11  
25 and a public hearing in the town or city, determines the exemptions required and finds that the present or proposed  
26 use of the land or structure is reasonably necessary for the convenience or welfare of the public; provided however,  
27 that if lands or structures used or to be used by a public service corporation are located in more than 1 municipality  
28 such lands or structures may be exempted in particular respects from the operation of any zoning ordinance or by-  
29 law if, upon petition of the corporation, the department of telecommunications and cable or the department of public  
30 utilities shall after notice to all affected communities and public hearing in 1 of said municipalities, determine the  
31 exemptions required and find that the present or proposed use of the land or structure is reasonably necessary for the  
32 convenience or welfare of the public. For the purpose of this section the petition of a public service corporation  
33 relating to siting of a communications or cable television facility shall be filed with the department of  
34 telecommunications and cable. All other petitions shall be filed with the department of public utilities.

35  
36 BROADBAND DEPLOYMENT BY THE COMMONWEALTH AND POLITICAL SUBDIVISIONS

37  
38 SECTION 3. Section 6C of chapter 40J of the General Laws, as amended by section 6 of chapter 231 of the acts of  
39 2008, is hereby further amended by adding the following paragraph:-

40 Notwithstanding any general or special law to the contrary, the corporation may exercise any of its powers  
41 to assist or enable the institute to fulfill its purposes as set forth in section 6B, including without limitation the  
42 powers set forth in paragraph (e) of section 4, and such purposes are hereby deemed and held to be purposes of the  
43 corporation. Without limiting the generality of the foregoing, the corporation shall have the power to develop,  
44 operate, lease or otherwise acquire, own, hold, dispose of and encumber conduit, fiber, towers and other real and  
45 personal property related to broadband infrastructure that shall be necessary or convenient to the fulfillment of such

46 purposes. The exercise by the corporation of any such powers shall be deemed and held to be an essential  
47 governmental function.

48

49 MASSACHUSETTS HIGHWAY DIVISION BROADBAND TRANSFER

50

51 SECTION 4. Section 6B of chapter 40J of the general laws, as amended by section 6 of chapter 231 of  
52 the acts of 2008, is hereby amended by inserting at the end of subsection (d) the following paragraph:-

53

54 Notwithstanding any provision of any other law or regulation to the contrary, the corporation on  
55 behalf of the institute may accept, and the department of highways is authorized to transfer,  
56 lease or license for a term not to exceed 25 years to the corporation on behalf of the institute any  
57 interest in real property deemed appropriate by the corporation and the commissioner of the  
58 department to promote the objectives of this chapter. The nature and extent of such interest  
59 shall be transferred on such terms and conditions as the commissioner may determine. Any  
60 such interest acquired pursuant to this subsection shall revert to the commonwealth at the  
61 expiration of any such term; provided, further, that the terms and conditions under which any  
62 interest is to be acquired pursuant to this subsection shall be approved in advance by the  
63 secretary for administration, in consultation with the inspector general, and the secretary of  
64 transportation. Any such interest acquired by the corporation may be subsequently transferred,  
65 leased or licensed thereby for use by public entities or non-profit or for-profit private sector  
66 entities subject to the approval of the commissioner of the department of highways and subject  
67 to the provisions of this section, including without limitation, such right of reverter at the  
68 expiration of the term. The corporation shall transfer, lease or license any such interest using  
69 such competitive processes and procedures as may be reviewed and approved by the inspector  
70 general. Notice that such interest is available for transfer, lease or license shall be publicly  
71 advertised in two daily newspapers of general circulation published in the city of Boston, and, if  
72 such real property is located in any other city or town, in a newspaper of general circulation  
73 published in such other city or town, once a week for 2 successive weeks. Such advertisements

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74 shall state the availability of such interest, the nature of the competitive process and other  
75 information deemed relevant, including the time and place where all pertinent information  
76 relative to the interest to be transferred, leased or licensed may be obtained, the criteria for  
77 selection of a successful proponent, and the time, place and manner for the submission of bids,  
78 proposals and the opening thereof. The consideration for any such interest shall be within the  
79 estimated range of the fair market value of the interest as determined by the corporation based  
80 upon an independent professional appraisal.

**UNCORRECTED PROOF**

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**The Commonwealth of Massachusetts**

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**JOURNAL OF THE HOUSE.**



**MONDAY, APRIL 27, 2009.**

[40] \*

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JOURNAL OF THE HOUSE.

Monday, April 27, 2009.

Met according to adjournment, at twelve o'clock noon, with Mr. Petrolati of Ludlow in the Chair (having been appointed by the Speaker, under authority conferred by Rule 5, to perform the duties of the Chair).

Prayer was offered by the Reverend Robert F. Quinn, C.S.P., Chaplain of the House, as follows:

Gracious God, today we begin a new, significant and especially difficult legislative workweek. As we evaluate and discuss in a fair, realistic and objective manner House bill 4100, we depend upon Your gifts of wisdom and courage which enable us to make right and ethical decisions. Your guidance also helps us to select the most appropriate legislative options which are open to us. In these times of limited financial resources, may we have a meeting of minds and hearts as we together try to resolve the most fundamental, sensitive and emotional issues before us. Teach us to be aware of the facts that we are all citizens of the Commonwealth, the common good should be a common goal for all and our personal financial agenda items may have to wait for another year.

Prayer.

Grant Your blessings to the Speaker, the members and employees of this House and their families. Amen.

At the request of the Chair (Mr. Petrolati), the members, guests and employees joined with him in reciting the pledge of allegiance to the flag.

Pledge of allegiance.

*Statement of Representative Gobi of Spencer.*

A statement of Ms. Gobi of Spencer was spread upon the records of the House, as follows:

MR. SPEAKER: I would like to call to the attention of the House the fact that I may be unable to be present in the House Chamber for a portion of today's sitting due to illness. Any roll calls that I may miss will be due entirely to the reason stated.

Statement of Representative Gobi of Spencer.

*Recess.*

At four minutes after twelve o'clock noon, on motion of Mr. O'Flaherty of Chelsea (Mr. Petrolati of Ludlow being in the Chair), the House recessed until half past twelve o'clock; and at six minutes before one o'clock P.M. the House was called to order with Mr. Petrolati in the Chair.

Recess.

*Message from the Governor.*



## UNCORRECTED PROOF

A message from His Excellency the Governor recommending legislation relating to economic recovery through broadband initiatives in Massachusetts (House, No. 4076) was filed in the office of the Clerk on Friday, April 24.

The message was read; and it was referred, under Rule 30, with the accompanying draft of a bill, to the committee on Telecommunications, Utilities and Energy. Sent to the Senate for concurrence.

Economy,—  
recovery  
initiatives.

### *Resolutions.*

Resolutions (filed with the Clerk by Representatives Canavan of Brockton, Brady of Brockton and Creedon of Brockton) honoring the legacy of the late Rocky Marciano on the occasion of the dedication of the United States Postal Service Rocky Marciano Building, were referred, under Rule 85, to the committee on Rules.

Brockton,—  
Rocky Marciano  
Post Office.

Mr. Binienda of Worcester, for said committee, then reported recommending that the resolutions ought to be adopted. Under suspension of the rules, on motion of Mrs. Canavan, the resolutions (reported by the committee on Bills in the Third Reading to be correctly drawn) were considered forthwith; and they were adopted.

### *Papers from the Senate.*

Petitions were referred, in concurrence, as follows:

Petition (accompanied by bill, Senate, No. 2043) of Stephen M. Brewer and Todd M. Smola (by vote of the town) for legislation relative to a betterment assessment in the town of Sturbridge. To the committee on Municipalities and Regional Government.

Sturbridge,—  
betterment  
assessments.

Petition (accompanied by bill, Senate, No. 2044) of Brian A. Joyce, Walter F. Timilty, Angelo M. Scaccia and Linda Dorcena Forry (by vote of the town) for legislation to provide an accidental disability retirement and medical benefits payment to Antonio Pickens. To the committee on Public Service.

Milton,—  
Antonio Pickens.

### *Reports of Committees.*

By Mr. Kafka of Stoughton, for the committee on Steering, Policy and Scheduling, that the Bill relative to employees of the town of Westborough (House, No. 3796) be scheduled for consideration by the House.

Westborough,—  
employees.

Under suspension of Rule 7A, on motion of Ms. Polito of Shrewsbury, the bill was read a second time forthwith; and it was ordered to a third reading.

By Mr. Kafka of Stoughton, for the committee on Steering, Policy and Scheduling, that the Bill to establish a supplementary tax rate in the town of Rockland (printed as House, No. 4050) be scheduled for consideration by the House.

Rockland,—  
tax rate.

Under suspension of Rule 7A, on motion of Mr. Nyman of Hanover, the bill was read a second time forthwith; and it was ordered to a third reading.

By Mr. Straus of Mattapoisett, for the committee on Environment, Natural Resources and Agriculture, on a petition, a Bill providing for the preservation and improvement of land, parks, safety, and clean energy in the Commonwealth (House, No. 3667).

Preservation of  
land.

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By the same member, for the same committee, on a petition a Bill authorizing the Department of Fish and Game to acquire conservation restrictions in and to lands owned by the city of Fitchburg (House, No. 3848).

Fitchburg, -  
conservation.

Severally read; and referred, under Rule 33, to the committee on Ways and Means.

By Mr. O'Flaherty of Chelsea, for the committee on the Judiciary, establishing a sick leave bank for Tanya M. Dubois, an employee of the Trial Court (House, No. 1683). Read; and referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

Tanya M.  
Dubois.

*Engrossed Bill.*

The engrossed Bill establishing a sick leave bank for Michael F. Harrington, an employee of the Department of Conservation and Recreation (see House, No. 2579) (which originated in the House), in respect to which the Senate had concurred in the adoption of the emergency preamble, was passed to be enacted; and it was signed by the acting Speaker and sent to the Senate.

Engrossed  
bill.

*Quorum Roll Call.*

Mr. Flynn of Bridgewater thereupon asked for a count of the House to ascertain if a quorum was present. The Chair (Mr. Petrolati of Ludlow), having determined that a quorum was not in attendance, then directed the Sergeant-at-Arms to secure the presence of a quorum.

Quorum.

Subsequently a roll call was taken for the purpose of ascertaining the presence of a quorum; and on the roll call 155 members were recorded as being in attendance.

Quorum roll  
call,— yea and nay  
No. 81.

**[See Yea and Nay No. 81 in Supplement.]**

Therefore a quorum was present.

*Orders of the Day.*

The House Bill making appropriations for the fiscal year 2010 for the maintenance of the departments, boards, commissions, institutions and certain activities of the Commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements (House, No. 4100) was considered, the main question being on ordering the bill to a third reading.

General  
Appropriation  
Bill.

After remarks on the question on ordering the bill to a third reading, Mr. Jones of North Reading and other members of the House moved to amend the bill by inserting, after section 23 (as printed), the following section:

“SECTION 23A. Section 1 of chapter 124 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by adding the following new subsection:—

(y) adopt policies and procedures, in consultation with the county sheriffs, establishing an optional fee, of a maximum of \$5, to be paid by inmates for daily room and board at any county or state correctional facility. Based on an inmate's ability to pay, the commissioner or a county sheriff may charge each inmate a reasonable daily

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room and board fee on a sliding scale. The commissioner of corrections may deduct such fee from the inmate's account as provided for in section 48A of chapter 127. Notwithstanding the foregoing provisions, room and board shall not be denied if the inmate is incapable of paying the daily room and board fee."

After debate on the question on adoption of the amendment, the sense of the House was taken by yeas and nays at the request of Mr. Jones; and on the roll call (Mrs. Haddad of Somerset being in the Chair) 60 members voted in the affirmative and 98 in the negative.

Amendment  
rejected,—  
yea and nay  
No. 82.

[See Yea and Nay No. 82 in Supplement.]

Therefore the amendment was rejected.

After debate on the question on ordering the bill to a third reading, Mrs. Peisch of Wellesley moved to amend it by inserting, after section 38 (as printed), the following section:

"SECTION 38A. Notwithstanding any general or special laws to the contrary, The Joint Committee on Revenue shall study all sales, corporate, and income tax deductions [A] and credits. The Committee will also study capital gains and dividends as it relates to State tax policy. The Committee shall issue a report no later than January 1, 2010 on its findings."

After debate on the question on adoption of the amendment, Mr. Jones of North Reading moved to amend the proposed new section [at "A"] by striking out the words "and credits" and inserting in place thereof the words "credits, and exemptions"; and the further amendment was adopted.

After remarks the amendment, as amended, then also was adopted.

Mr. Kaufman of Lexington then moved to amend the bill by inserting after section 12 (as printed) the following two sections:

"SECTION 12A. Section 1 of chapter 62 of the General Laws is hereby amended by inserting after the numeral 72, in line 8, as appearing in the 2006 Official Edition, the following numeral:- 139C.

SECTION 12B. Paragraph (1) of subsection (d) of section 2 of said chapter 62, as so appearing, is hereby amended by adding the following clause:-

(P) The deduction described in section 163(e)(5) of the Code to the extent increased by amendments to section 163(e)(5)(F) and section 163(i)(1) inserted by section 1232 of the American Recovery and Reinvestment Act of 2009."; and by inserting after section 16 (as printed) the following eleven sections:

"SECTION 16A. The definition of 'gross income' in section 1 of chapter 63 of the General Laws, as so appearing, is hereby amended by adding the following sentence:- Gross income shall be determined without regard to section 108(i) of the Code.

SECTION 16B. The definition of 'net income' in said section 1 of said chapter 63, as so appearing, is hereby amended by adding the following clause:-

(f) the deduction described in section 163(e)(5) of the Code to the extent increased by amendments to section 163(e)(5)(F) and section 163(i)(1) inserted by section 1232 of the American Recovery and Reinvestment Act of 2009.

SECTION 16C. Paragraph 3 of section 30 of chapter 63, as so appearing, is hereby amended by adding the following sentence:- Gross income shall be determined without regard to section 108(i) of the Code.

SECTION 16D. Paragraph 4 of said section 30 of said chapter 63, as so appearing, is hereby amended by adding the following clause:-

(vii) the deduction described in section 163(e)(5) of the Code to the extent increased by amendments to section 163(e)(5)(F) and section 163(i)(1) inserted by

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section 1232 of the American Recovery and Reinvestment Act of 2009.

SECTION 16E. Section 52A of said chapter 63 is hereby amended by inserting after the word 'exclusion', in line 28, as so appearing, the following words:- and without regard to section 108(i) of the Code.

SECTION 16F. Paragraph (b) of subsection (1) of said section 52A of said chapter 63, as so appearing, is hereby amended by adding the following clause:-

(vi) the deduction described in section 163(e)(5) of the Code to the extent increased by amendments to section 163(e)(5)(F) and section 163(i)(1), inserted by section 1232 of the American Recovery and Reinvestment Act of 2009.

SECTION 16G. Section 12A shall be effective for taxable years ending on or after January 1, 2009.

SECTION 16H. Sections 16A, 16C and 16E shall be effective for discharges in taxable years ending after December 31, 2008.

SECTION 16I. Sections 12B, 16B, 16D and 16F shall apply to obligations issued after August 31, 2008 in taxable years ending after that date.

SECTION 16J. Notwithstanding federal income tax treatment to the contrary, for purposes of chapters 62 and 63 of the General Laws, the rules of section 382 of the Internal Revenue Code shall be applied without regard to the treatment of a change in ownership of a bank or other corporation provided in Internal Revenue Service Notice 2008-83 or in any federal statutory or administrative codification, supplement, or implementation of such Notice. For purposes of said chapters 62 and 63, Internal Revenue Service Notice 2008-83 and any such codification, supplement, or implementation shall have no force or effect in any taxable year.

SECTION 16K. Notwithstanding federal income tax treatment to the contrary, for purposes of chapters 62 and 63 of the General Laws, section 382(n) of the Internal Revenue Code, inserted by the American Recovery and Reinvestment Act of 2009, shall have no force or effect in any taxable year."

After remarks the amendments were adopted.

Pending the question on ordering the bill, as amended, to a third reading, at ten minutes after three o'clock P.M., on motion of Mr. Galvin of Canton (Mrs. Haddad of Somerset being in the Chair), the House recessed until half past four o'clock; and at twenty-three minutes before five o'clock P.M. the House was called to order with Ms. Haddad in the Chair.

Recesses.

The House thereupon took a further recess, on motion of Mr. Pedone of Worcester, until half past five o'clock; and at eighteen minutes before six o'clock the House was called to order with Mrs. Haddad in the Chair.

The House thereupon took a further recess, on further motion of Mr. Pedone, until the hour of seven o'clock; and at that time the House was called to order with Mr. Vallee of Franklin in the Chair.

The Chair (Mr. Vallee) then declared a recess subject to the call of the Chair; and at twenty minutes after seven o'clock P.M. the House was called to order with Mrs. Haddad of Somerset in the Chair.

Mr. Hill of Ipswich thereupon asked for a count of the House to ascertain if a quorum was present. The Chair (Mrs. Haddad), having determined that a quorum was not in attendance, then directed the Sergeant-at-Arms to secure the presence of a quorum.

Quorum.

Subsequently a roll call was taken for the purpose of ascertaining the presence of a quorum; and on the roll call 151 members were recorded as being in attendance.

Quorum roll call,— yea and nay No. 83.

**[See Yea and Nay No. 83 in Supplement.]**

Therefore a quorum was present.

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Subsequently a statement of Mr. Cantwell of Marshfield was spread upon the records as follows:

MADAM SPEAKER: During the taking of the previous roll call, I was not recorded due to being on official business in another part of the State House.

Statement of  
Representative  
Cantwell of  
Marshfield.

Mr. Rodrigues of Westport then moved to amend the bill [A] by striking out sections 13, 14 and 15.

Pending the question on adoption of the amendment, the same member moved to amend it [at "A"] by striking out the text thereafter and inserting in place thereof the following:- in section 15 by striking out lines 9 to 14, inclusive, and inserting in place thereof the following:

- “(i) the date that the tax credit was awarded;
- (ii) the type and amount of the tax credit awarded to each taxpayer and, if applicable, each project; and
- (iii) the employment data provided by each taxpayer pursuant to subsection (b).”.

After remarks the further amendment was adopted. Mr. Rodrigues moved that this vote be reconsidered; and the motion to reconsider prevailed.

On the recurring question, the further amendment was rejected.

The amendment offered by Mr. Rodrigues then also was rejected.

Mr. Bosley of North Adams then moved to amend the bill by [A] adding the following two sections:

“SECTION 43. Subsection (o)(4) of section 6 of chapter 62 of the General Laws, as so appearing, is hereby amended by striking out the following: ‘90’ and inserting in place thereof the following:- 100.

SECTION 44. Subsection (d) of section 38Z of chapter 63 of the General Laws, as so appearing, is hereby amended by striking out the following: ‘90’ and inserting in place thereof the following:- 100.”.

Pending the question on adoption of the amendment, Mr. Bosley and other members of the House moved to amend it [at A] by striking out the text thereafter and inserting in place thereof the following:- inserting after section 12B (inserted by amendment) the following two sections:

“SECTION 12C. Paragraph (4) of subsection (o) of section 6 of chapter 62 of the General Laws, as appearing in section 3 of chapter 310 of the acts of 2008, is hereby amended by striking out the number ‘90’ and inserting in place thereof the following number:- 100.

SECTION 12D. Section 6L of chapter 62 of the General Laws is hereby amended by striking out subsections (a) and (b), as amended by section 4 of chapter 310 of the acts of 2008, and inserting in place thereof the following two subsections:-

(a) This section shall apply to credits earned under subsection (l) of section 6.

(b) At the written election of a taxpayer entitled to a credit under subsection (l) of section 6, the commissioner shall apply the credit against the liability of the taxpayer as determined on its return, as first reduced by any other available credits, and shall then refund to the taxpayer 90 per cent of the balance of the credits.”; and by inserting after section 15 the following two sections:

“SECTION 15A. Section 32E of chapter 63 of the General Laws is hereby amended by striking out subsections (a) and (b), as amended by section 5 of said chapter 310, and inserting in place thereof the following two subsections:-

(a) This section shall apply to credits earned under section 38T.

(b) At the written election of a taxpayer entitled to a credit under section 38T, the commissioner shall apply the credit against the liability of the taxpayer as determined

**UNCORRECTED PROOF**

on its return, as first reduced by any other available credits, and shall then refund to the taxpayer 90 per cent of the balance of credits.

SECTION 15B. Subsection (d) of section 38Z of chapter 63 of the General Laws, as appearing in section 6 of chapter 310 of the acts of 2008, is hereby amended by striking out the number '90' and inserting in place thereof the following number:- 100."

After debate on the question on adoption of the further amendment, the sense of the House was taken by yeas and nays at the request of Mr. Bosley of North Adams; and on the roll call 158 members voted in the affirmative and 1 in the negative.

Further amendment adopted,—  
yea and nay  
No. 84.

[See Yea and Nay No. 84 in Supplement.]

Therefore the further amendment was adopted, thus precluding a vote on the pending amendment.

Ms. Balsler of Newton and other members then moved to amend the bill by adding the following section:

"SECTION 43. Section 2 of chapter 64H of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out, in line 3, the word 'five' and inserting in place thereof the following word:- six."

Pending the question on adoption of the amendment, Ms. Balsler moved that it be amended by inserting after section 15B (inserted by amendment) the following four sections:

"SECTION 15C. Section 2 of chapter 64H of the General Laws, as so appearing, is hereby amended by striking out, in line 3, the word 'five', and inserting in place thereof the following figure:- 6.25.

SECTION 15D. Chapter 64H of the General Laws is hereby amended by striking out section 4, as so appearing, and inserting in place thereof the following:-

Section 4. For the purpose of adding and collecting the tax imposed by this chapter, or an amount equal as nearly as possible or practicable to the average equivalent thereof, to be reimbursed to the vendor by the purchaser, the following formula shall be in force and effect as follows:—

Amount of Sale	Amount of Tax
\$0.01 to \$0.07 inclusive .....	No tax
\$0.08 to \$0.23 inclusive .....	1 cent
\$0.24 to \$0.39 inclusive .....	2 cents
\$0.40 to \$0.55 inclusive .....	3 cents
\$0.56 to \$0.71 inclusive .....	4 cents
\$0.72 to \$0.87 inclusive .....	5 cents
\$0.88 to \$1.03 inclusive .....	6 cents

In addition to a tax of 6.25 cents on each full dollar, a tax shall be collected on each part of a dollar in excess of a full dollar in accordance with the above formula. The tax shall be rounded to a whole cent, rounding up to the next cent whenever the computed tax contains one-half of a cent or greater.

SECTION 15E. Said section 4 of said chapter 64H of the General Laws, as so appearing, is hereby further amended by striking out, in line 13, the word "five" and inserting in place thereof the following figure:- 6.25.

SECTION 15F. Section 2 of chapter 64I of the General Laws, as so appearing, is hereby amended by striking out, in line 6, the word 'five', and inserting in place thereof the following figure:- 6.25."; by inserting after section 40 the following two sections:

"SECTION 40A. Notwithstanding any general or special law to the contrary,

**UNCORRECTED PROOF**

there shall be established and set up on the books a separate fund to be known as the Transportation Investment Fund to be used to improve the transportation system in the commonwealth. There shall be credited to the fund all moneys received by the commonwealth equal to .385 per cent of the receipts from sales, as defined by chapter 64H, and .385 per cent of the sales price of purchases, as defined by chapter 64I, from that portion of the taxes imposed under said chapters 64H and 64I as excises upon the sale and use at retail of tangible property or of services, and upon the storage, use or other consumption of tangible property or of services, including interest thereon or penalties, but not including any portion of the taxes that constitute special receipts within the meaning of subsection (b 1/2) of section 10 of chapter 152 of the acts of 1997 or within the meaning of subsection (b 1/2) of said section 10 of said chapter 152. Money remaining in the fund at the end of the year shall not revert to the General Fund.

SECTION 40B. Section 40A is hereby repealed.”; and by inserting after section 41 the following section:

“SECTION 41A. Section 40B shall take effect on September 1, 2009.”.

Mr. Peterson of Grafton thereupon raised a point of order that the further amendments offered by the lady from Newton were improperly before the House for the reason that they were beyond the scope of the pending amendment.

Point of  
order.

The Chair (Mrs. Haddad of Somerset) state that an examination of the further amendments showed that they were in fact beyond the scope of the amendment under consideration, and therefore the further amendments were laid aside accordingly.

There being no objection,— the pending amendment offered by Ms. Balsler, et als, then was withdrawn.

Mr. Sciortino of Medford and other members of the House then moved to amend the bill by [A] adding at the end thereof the following three sections:

“SECTION 43. Chapter 10 of the General Laws is hereby amended by inserting after 35KK the following new section:-

Section 35LL. Transportation Reinvestment Fund

(a) As used in this section, the following words shall, unless the context requires otherwise, have the following meanings:—

‘Dedicated sales tax revenue amount’, all moneys received by the commonwealth equal to 1 per cent of the receipts from sales, as defined by chapter 64H, and 1 per cent of the sales price of purchases, as defined by chapter 64I, from that portion of the taxes imposed under said chapters 64H and 64I as excises upon the sale and use at retail of tangible property or of services, and upon the storage, use or other consumption of tangible property or of services, including interest thereon or penalties, but not including any portion of the taxes that constitute special receipts within the meaning of subsection (b 1/2) of section 10 of chapter 152 of the acts of 1997 or within the meaning of subsection (b 1/2) of said section 10 of said chapter 152 or any portion of the taxes imposed on the sale of meals as defined in paragraph (h) of section 6 of said chapter 64H.

‘Receipts from sales’, gross receipts from nonexempt sales, less amounts abated or reimbursed.

‘Sales price of purchases’, sales price of nonexempt purchases, less amounts abated or reimbursed.

‘Secretary’, the Secretary of Transportation of the Commonwealth.

**UNCORRECTED PROOF**

(b) There shall be established on the books of the commonwealth a separate fund, to be known as the Transportation Reinvestment Fund, which shall be used for financing transportation-related purposes of the commonwealth. There shall be credited to the fund the dedicated sales tax revenue amount.

The fund, which shall be under the control of the Executive Office of Transportation and not subject to appropriation, shall be used as follows:

(i) For expenditure, under the direction of the Secretary, for maintaining, repairing, improving and constructing town and county ways and bridges, sidewalks adjacent to such ways and bridges, bikeways and other projects eligible for funding as a transportation enhancement project as described in the Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240, salt storage sheds, bikeways and public use off-street parking facilities related to mass transportation, for engineering services and expenses related to highway transportation enhancement and mass transportation purposes, for care, repair, storage, replacement, purchase and long-term leasing of road building machinery, equipment and tools, for the erection and maintenance of direction signs and warning signs and for necessary or beneficial improvements to unpaved town and county ways together with any money which any town or county may appropriate for such purposes to be used on the same ways, sheds, bikeways, bridges, machinery, equipment, tools and facilities. Such engineering services, including surveying services, shall only be performed by architectural, engineering or surveying firms prequalified by the Secretary; provided, however, that a municipality may seek a waiver of this requirement from the Secretary if the municipality demonstrates to the satisfaction of the Secretary that it is cost prohibitive to use a prequalified firm. Such ways, sheds, bikeways, bridges, machinery, equipment, tools and facilities shall remain town or county ways, sheds, bikeways, bridges, machinery, equipment, tools and facilities. The Secretary shall withhold or withdraw the unexpended balance of any funds assigned by it under this subdivision if the town fails to comply with the official standards for traffic control established by the authority or with any provision of a traffic control agreement negotiated between the authority and the town, as required by the United States Secretary of Commerce under section 109 of Title 23 of the United States Code. In this subdivision the word 'town' shall include city;

(ii) For expenditure, under the direction of the Secretary, for maintaining, repairing and improving state highways and bridges, including bridges and appurtenances managed by the department of conservation and recreation, and for the turnpike and the metropolitan highway system managed until its dissolution by the Massachusetts turnpike authority;

(iii) For contributions to regional transit authorities under section 23 of chapter 161B of the General Laws;

(iv) For expenditure, under the direction of the Secretary, for infrastructure improvements to transportation facilities throughout the commonwealth;

(v) For regional expenditure, under the direction of the Secretary, for highway division projects in the five geographic regions of the commonwealth consistent with the boundaries of the five highway division districts as existing on July 1, 2009; provided that the commonwealth's total five year capital expenditures for road and bridge projects in any region, including but not limited to expenditures made from the fund, shall not be less than 75 per cent of the following number: the annual percentage of the total motor vehicle fuel tax generated by that region multiplied by the highway division's 5 year historic capital expenditures, excluding personnel costs;

(vi) For expenditures to meet any debt obligations of the Massachusetts turnpike



**UNCORRECTED PROOF**

authority, the Massachusetts Bay transportation authority, the regional transit authorities, or any successor agencies or authorities of any of these authorities;

SECTION 44. Chapter 64H of the General Laws, as appearing in the 2006 Official Edition, is hereby amended in section 2 by striking from line 3 the figure 'five' and replacing it with the figure '7'.

SECTION 45. Said chapter 64H is further amended by striking section 4 and replacing it with the following:-

Section 4. For the purpose of adding and collecting the tax imposed by this chapter, or an amount equal as nearly as possible or practicable to the average equivalent thereof, to be reimbursed to the vendor by the purchaser, the following formula shall be in force and effect as follows:—

Amount of Sale	Amount of Tax
\$0.01 to \$0.14 inclusive.....	1 cent
\$0.15 to \$0.28 inclusive.....	2 cents
\$0.29 to \$0.42 inclusive.....	3 cents
\$0.43 to \$0.56 inclusive.....	4 cents
\$0.57 to \$0.70 inclusive.....	5 cents
\$0.71 to \$0.84 inclusive.....	6 cents
\$0.85 to \$1.00 inclusive.....	7 cents

In addition to a tax of 7 cents on each dollar, a tax shall be collected on each part of a dollar in excess of a full dollar in accordance with the above formula.”.

Pending the question on adoption of the amendment, Mr. Sciortino moved to amend it [at “A”] by striking out the text thereafter and inserting in place thereof the following:- inserting after section 15B (inserted by amendment) the following four sections:

“SECTION 15C. Section 2 of chapter 64H of the General Laws, as so appearing, is hereby amended by striking out, in line 3, the word ‘five’, and inserting in place thereof the following figure:- 6.25.

SECTION 15D. Chapter 64H of the General Laws is hereby amended by striking out section 4, as so appearing, and inserting in place thereof the following:-

Section 4. For the purpose of adding and collecting the tax imposed by this chapter, or an amount equal as nearly as possible or practicable to the average equivalent thereof, to be reimbursed to the vendor by the purchaser, the following formula shall be in force and effect as follows:—

Amount of Sale	Amount of Tax
\$0.01 to \$0.07 inclusive .....	No tax
\$0.08 to \$0.23 inclusive .....	1 cent
\$0.24 to \$0.39 inclusive .....	2 cents
\$0.40 to \$0.55 inclusive .....	3 cents
\$0.56 to \$0.71 inclusive .....	4 cents
\$0.72 to \$0.87 inclusive .....	5 cents
\$0.88 to \$1.03 inclusive .....	6 cents

In addition to a tax of 6.25 cents on each full dollar, a tax shall be collected on each part of a dollar in excess of a full dollar in accordance with the above formula. The tax shall be rounded to a whole cent, rounding up to the next cent whenever the computed tax contains one-half of a cent or greater.”

SECTION 15E. Said section 4 of said chapter 64H of the General Laws, as so appearing, is hereby further amended by striking out, in line 13, the word ‘five’ and inserting in place thereof the following figure:- 6.25.

**UNCORRECTED PROOF**

SECTION 15F. Section 2 of chapter 64I of the General Laws, as so appearing, is hereby amended by striking out, in line 6, the word 'five', and inserting in place thereof the following figure:- 6.25."; by inserting after section 40 the following two sections:

"SECTION 40A. Notwithstanding any general or special law to the contrary, there shall be established and set up on the books a separate fund to be known as the Transportation Investment Fund to be used to improve the transportation system in the commonwealth. There shall be credited to the fund all moneys received by the commonwealth equal to .385 per cent of the receipts from sales, as defined by chapter 64H, and .385 per cent of the sales price of purchases, as defined by chapter 64I, from that portion of the taxes imposed under said chapters 64H and 64I as excises upon the sale and use at retail of tangible property or of services, and upon the storage, use or other consumption of tangible property or of services, including interest thereon or penalties, but not including any portion of the taxes that constitute special receipts within the meaning of subsection (b 1/2) of section 10 of chapter 152 of the acts of 1997 or within the meaning of subsection (b 1/2) of said section 10 of said chapter 152. Money remaining in the fund at the end of the year shall not revert to the General Fund.

SECTION 40B. Section 40A is hereby repealed."; and by inserting after section 41 the following section:

"SECTION 41A. Section 40B shall take effect on September 1, 2009."

After debate on the question on adoption of the further amendment (Mr. Donato of Medford being in the Chair), the Chair (Mr. Donato) placed before the House the question on suspension of Rule 1A in order that the House might continue to meet to meet beyond the hour of nine o'clock P.M.

On the question on suspension of Rule 1A, the sense of the House was taken by yeas and nays, as required under the provisions of said rule, and on the roll 129 members voted in the affirmative and 30 in the negative.

**[See Yea and Nay No. 85 in Supplement.]**

Therefore Rule 1A was suspended.

After further debate on the question on adoption of the further amendment offered by Mr. Sciortino of Medford, Mrs. Haddad of Somerset asked for a count of the House to ascertain if a quorum was present. The Chair (Mr. Donato), having determined that a quorum was not in attendance, then directed the Sergeant-at-Arms to secure the presence of a quorum.

Subsequently a roll call was taken for the purpose of ascertaining the presence of a quorum; and on the roll call (the Speaker having been in the Chair) 158 members were recorded as being in attendance.

**[See Yea and Nay No. 86 in Supplement.]**

Therefore a quorum was present.

After debate on the question on adoption of the further amendments, the sense of the House was taken by yeas and nays at the request of Mr. Evangelidis of Holden; and on the roll call 108 members voted in the affirmative and 51 in the negative.

**[See Yea and Nay No. 87 in Supplement.]**

Therefore the further amendments were adopted, thus precluding a vote on the pending amendment.

*Recess.*

At one minute before eleven o'clock P.M., on motion of Mrs. Haddad of Somerset

Suspension of  
Rule 1A.

Rule 1A  
suspended,—  
yea and nay No.  
85.

Quorum.

Quorum roll  
call,— yea and nay  
No. 86.

Further  
amendments  
adopted,—  
yea and nay  
No. 87.

Recess.