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UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



JOURNAL OF THE SENATE.

Wednesday, March 25, 2009.

Met at a half past at twelve o'clock noon (Mr. Rosenberg in the Chair).

Distinguished Guest.

There being no objection, during consideration of the Orders of the Day, the President handed the gavel to Mr. Tarr for the purpose of recognizing the achievement of one of Mr. Tarr's staff. Mr. Tarr then recognized Daniel Pawson, a member of his staff, for his success in being a winning contestant on the game show Jeopardy.

Petition.

Mr. Eldridge presented a petition (subject to Joint Rule 12) of James B. Eldridge, Harriette L. Chandler, Carolyn Dykema, Harold P. Naughton, Jr. and other members of the General Court for legislation to establish a special commission on the reuse of Westborough State Hospital,— **and the same was referred, under Senate Rule 20, to the committees on Rules of the two branches, acting concurrently.**

Recess.

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

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

Orders of the Day.

The Orders of the Day were considered, as follows:

The Senate Bill modernizing the transportation systems of the Commonwealth (Senate, No. 10),— **was read a second time.**

After remarks, and pending the question on ordering the bill to a third reading, Mr. Downing moved that the bill be amended by inserting the following new section:—

“Section XX. Notwithstanding any general or special law to the contrary, the commissioner of the division of capital asset management and maintenance shall, in consultation with the commissioner of the Massachusetts highway department, convey without consideration the highway maintenance facility located on Rt. 102 in the town of Lee to the town of Lee for the purposes of using the facility as a municipal highway garage. The commissioner of the division of capital asset management and maintenance shall begin this process no longer than 90 days after the reorganization of the Massachusetts highway department and the Massachusetts turnpike authority into one agency commences. If at any time the town of Lee discontinues using said facility as a municipal highway garage the facility shall revert back to the state transportation agency.”

The amendment was rejected.

Messrs. Richard T. Moore, Montigny and O'Leary moved that the bill be amended, in line 2146 by striking the following:—

“secretary of transportation” and inserting therein, the following: “inspector general council, established pursuant to section 3 of chapter 12A.”

After remarks, the question on adoption of the amendment was determined by a call of the yeas and nays at sixteen minutes past one o'clock P.M., on motion of Mr. Richard T. Moore as follows, to wit (yeas 39 — nays 0) [Yeas and Nays No. 19]:

YEAS.

Baddour, Steven A. Knapik, Michael R.
Berry, Frederick E. McGee, Thomas M.
Brewer, Stephen M. Menard, Joan M.
Brown, Scott P. Montigny, Mark C.
Buoniconti, Stephen J. Moore, Michael O.
Candaras, Gale D. Moore, Richard T.
Chandler, Harriette L. Morrissey, Michael W.
Chang-Diaz, Sonia O'Leary, Robert A.
Creem, Cynthia Stone Pacheco, Marc R.
Donnelly, Kenneth J. Panagiotakos, Steven C.
Downing, Benjamin B. Petrucci, Anthony
Eldridge, James B. Rosenberg, Stanley C.
Fargo, Susan C. Spilka, Karen E.
Flanagan, Jennifer L. Tarr, Bruce E.
Galluccio, Anthony D. Timilty, James E.
Hart, John A., Jr. Tisci, Richard R.
Hedlund, Robert L. Tolman, Steven A.
Jehlen, Patricia D. Tucker, Susan C.
Joyce, Brian A. Walsh, Marian — 39.
Kennedy, Thomas P.

NAYS — 0.

The yeas and nays having been completed at twenty minutes past one o'clock P.M., the amendment was adopted.

Mr. Galluccio moved that the bill be amended, by striking section 56 in its entirety and inserting thereof the following new section:—

“SECTION 56. (a) The Massachusetts Port Authority shall transfer the Maurice J. Tobin Memorial Bridge, in the city of Chelsea its right to collect toll revenues on that bridge and all related assets, liabilities, expenses and obligations to the division of roads and bridges in the Massachusetts Surface Transportation Authority not later than July 1, 2010, provided, however, that the tolls collected from transit over or through the bridge by private passenger vehicles registered in the city of Chelsea or the Charlestown section of the city of Boston, as the Boston transportation department has determined the geographical boundaries of such sections, from time to time, shall not be greater than the tolls in effect for such vehicles at existing toll facilities at the bridge as of January 1, 2009, pursuant to the Resident Commuter Permit program as provided under 740 CMR 11.03.

The transfer by the Massachusetts Port Authority of that bridge may be made pursuant to such other terms and conditions as may be acceptable to the Massachusetts Port Authority and the Massachusetts Surface Transportation Authority, but such terms shall be consistent with and authorized by Chapter 465 of the Act of 1956 and any trust agreement to which the Massachusetts Port Authority is a party as of the effective date of this act.

(b) On July 1, 2009, ownership, possession and control of the bridge shall pass to and be vested in the Massachusetts Surface Transportation Authority without consideration or further evidence of transfer.

(c) All books, maps, papers, plans, records and documents of whatever description pertaining to the design, construction, operation and affairs of the bridge which are in the possession of the Massachusetts Port Authority on June 30, 2010, or which thereafter come into the possession of the Massachusetts Port Authority shall be transferred and delivered to the Massachusetts Surface Transportation Authority for its use, ownership, possession and control.

(d) On July 1, 2010, all proceeds of bonds and grants and other aid which are held by the Massachusetts Port Authority for the benefit of the bridge on the effective date of this act shall then and thereafter be deemed to be held in trust for, and shall upon demand of the Massachusetts Surface Transportation Authority be transferred to the Massachusetts Surface Transportation Authority to be applied to projects for which such bonds, grants or other aid were authorized. All proceeds of bonds, grants or other aid referred to herein, which shall be so held in trust and transferred upon demand, shall be in the amount as certified by the executive director of the Massachusetts Port Authority to the state treasurer.”

The amendment was adopted.

Mr. Galluccio moved that the bill be amended by inserting at the end thereof the following sections:—

SECTION XX. The General Laws are hereby amended by inserting after chapter 21M the following chapter:—

CHAPTER 21N.

THE TRANSPORTATION OF EXPLOSIVE AND INFLAMMABLE MATERIALS AND STRICT LIABILITY.

Section 1. As used in this chapter, the following words shall, unless the context otherwise requires, have the following meanings:—

“Motor vehicle,” as defined in section 1 of chapter 90.

“Passenger vehicle,” any motor vehicle that is used or maintained primarily for the transportation of persons and not for the commercial transportation of any hazardous article or material identified in section 9 of chapter 148 of the General Laws.

“Person,” any individual, corporation, affiliate or subsidiary, partnership, association, cooperative or otherwise, trust or estate, governmental agency, authority, municipality or agency thereof, board or commission, or other public or private legal entity.

Section 2. Notwithstanding any general or special law to the contrary, whoever owns or operates a motor vehicle transporting any hazardous article or material identified in section 9 of chapter 148, shall be strictly liable for damages to the person or property of another caused by the release of any such hazardous article or material, including, but not limited to, damage caused by fire or explosion without proof of negligence. The exercise of due care shall not excuse any owner or operator from strict liability for personal injuries or real or personal property damage caused thereby.

Section 2 of chapter 258, not this chapter, shall apply to any claim against a public employer.

Nothing in this chapter shall be construed to impose strict liability on a person that owns or operates a passenger vehicle or to preclude the right to bring a claim for contributory negligence under chapter 231B.

SECTION XX. Section 35 of chapter 85 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out, in lines 28 and 29, the words “two hundred dollars” and inserting in place thereof the following figure:— \$500.

SECTION XX. Chapter 10 of the General Laws is hereby amended by adding the following section:—

Section 75. There shall be established and set up on the books of the commonwealth a separate fund to be known as the HazMat Response Fund. There shall be credited to the fund all penalties and fines due the commonwealth collected under the second paragraph in section 35 of chapter 85 and the fourth paragraph in section 20 of chapter 90 and any income derived from investment of amounts credited to the fund. Amounts credited to the fund shall be received and held in trust solely for hazardous materials training and equipment procurement. The state treasurer shall be the custodian of the fund and shall receive, deposit and invest all monies transmitted to him under this section in accordance with sections 34, 34A and 38 of chapter 29, and all other applicable statutes, in such a manner as to secure the highest rate of return available consistent with the safety of the fund, and shall credit interest and earnings on the trust fund corpus to the trust fund. The secretary of the executive office of public safety shall award and administer grants from the fund, without further appropriation, to municipalities in the commonwealth. The secretary of the executive office of public safety shall develop written criteria for awarding grants, which shall be evaluated and, if necessary, revised on an annual basis. The secretary of the executive office of public safety shall file a report detailing the amount of funds collected and expended from the fund along with a copy of the written criteria used to expend the funds to the house and senate committees on ways and means not later than August 15 of each calendar year. Any unexpended balance of monies in the fund at the end of the fiscal year shall not revert to the General Fund but shall remain available for expenditure from such fund in subsequent fiscal years. No expenditure made from the fund shall cause the fund to become deficient at any point during a fiscal year.

SECTION XX. Said section 35 of said chapter 85, as so appearing, is hereby amended by adding the following 2 paragraphs:— Any person that operates a vehicle carrying any article or material identified in section 9 of chapter 148, the weight of which, with its load, exceeds the maximum weight authorized under this section or section 34, unless such vehicle is being operated in accordance with the terms of a special permit issued under section 30 or 30A, shall be punished by a fine of not more than \$1,000.

Any person that violates this section or section 34 shall be deemed to have committed a moving violation for the purposes of determining surcharges on motor vehicle premiums under section 113B of chapter 175.

SECTION XX. Section 20 of chapter 90 of the General Laws, as so appearing, is hereby amended by inserting, after the third paragraph, the following paragraph:—

Any person who violates section 17 while operating a commercial motor vehicle, as defined in section 1 of chapter 90F, while such vehicle is transporting any article or material identified in section 9 of chapter 148, shall be punished by a fine of not more than \$1,000 for the first offense, not less than \$1,000 nor more than \$2,000 for a second offense committed in any 12 month period, and not less than \$2,000 nor more than \$3,000 for a third or subsequent offense committed in any 12 month period. Prosecutions commenced under this paragraph shall not be placed on file nor continued without a finding.

The amendment was rejected.

Mr. Knapik moved that the bill be amended by inserting the following new section:—

“The executive office of transportation, in consultation with the Massachusetts turnpike authority, the Massachusetts highway department, and the secretary of administration and finance, shall study the feasibility of developing a new exit off the Massachusetts turnpike between exits 2 and 3 going eastbound and westbound. The study shall include, but not be limited to, looking into the effectiveness of a new exit to provide better transit options and service for the region, the economic impact it will have on the municipalities in the area, estimated cost of the project, and siting of the exits.”

“The executive office of transportation shall report the findings of the study, and its recommendations if any, by filing the same with the clerks of the senate and house of representatives not more than 1 year after the effective date of this act.”

The amendment was rejected.

Messrs. Tisei, Tarr, Knapik, Hedlund, Brown and Montigny moved to amend the bill by inserting the following section:—

“Section. xx. The secretary of transportation shall submit a report on the progress and all expenditures related to any state transportation infrastructure projects undertaken through use of federal funds received under the American recovery and reinvestment act of 2009 to the clerks of the senate and house of representatives, the chairs of the senate and house committees on ways and means and the senate and house chairs of the joint committee on transportation and the joint committee on bonding, capital expenditures and state assets. The report shall include, but not be limited to: the total estimated cost of each project, the

amount expended for the planning and design of each project up to the time the report is filed, the amount expended on construction of each project up to the time the report is filed, the timeline from advertisement through contract award and from the start of actual design and construction by the design build team to project completion, the time saved, if any, by employing the design build procurement method; and the estimated lifetime maintenance schedule and cost of each project, the original estimated completion date of each project and the current anticipated completion date of each project. This report shall also include the total number of employees and outside contractors and amount expended on salaries and benefits for employees and outside contractors that are specifically working on projects to be carried out as part of projects funded through the American recovery and reinvestment act of 2009. The report shall be submitted on December 31 of each year until the culmination of any project constructed with funds authorized by the American recovery and reinvestment act of 2009.”

After remarks, the question on adoption of the amendment was determined by a call of the yeas and nays at twenty-eight minutes past one o'clock P.M., on motion of Mr. Tarr as follows, to wit (yeas 39 — nays 0) [Yeas and Nays No. 20]:

YEAS.

Baddour, Steven A. Knapik, Michael R.
Berry, Frederick E. McGee, Thomas M.
Brewer, Stephen M. Menard, Joan M.
Brown, Scott P. Montigny, Mark C.
Buoniconti, Stephen J. Moore, Michael O.
Candaras, Gale D. Moore, Richard T.
Chandler, Harriette L. Morrissey, Michael W.
Chang-Diaz, Sonia O'Leary, Robert A.
Creem, Cynthia Stone Pacheco, Marc R.
Donnelly, Kenneth J. Panagiotakos, Steven C.
Downing, Benjamin B. Petruccelli, Anthony
Eldridge, James B. Rosenberg, Stanley C.
Fargo, Susan C. Spilka, Karen E.
Flanagan, Jennifer L. Tarr, Bruce E.
Galluccio, Anthony D. Timilty, James E.
Hart, John A., Jr. Tisei, Richard R.
Hedlund, Robert L. Tolman, Steven A.
Jehlen, Patricia D. Tucker, Susan C.
Joyce, Brian A. Walsh, Marian — 39.
Kennedy, Thomas P.

NAYS — 0.

The yeas and nays having been completed at twenty-eight minutes before two o'clock P.M., the amendment was adopted.

Ms. Fargo moved that the bill be amended by adding the following section:—

“SECTION ____ . Section 7 of chapter 64A, as appearing in the 2006 Official Edition, is hereby amended by striking out the entire text of the section and inserting in place thereof, the following text:—

“Section 7. Any person who shall buy any fuel other than aviation fuel on which an excise has been paid or is chargeable under this chapter, and shall consume the same in any manner except on a farm for farming purposes or in the operation of motor vehicles upon or over highways, whether or not such vehicles are registered under the provisions of section five of chapter ninety, and any person who transfers into another state fuel on which the excise has been paid or is chargeable under this chapter, and pays an additional excise or other tax which is properly due to such other state on such fuel so transferred, shall be reimbursed the amount of said excise in the manner and subject to the conditions hereinafter set forth; provided, however, that any turnpike, roadway, bridge or tunnel for which a toll is collected for travel that is operated by, the Roads and Bridge Division of the Massachusetts Surface Transportation Authority, referred to as “MSTA” or other department, division or quasi-public authority shall not be considered a highway for the purposes of this chapter. All claims for reimbursement shall be for not less than one dollar, shall be made by affidavit in such form and containing such information as the commissioner of revenue shall prescribe consistent with this section and in the case of claims for reimbursement for tax on fuel consumed on said turnpike, roadway, bridge or tunnel, shall be made with respect to a calendar half year and shall be accompanied by the toll receipts or invoices provided to users of said tolled turnpike, roadway, bridge or tunnel by the MSTA or other operating department, division or quasi-public authority. All claims shall be accompanied by original invoices or sales receipts of such fuel or by other documentation acceptable to the commissioner, evidencing the transfer of fuel in bulk to a motor vehicle, except no such invoices, sales receipts or bulk transfer documents, need accompany such claims for reimbursement from non-commercial users of such tolled turnpike, roadway, bridge or tunnel.

All claims for reimbursement shall be filed with the commissioner within two years from the date of purchase or invoice of fuel; except claims for reimbursement of the excise paid for fuel used: (a) in the operation of motor vehicles on any turnpike, roadway, bridge or tunnel for which a toll is collected, shall be based on quarterly year periods, the ending date of such period shall be the last day of March, June, September, and December, respectively, and claims for reimbursement shall be filed within 1 year of the ending date of the respective period based on the date of travel; or (b) in producing or generating power for the operation of

watercraft of every description, other than a seaplane, which shall be filed within 6 months from the date of purchase or invoice of such fuel. Such toll receipts given to users of said turnpike or invoices rendered to such users by the MSTA or other operating department, division or quasi-public authority, shall be accepted by the commissioner as evidence of the use on said turnpike of fuel in the proportion of 1 gallon for each 20 miles of indicated travel by passenger cars, ambulances, hearses, motorcycles and light trucks, and in the proportion of 1 gallon for each 8 miles of indicated travel by all other trucks and buses.

Notwithstanding any other method to calculate miles traveled, the collection of a toll for travel, as evidenced by such receipt, invoice or statement, shall determine the distance traveled in accordance with the established mileage for such respective toll as set forth: (i) 2.2 miles for such toll collected for travel through the Sumner Tunnel, the vehicular tunnel under Boston Harbor that was constructed by the city of Boston under the provisions of chapter two hundred and ninety-seven of the acts of nineteen hundred and twenty nine; (ii) 2 miles for such toll collected for southbound travel on the Tobin Memorial Bridge, the bridge formerly known as the Mystic River Bridge that connects the city of Boston with the city of Chelsea; (iii) 6.8 miles for such toll collected for westbound travel through the Ted Williams Tunnel, the vehicular tunnel under Boston Harbor that constitutes a part of the interstate highway route 90 that connects South Boston with East Boston in the city of Boston; and (iv) for such toll collected for travel on the so called Boston extension of the interstate highway route 90 beginning at the interchange of interstate highway 90 and interstate highway 95, also referred as state highway route 128, in the town of Weston and ending in the city of Boston at the interchange of interstate highway 90 and interstate highway route 93, the travel mileage for such toll shall be established as: (a) 4.4 miles for such toll collected for eastbound travel at the toll plaza, known as the Weston Toll Plaza, at the interchange of said interstate 90 and interstate highway 95, exit 15, in the town of Weston, to access or continue eastbound travel on interstate highway 90 onto the Boston extension segment; (b) 2.5 miles for eastbound travel accessing the Boston extension at West Newton, exit 16, in the city of Newton, provided a toll is collected at such entry interchange; (c) 3.1 miles for such toll collected for eastbound travel exiting the Boston extension at the Allston-Brighton interchange, exit 18, in the city of Boston; (d) 6.8 miles for such toll collected for continued eastbound travel on the Boston extension, at the Allston-Brighton Toll Plaza in the city of Boston; (e) 3.7 miles for such toll collected for westbound travel exiting the Boston extension at Brighton-Cambridge, exit 20, in the city of Boston; except, the mileage for such toll collected for use of the so-called U-Turn Lane at exit 20 shall be established as 7.4 miles; (f) 6.9 miles for such toll collected for continued westbound travel on the Boston Extension at the Allston-Brighton Toll Plaza in the city of Boston; (g) 2.4 miles for westbound travel exiting the Boston extension at West Newton, exit 16, in the city of Newton, provided a toll is collected at such exit interchange; and (h) 4.3 miles for such toll collected for westbound travel at the toll plaza known as the Weston Toll Plaza at the interchange of said interstate 90 and interstate highway 95, exit 15, in the town of Weston, to exit the Boston extension or continue such westbound travel on the non-Boston extension segment of said interstate 90, notwithstanding, the term "collected" shall for the purposes of this sub clause, include such toll assessed for westbound travel on said Boston extension segment.

Except as specifically set forth in the preceding paragraph, no claim shall be allowed for travel mileage for the Mystic River Bridge, Sumner Tunnel, interstate highway 90 travel east of interstate highway 95, Ted Williams Tunnel, Mystic River Bridge or Callahan Tunnel, the vehicular tunnel constructed under the provisions of chapter five hundred and ninety-eight of the acts of nineteen hundred and fifty-eight between the North End Section of the city of Boston and the East Boston section of said city. No claim for reimbursement for tax on fuel consumed on said turnpike, roadway, bridge or tunnel shall be allowed unless fuel, which an excise was paid or chargeable under this chapter, was: (i) purchased in an amount not less than the quantity of fuel which is the basis for the claim of reimbursement for the same quarterly period, or (ii) was transferred from bulk to the vehicle tank within the same quarterly period.

The provisions of chapter 64I shall not apply to fuel consumed on said turnpike, roadway, bridge or tunnel as calculated based on miles of travel, which is the basis for reimbursement of the fuel excise under this section.

The commissioner may require such further information, consistent with this section, as he shall deem necessary for the determination of such claims, and shall transmit all claims approved by him to the comptroller for certification; and the amount approved by the commissioner and certified as aforesaid shall be paid forthwith from the proceeds of the excise tax levied under this chapter, without specific appropriation.

The commissioner shall provide information relating to the fuel tax reimbursement program on the department of revenue's public internet web-site to include, general information relating to the program, applicable rules and regulations, application forms and the mileage distances between interchanges or as otherwise established by this section.

The MSTA or such other operating department, division or quasi-public authority that utilizes the so called Fast Lane electronic toll collection system or such other electronic system to collect tolls from motorists for turnpike, roadway, bridge or tunnel use, shall issue or make available, electronically on the internet, at no charge to account holders, a monthly statement of such account holder's toll account activity. Such internet access to electronic account information shall be reasonably safeguarded and limited in access so that only the account holder, or his authorized agent, shall have access to such account information. Such statements shall provide information occurring within such monthly period, including without limitation: tolls paid, entry and exit points and travel mileage representing such paid tolls as established by this section or otherwise, and any other account information that is reasonably available to assist in the filing of such reimbursement claim. To the extent possible, the commissioner shall accept information that is contained on such statement as evidence of such travel and as part of such required document for such claim. Notwithstanding any other law to the contrary, the commissioner may request account information of an electronic tolling account, from the MSTA or such other operating department, division or quasi-public authority, for the sole purpose to audit or verify any claim for reimbursement submitted by the holder of such account, and such information received shall be held as confidential taxpayer information.

The commissioner by regulation shall be authorized to establish procedures for the administration and filing of claims for

reimbursement for such fuel excise in accordance with this section.”
The amendment was rejected.

Mr. Petruccelli moved that the bill be amended, in lines 44 through 46, by striking out the words “(4) develop, based on a public hearing process, procedures to be used for transportation project selection; (5) establish criteria for project selection to be used in the procedures developed pursuant to clause (4);”, and inserting in place thereof the following text:—

“(4) develop, based on a public hearing process and in consultation with the metropolitan planning organizations, procedures and criteria to be used for transportation project selection, consistent with the sustainable development principles of the commonwealth;”; and by inserting, in line 77, after the words “rural populations.” the following new text:—

“Said plan shall be designed to invest public funds wisely in order to promote smart growth and equitable development, give priority to investments that will deliver good jobs and good wages, transit access, housing, and open space, by making sustainable investments in transportation infrastructure that abides by the sustainable development principles of the commonwealth, which include: concentrate development and mix uses; advance equity; make efficient decisions; protect land and ecosystems; use natural resources wisely; expand housing opportunities; provide transportation choice; increase job and business opportunities; promote clean energy; and plan regionally.”.

The amendment was rejected.

Mr. Tolman moved that the bill be amended, in section 20, be amended by inserting after the words “that are greater than the tolls in effect for vehicles registered in said East Boston section at existing tunnel toll facilities on the effective date of section 14 of chapter 102 of the acts of 1995;”, the following words:— “and provided further, residents with private vehicles registered in the Allston section of the city of Boston, and the Brighton section of the city of Boston, as the Boston transportation department has determined the geographical boundaries of such sections, from time to time, shall pay a toll no greater than the toll in effect for the Massachusetts turnpike authority’s Allston-Brighton tolls on the Massachusetts turnpike in the city of Boston for Allston and Brighton registered vehicles as of January 1, 2001;”.

After remarks, the amendment was rejected.

Mr. Hart moved that the bill be amended by inserting the following section:—

Section 40A. Section 20 of Chapter 149A as inserted by Chapter 193 of the Acts of 2004 is hereby amended by inserting the following new subsection after subsection 20(c):

20(d). Except for the provisions of §39M of chapter 30 as provided above, all other provisions of the public bidding statutes, including sections 26, 27, 27A, 27B, 27C, 27D, 29, 29C and 34A of chapter 149 and sections 39F, 39G, 39J, 39N, 39O 39P and 39R of chapter 30, shall apply to all design-build projects procured pursuant to this chapter in the same manner they apply to public works projects generally procured pursuant to section 39M said chapter 30.

The amendment was adopted.

Mr. Hart moved that the bill be amended by inserting the following section:—

“Section 15A. Subsection (b) of Section 11 of Chapter 233 of the Acts of 2008 is hereby amended by inserting after the word “engineering” in the first sentence the following words:— and construction”.

The amendment was adopted.

Mr. Morrissey moved that the bill be amended, in SECTION 62 by adding at the end of subsection (f) the following:— “Provided however that the department of conservation and recreation shall have the power to approve construction requests and curb cut permitting for parkways under the control of the department of conservation and recreation as of January 1, 2009.”

The amendment was adopted.

Mr. Tisei moved that the bill be amended by inserting at the end thereof the following section:—

“Section XX. Section 7 of chapter 64A of the general laws, as appearing the 2006 official edition, is hereby amended by inserting at the end thereof the following:

The exemption from taxation of the Massachusetts Bay Transportation Authority provided under section twenty-four of chapter one hundred sixty-one A shall apply to all fuel purchases by said Authority or by any person pursuant to a contract with said Authority which designates such person as agent for said Authority for the purpose of the purchase of fuel to be used in connection with services rendered under such contract, and with respect to contracts entered into after the effective date of this paragraph, which prohibits such person from seeking abatement, refund or reimbursement of any tax and requires such person to report to the Authority no less frequently than quarterly, on a form prescribed by the commissioner, the date, number of gallons, and price paid for each such fuel purchase. Any fuel purchases made in bulk by the Authority shall be excluded from the amount subject to tax under section four. In the case of any fuel purchase by or for the benefit of the Authority on which an excise has been paid, the Authority shall be reimbursed the amount of said excise paid prior to or on or after the effective date of this paragraph. All claims for reimbursement shall be made by affidavit in such form and containing such information as the commissioner shall prescribe and shall be accompanied by copies of invoices or sales receipts or, in the case of purchases by agents of the Authority, by copies of the form described in the first sentence of this paragraph or such other documentation as the commissioner shall require. All claims for reimbursement after the effective date of this paragraph shall be filed on a quarterly basis and within two years from the date of purchase or invoice of fuel.”

The amendment was rejected.

Messrs. Tarr, Tisei, Knapik, Hedlund, Brown and Montigny moved that the bill be amended by adding at the end the following additional section:—

“SECTION XX. (a) There shall be created in the Division of Roads and Bridges within the Massachusetts Surface Transit Authority the position of Tollpayer Advocate. The Tollpayer Advocate shall serve without compensation; shall be permitted to

attend all meetings of the board of the Massachusetts Surface Transit Authority, as well as the meetings of any subsidiary board; and shall advocate on behalf of the tollpayers of the Commonwealth to ensure that the interests of those people who pay tolls are fully understood and considered by the board in its deliberations and decisions.

(b) There shall be created in the Division of Public Transit within the Massachusetts Surface Transit Authority the position of Ridership Advocate. The Ridership Advocate shall serve without compensation; shall be permitted to attend all meetings of the board of the Massachusetts Surface Transit Authority, as well as the meetings of any subsidiary board; and shall advocate on behalf of the riders of the public transit system of the Commonwealth to ensure that the public transit system maintains high standards of quality and punctuality.”

The amendment was adopted.

Messrs. Tarr, Tisei, Knapik, Hedlund, Brown and Montigny moved that the bill be amended by adding at the end the following additional section:—

“SECTION XX. Not more than one year following the passage of this act, and not less than once every five years thereafter, the Executive Office of Transportation and the Massachusetts Surface Transportation Authority shall facilitate an independent audit of all transportation systems within their jurisdiction.

Said audit shall be achieved through either a contract with an independent entity with demonstrable expertise, experience and capability to perform an audit of the scope and magnitude required, or through an interagency service agreement or similar mechanism entered into with the Auditor of the Commonwealth.

The purposes of said audit shall include, but not be limited to, the identification of unrealized potential cost savings and efficiencies, the evaluation of the efficiency of transportation systems, and the development of recommendations to capture savings and improve efficiencies.

The results of said audit shall be report to the clerks of the House and Senate in a timely manner after its completion.”

After debate, the amendment was rejected.

Messrs. Tarr, Tisei, Knapik, Hedlund and Brown moved that the bill be amended by adding a new section at the end of Section 20, subsection (6), clause (b):

“(c)The Chief Executive Officer shall establish and use the performance criteria established in this section to determine the quality of service of all private entities, including commuter rail providers, that perform transportation services on behalf of the Massachusetts Surface Transportation Authority. The results of such performance measures shall be criteria in negotiating any contracts.”

The amendment was adopted.

Messrs. Tarr, Tisei, Knapik, Hedlund, Brown and Montigny moved that the bill be amended by adding at the end the following additional section:—

“SECTION XX. (a) Definitions – For the purposes of this section, the terms below shall be defined as follows:

1. Entity — whether for-profit or not for profit,

a. a corporation

b. an association

c. a partnership

d. a limited liability corporation

e. a limited liability partnership

f. a sole proprietorship

g. any other legal business entity

h. a political subdivision of the Commonwealth

provided that an employee of the Commonwealth or an individual recipient of assistance shall not be considered an entity.

2. State expenditure – an expenditure of state funds including grants, subgrants, loans, awards, cooperative agreements, financial assistance, contracts, subcontracts, purchase order, task orders and delivery orders, and excluding transactions below \$25,000.

3. Searchable website – a website which allows the public to:

a. Search and aggregate state expenditures by any item identified in the definition of website contained herein

b. Ascertain through a single search the total amount of state funding awarded to an entity by fiscal year, and

c. Download information, including the results of searches.

4. Website — a searchable website which includes for each state expenditure:

a. The name of the receiving entity

b. The amount of the expenditure

c. Information describing the expenditure such as transaction type, funding agency or program, and title descriptive of the purpose of the expenditure

d. The location of the entity receiving the expenditure and the primary location of performance pursuant to the expenditure, including the city, state, county and legislative district

e. A unique identifier of the entity receiving the award and of any parent entity of the recipient

f. Any other relevant information specified by the Operational Services Division.

(b) The Secretary of Administration and Finance, the Comptroller, the Treasurer and the Operational Services Division are hereby authorized and directed to develop a single searchable website, accessible by the public without cost, to enable the public to research and examine state expenditures as defined herein. Said website shall be designed so as to maximize utility, minimize cost and promote accessibility of information, and shall build upon resources currently existing, including, but not limited to, the “EASI” website, so-called, administered by the Executive Office of Administration and Finance, and the Comm-Pass system, so-

called, administered by the Operational Services Division of the Executive Office of Administration and Finance.

In developing said website, the Secretary shall seek to obtain the use of coding and other information management infrastructure developed by the federal government pursuant to the "Federal Funding Accountability and Transparency Act of 2006".

Said website shall seek to provide information for Fiscal Year 2009 and subsequent years.

A plan for the development and implementation of said website, together with any estimates for funding required and other legislative recommendations, shall be filed with the clerks of the House and Senate not later than November 31, 2009."

The amendment was rejected.

Messrs. Tarr, Tisei, Knapik, Hedlund and Brown moved that the bill be amended by adding at the end the following additional section:—

"SECTION XX. The Massachusetts Turnpike Authority shall conduct a study of the traffic patterns, flow and utilization of the Ted Williams Tunnel, Sumner Tunnel and Lieutenant William F. Callahan Tunnel and evaluate the cost-effectiveness of limiting access to any of these tunnels for periods of time so as to reduce operating costs. Said evaluation shall include, but not be limited to, and adverse impacts which might result from any changes in the operating hours of one or more of said tunnels and any cost savings to be derived from such changes.

Said report and evaluation shall be completed and filed with the clerks of the House and Senate not later than 12 months after the passage of this act."

The amendment was rejected.

Ms. Spilka, Ms. Creem and Messrs. Brown, McGee, Eldridge and Petrucci moved that the bill be amended in SECTION 57, at line 5555 by inserting after the word "(a)" the following words: "The Massachusetts Surface Transportation Authority shall provide by resolution for the issuance of revenue bonds of the authority for the purpose of providing funds to be used to refund the metropolitan highway system revenue bonds outstanding, including the payment of the redemption premium thereon. Such resolution shall be adopted as soon as reasonably prudent considering all applicable market conditions. Revenue from tolls collected for transit over the turnpike or metropolitan highway system as authorized by subsections 4 (j) and (k) of chapter 81B shall not be pledged or assigned for such notes or bonds. (b)"; in lines 5558 and 5559 by striking the following words:— "(1) refunding the metropolitan highway system revenue bonds then outstanding, including the payment of the redemption premium thereon"; in line 5560 by striking the figure "(2)" and inserting in place thereof the figure "(1)"; in line 5562 by striking the figure "(3)" and inserting in place thereof the figure "(2)"; in line 5564 by striking the word "(b)" and inserting the word "(c)"; in line 5577 by striking the word "(c)" and inserting the word "(d)"; and in line 5579 by striking the word "(d)" and inserting the word "(e)".

The amendment was adopted.

Messrs. Montigny and O'Leary moved that the bill be amended by adding the following section at the end:

Section XX:

(a) Chapter 6 of the General Laws is hereby 1 amended by striking out section 98, as appearing in section 3 of chapter 304 of the acts of 2008, and inserting in place thereof the following section:

Section 98. (a) As used in this section, "state entities" shall mean the commonwealth, state authorities, as defined in section 1 of chapter 29, and other state entities with responsibility for managing and overseeing public funds, including the Massachusetts Surface Transportation Authority and any fund associated with holding, managing or controlling the debt of predecessor state entities ("authority" or "Authority").

(b) It shall be the duty of the board to promote transparency, public accountability and adherence to best practices by all state entities with respect to investments, borrowing or other financial transactions made or entered into by state entities and involving public funds. The board shall make an annual written report to the secretary of administration and finance, the state treasurer, the state auditor, the house and senate committees on ways and means, and the senate and house committees on bonding, capital expenditures and state assets with respect to its findings regarding investments, borrowing and other financial transactions carried out by state entities and its activities to promote transparency, public accountability and best practices with respect thereto.

(c) In order to carry out its duty, the board shall:

- (1) adopt regulations or guidelines requiring state entities to report, adopt appropriate policies, and adhere to best practices with respect to investments, borrowing and other financial transactions;
- (2) make recommendations to state entities or state officers and propose legislative changes to improve the management of public funds;
- (3) employ staff and engage professionals to review and advise it on financial transactions entered into by state entities;
- (4) report on the impact of the authority's debt as they relate to the credit rating of the commonwealth; report on the impact of the authority's debt and other financial obligations as they relate to the commonwealth's capital plan and; a full accounting of all administrative costs borne by the authority, including but not limited to, debt service, banking fees, salaries and benefits paid to employees and outside contractors, all payments to law firms, outside consultants and legislative or executive agents, an inventory of all vehicles and rolling stock owned by the authority, a review of the authority's real property holdings and its value and any other financial information related to the operation of the authority; and
- (5) conduct oversight hearings with respect to investment, borrowing and other financial transactions made or entered into by state entities.

the commonwealth.

(b) Said chapter 304 is hereby further amended by striking out section 29 and inserting in place thereof the following section:

"SECTION 29. The state treasurer and all quasi public entities and independent authorities shall submit a report on their borrowing practices beginning with fiscal year 2009 to the secretary of administration and finance, the state auditor, the chair of

the finance advisory board established in section 97 of chapter 6 of the General Laws, the chairpersons of the senate and house committees on ways and means and the chairpersons of the senate and house committees on bonding, capital expenditures and state assets prior to June 30, 2009. The report shall include all transactions entered into during the 6 months immediately preceding the filing of the report. The report shall include: (1) a list of all transactions related to derivative financial products; (2) the terms and conditions of each derivative financial product transaction; (3) the parties involved in negotiating each derivative financial product transaction; (4) copies of all agreements entered into between the parties relative to derivative financial product transactions; (5) the financial impact of each transaction including, but not limited to, the interest rates, fluctuation in interest rates and payments associated therewith; and (6) a written rationale for the determination to enter into any such transaction. The report shall be signed under oath by the state treasurer or by the chief financial officer of the quasi public entity or independent authority filing the report, and the secretary of administration and finance with respect to quasi public entities and independent authorities. For purposes of this section, “derivative financial products” shall mean financial instruments with values derived from or based upon the value of other assets or on the level of an interest rate index including, but not limited to, a call option on a bond, an interest rate swaptions, caps, floors, collars, inverse floaters, auction rate securities or any other financial transaction other than fixed-rate, long-term borrowing. As of the effective date of this act no quasi-public state entity or independent authority of the commonwealth shall be authorized to enter into any derivative financial 86 transaction as defined in this act except: (a) with respect to any transaction subject to any level of commonwealth credit support, a quasi-public state entity or independent authority of the commonwealth shall be authorized to enter into a derivative transaction upon request to the secretary of administration and finance, with the approval of the governor and treasurer of the commonwealth; and (b) with respect to any transaction not subject to any level of commonwealth credit support, a quasi-public state entity or independent authority of the commonwealth shall be authorized to enter into a derivative transaction upon request to the secretary of administration and finance, with the approval of the governor.”

The amendment was rejected.

Messrs. Hedlund, Tarr, Brown, Tisei and Knapik moved that the bill be amended in Section 2 by adding after the words “each project” as found in subchapter 2 of subsection (f) of section 19 of Chapter 6 on line 188 the following sentence:— The agency may not proceed with a capital project prior to confirming that the authority’s cashflow will support the new annual operating and maintenance costs, or when lacking sufficient cashflow, that the agency identifies proposed service cuts or revenue enhancements to make up the difference.

The amendment was rejected.

Messrs. Hedlund, Tarr, Brown, Tisei, Knapik and Montigny moved that the bill be amended in Section 20 by striking the last line of the first paragraph of Section 2 of Chapter 81B and replacing it with the following:—

No director shall have been a registered legislative agent, as defined in section 39 of chapter 3 for a period of at least 5 years prior to his appointment, no director shall have been a member of the General Court or employee of the Executive branch or of the General Court for a period of 2 years prior to his appointment, and no director shall have been employed by an organization that has business before the authority, or any predecessor agency or authority, for a period of at least 2 years prior to his appointment.

The amendment was adopted.

Messrs. Hedlund, Tarr, Brown, Tisei and Knapik moved that the bill be amended in Section 2 by striking out subsection (e) of section 19 and replacing it with the following:—“(e) In exercising its powers under this section, the executive office shall have, as a primary goal, the reduction of greenhouse gas emissions, particulates and other pollutants, provided, however, that this goal is balanced with the authority’s financial capabilities and the need to maintain a multi-modal approach to transit. The secretary shall collaborate with the executive office of environmental affairs, the bureau for environmental health within the department of public health and other state or federal agencies to reduce greenhouse gas emissions to the limits established in chapter 21N.”

The amendment was rejected.

Messrs. Hedlund, Tarr, Brown, Tisei and Knapik moved that the bill be amended in Section 5 by striking the second paragraph of Section 70 and replacing it with the following:— “The commission shall have 7 members, none of whom shall be employees of the executive branch, members of the general court or employees of the legislature for a period of at least two years prior to his appointment. The members shall include : 3 members who shall reside in different geographic regions of the commonwealth, to be appointed by the governor to terms of 2 years; 1 member, to be appointed by the president of the senate to serve a term of 2 years; 1 member, to be appointed by the speaker of the house of representatives to serve a term of 2 years; 1 member, to be appointed by the treasurer who shall not be an employee of the department of the state treasurer to serve a term of 2 years; and 1 representative from the Massachusetts Organization of State Engineers and Scientists, to serve a term of 2 years. Each of the members of the commission shall be an expert with experience in the fields of transportation law, public policy, public finance, management consulting, transportation or organizational change. One of the members appointed by the governor shall be an expert in the field of public finance. One of the members appointed by the governor shall be an expert in the field of transportation. One of the members appointed by the governor shall be the president of the Massachusetts AFL-CIO, or his designee. One of the members shall be appointed by the governor to serve as chairperson of the commission. The members appointed by the governor may be eligible for reappointment; provided, however, that no member appointed by the governor may serve more than 3 terms. No member may have served as a legislative agent for a period of 5 years prior to his appointment.”

The amendment was adopted.

Messrs. Hedlund, Tarr, Brown, Tisei and Knapik moved that the bill be amended in Section 20, by adding at the end of section 56 of Chapter 81C the following sentence:— “Any bonds issued by the authority that would require the collection of tolls beyond 2039 must be approved by a two-thirds vote of the Legislature.”

The amendment was rejected.

Messrs. Hedlund, Tarr, Brown, Tisei and Knapik moved that the bill be amended in Section 29 by striking out section 17A of chapter 81D and replacing it with the following:— “The division shall be a public employer as defined in section 1 of chapter 258 and shall be subject to the indemnification limits of section 2 of chapter 258.”

The amended was rejected.

Messrs. Hedlund, Tarr, Brown, Tisei and Knapik moved that the bill be amended in Section 20, by adding at the end of section 56 of Chapter 81C the following sentence: “Any bonds issued by the authority that would require the collection of tolls beyond 2039 must be approved by a majority vote of the Legislature.”

The amendment rejected.

Ms. Jehlen moved that the bill be amended by adding after section 85 the following section:—

“Section 86: The secretary of administration and finance (“secretary”) shall promulgate regulations that promote a singular system of audit based on Federal Acquisition Regulation standards for all state design and related design professional service contracts. Said singular system of audit will allow each design firm to submit one annual overhead audit of its company to be qualified to participate in the state procurement process for said fiscal year.

The standard for the overhead audits shall be the Federal Acquisition Regulations. Said regulations should address matters concerning 1) streamlining the audit process for procurement for all agencies that require a audit for vendors providing design and related services to said agency 2) assuring compliance with the annual singular audit process for all agencies for which the audit process is required.

The Secretary shall consult an advisory committee for the promulgation of these regulations. The advisory committee shall consist the following: one representative from the Associated Industries of Massachusetts, one representative from the Massachusetts Chapter of the American Council of Engineering Companies, one representative from the Massachusetts Municipal Association, and one representative of the Boston Society of Architects along with a representative from each state agency that requires an audit for procurement of design and related services:

- 1) Massachusetts Port Authority
- 2) Massachusetts Surface Transportation Authority
- 3) Executive Office of Transportation
- 4) Massachusetts Bay Transportation Authority
- 5) Massachusetts Water Resources Authority
- 6) Department of Capital Asset Management
- 7) Department of Conservation and Recreation”.

The amendment was rejected.

Mr. Tisei moved that the bill be amended by inserting at the end thereof the following:— “Notwithstanding any special or general law to the contrary, not less than five per cent of the existing total yearly capital budget of the commonwealth, for the next five years, shall be set aside and utilized for debt remediation at the commonwealth’s transportation agencies and authorities. In order to achieve said remediation the secretary of administration and finance shall pursue all available options for refinancing existing debt at the Massachusetts turnpike authority and the Massachusetts bay transit authority, along with any debt inherited by any successor agencies thereto, using the aforementioned set aside capital budget in the form of notes and bonds issued by the treasurer of the commonwealth for terms not to exceed 20 years. Each year the secretary shall report to the clerks of the house and senate, the chairs of the joint committee on transportation, the chairs of the house and senate committees on bonding, capital expenditures and state assets, and the chairs of the house and senate committees on ways and means, not later than August 31 of each year, the amount total dollar amount of the capital budget that has been set aside, what portion of which has been utilized for transportation debt remediation and the amount of outstanding debt at the affected authorities.”

The amendment was rejected.

Ms. Chang-Díaz and Ms. Creem moved that the bill be amended by inserting after section 65, in proposed Chapter 81C, the following section:—

“Section 66. No later than July 31 of every calendar year, the Office of Inspector General shall, in consultation with the Division of Insurance and the Executive Office of Transportation, determine, for each privately owned, publicly used railway or roadway tunnel, the types and amounts of insurance coverage necessary to fully protect the traveling public and the Commonwealth in the event of any incident within each such tunnel causing harm or injury to any person or property.

No later than August 31 of every calendar year, the Executive Office of Transportation shall publish a roster of all privately owned, publicly used tunnels, which such roster shall include at a minimum the following information for each tunnel: tunnel’s identity and location, tunnel owner’s identity, minimum requirements set by the Inspector General, types and amounts of coverage actually in force, exclusions, underwriter’s identity, broker’s identity, premium period, premium amount, and current expiration date. The Executive Office of Transportation roster shall be designed and expressed to facilitate usage by the general public and shall either avoid or explain industry-specific terminology.

No later than September 30 of every calendar year, the owner of each privately owned, publicly used tunnel shall purchase at least the minimum coverage required, as determined by the Office of Inspector General in accordance with this section, for the following calendar year and shall provide proof of such coverage in a form and manner outlined by the Inspector General to the Executive Office of Transportation. The Executive Office of Transportation shall publish such information at no charge to the public and update the published roster accordingly.

If any owner of a privately owned, publicly used railway or roadway tunnel fails to provide proof of the minimum required coverage, as determined by the Office of Inspector General in accordance with this section, by September 30 of any year, the Executive Office of Transportation shall purchase such coverage and shall subsequently collect from the tunnel owner full

reimbursement for all premiums paid by the state, as well as all costs of enforcement and collection incurred by the state.”

The amendment was adopted.

Ms. Chang-Díaz, Ms. Jehlen, Mr. Eldridge, Ms. Creem and Messrs. Galluccio and Donnelly moved that the bill be amended in section 8, in proposed section 35LL, in the fourth paragraph, by striking out clause (b);

By striking out section 11;

in section 20, in proposed chapter 81B, by striking out, in lines 2015 and 2016, the words “, the parkways advisory board established by section 60 of chapter 81C”;

In section 2, in proposed chapter 81C, in the seventh paragraph, by striking out, in line 2170, the words “; parkway engineers”, and in line 2180, the words “, parkway engineer”;

In section 1, in proposed chapter 81C, by striking out, in line 2116, the words “; parkway maintenance”;

In section 20, in proposed chapter 81C, by striking out sections 59 to 63, inclusive;

By striking out sections 32 to 40, inclusive, and sections 55, 62 and 77K; and

In section 50, by striking out, in lines 5334 and 5335, and in lines 5350 and 5351, the words “, the department of conservation and recreation”, and in line 5349, the words “, parkways”.

The amendment was rejected.

Ms. Spilka moved that the bill be amended in SECTION 20, at line 1043 by striking the words: “state highway route 128 in the town of Weston” and inserting in place thereof the following words: “Cambridge Street in the Alston/Brighton neighborhood in the city of Boston”; and in lines 1190 and 1191 by striking the words: “the interchange of interstate highway route 90 and state highway route 128 in the town of Weston” and inserting in place thereof the following words: “the interchange of interstate highway route 90 and Cambridge Street in the Allston/Brighton neighborhood of the city of Boston”.

The amendment was rejected.

Ms. Spilka moved that the bill be amended in SECTION 27, by inserting after the words ‘account holder’ in line 3638 the following language: “, including a statement of miles traveled per calendar quarter year and the maximum gas tax reimbursement allowable to the account holder under Section 7 of Chapter 64A or Section 5 of Chapter 64E.”; and

By inserting at the end thereof the following new Section:—

“SECTION ____.

Section 1. Section 1 of Chapter 64A of the General Law, as appearing in the 2006 Official Edition, is hereby amended by adding the following clause:—

“Toll Receipts”, shall include, in addition to its usual meaning, a statement of activity issued by a Massachusetts Turnpike Authority authorized electronic toll payment collection vendor.

Section 2. Section 7 of Chapter 64A of the General Law, as appearing in the 2006 Official Edition, is hereby amended by striking out, in line 22, the word “half” and inserting in place thereof the following word:— quarter.

Section 3. Section 7 of Chapter 64A of the General Law, as appearing in the 2006 Official Edition, is further amended by striking out, in line 20, the words “original invoices or sales receipts of fuel” and inserting in place thereof the following language:

“invoices, sales receipts of fuel, or other reasonable evidence”

Section 4. Section 7 of Chapter 64A of the General Law, as appearing in the 2006 Official Edition, is further amended by adding after the words ‘same period’ in line 43 the following language: “, or unless the fuel which is the basis for the claim was purchased exclusively for personal non-commercial use”

Section 5. Section 7 of Chapter 64A of the General Law, as appearing in the 2006 Official Edition, is further amended by adding after the words ‘The commissioner’ in line 43 the following language:

“may establish, through regulation, other methods to further simplify filing and determination of claims under this section,”

Section 6. Section 7 of Chapter 64I of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by adding at the end, the following new paragraph:—

(f) Fuels consumed on any turnpike constructed by the Massachusetts Turnpike Authority in accordance with chapter three hundred and fifty-four of the acts of nineteen hundred and fifty-two, as amended, which the commissioner has deemed eligible for excise or other tax reimbursement under Section 7 of Chapter 64A or Section 5 of Chapter 64E and purchased exclusively for personal non-commercial use.

The amendment was rejected.

Mr. Morrissey moved that the bill be amended, in SECTION 62A by adding at the end of subsection (f) the following new subsection:—

(g) Notwithstanding any general or special law to the contrary, any employee of any state agency or its political subdivision who has been transferred under this Act shall retain his “just cause” protection under law.

The amendment was rejected.

Recess.

There being no objection, at twenty-four minutes before three o’clock P.M., at the request of Mr. Tisei, for the purpose of a minority caucus, the President declared a recess; and, at fourteen minutes past three o’clock P.M., the Senate reassembled, Mr. Rosenberg in the Chair.

Orders of the Day.

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

The Senate Bill modernizing the transportation systems of the Commonwealth (Senate, No. 10), was further considered, the main

question being on ordering it to a third reading.

Messrs. Moore and Donnelly moved that the bill be amended by inserting, in Chapter 81C, Section 1 (b), after the words “parkway maintenance;” the following: “trails and bikeways;”; and by inserting, in Chapter 81C, Section 20, Subsection 3(w) the following new Subsection:

“(x) administer the design and construction of all recreational trails and bikeways of the commonwealth”

The amendment was adopted.

Mr. Morrissey moved that the bill be amended, in Section 60 of Chapter 81C, by striking out clause (a) and replacing it with:—

“(a) There shall be a parkway advisory board to the division of roads and bridges to consist of 11 members, 3 of whom shall be appointed by the governor, of which 2 shall be residents of a municipality outside the geographic area defined in section 33 of chapter 92, 2 of whom shall be appointed by the mayor of the city of Boston, 1 of whom shall be a representative of the Massachusetts Historical Commission, 1 of whom shall be appointed by the commissioner of conservation and recreation, 1 of whom shall be appointed by the Massachusetts Audubon Society who shall be a resident of a municipality within the geographic area defined in said section 33 of chapter 92, 1 of whom shall be appointed by the Massachusetts Sierra Club who shall be a resident of a municipality outside the geographic area defined in said section 33 of said chapter 92, one of whom shall be appointed by the Environmental League of Massachusetts who shall be a resident of a municipality within the geographic area defined in said section 33 of said chapter 92, 1 of whom shall be appointed by Environment Massachusetts who shall be a resident of a municipality outside the geographic area defined in said section 33 of said chapter 92. Each member of the parkway advisory board shall have 1 vote. A majority of members shall constitute a quorum and the parkway advisory board may act by such majority vote represented in the quorum.”

The amendment was adopted.

Mr. Eldridge moved that the bill be amended in line 3305, by striking the figure “11” and inserting in place thereof the following figure:— “13”; in line 3305, by striking the figure “4” and inserting in place thereof the following figure:— “5”; in line 3317, by inserting after the words “turnpike corridor” the following new text:— “1 of whom shall be appointed by an environmental organization”; and in line 3338, by inserting after the word “bridges” the following new text:— “and the development of adjacent land and air rights”.

The amendment was adopted.

Ms. Flanagan moved that the bill be amended by inserting after Section 77L the following section:—

“SECTION 77M. The Massachusetts Bay Transportation Authority and the Massachusetts Turnpike Authority are each authorized to enter into an agreement with the Attorney General whereby the Attorney General may assume the representation of the authority, or its officers and employees sued in their official capacities or their individual capacities for acts or omissions within the scope of their office or employment, in such judicial proceedings, whether pending on the effective date of this act or commenced thereafter, as the Attorney General deems appropriate, in the same manner as the Attorney General currently provides such representation to state agencies and their officers and employees; provided, that such agreement shall provide for payment to the Attorney General of the full direct and indirect costs of such representation, and the Attorney General may retain and expend such funds without further appropriation for the purpose of defraying such costs; provided further, that when providing such representation, employees of the Attorney General shall remain public employees acting within the scope of their employment for purposes of chapter 258 of the general laws.”

After remarks, the amendment was adopted.

Messrs. Tarr, Tisei, Knapik, Hedlund, Brown and Montigny moved that the bill be amended by inserting at the end to the following section:—

“SECTION XX. The Massachusetts Surface Transportation Authority shall develop an inventory of all real property owned by the Authority. Said inventory shall be delivered to the clerks of the House and Senate within six months after the passage of this act.”

The amendment was adopted.

Messrs. Hedlund, Tarr, Brown, Tisei and Knapik moved that the bill be amended in Section 4 by adding after the words “reasonable return overall” as found on line 265, the following language:— “, provided that the criteria for reasonable return overall be established by the secretary pursuant to regulations promulgated in accordance with chapter 30A,”

The amendment was adopted.

Ms. Chang-Díaz, Mr. Morrissey, Ms. Jehlen, Mr. Galluccio, Ms. Creem, Messrs. Donnelly and Eldridge, Ms. Walsh and Messrs. Montigny, Tisei, Petruccelli and Hart moved that the bill be amended by inserting after section 75A the following section:—

“SECTION 75B. Notwithstanding any general or special law to the contrary, the authority, in consultation with the commissioner of conservation and recreation and the Massachusetts Historical Commission, shall promulgate regulations and procedures within 1 year after the effective date of this act relative to the design, construction, reconstruction, maintenance, repair, improvement and operation of all roadways, driveways, parkways, boulevards and bridges, and land thereunder, and all appurtenant facilities, works and systems, machinery and equipment related to the operation and maintenance of such roadways, driveways, parkways, boulevards and bridges, and land thereunder, and appurtenant facilities, works and systems related thereto, transferred to the division of roads and bridges in the Massachusetts Surface Transportation Authority pursuant to section 55, and such regulations and procedures shall comply with the Historic Parkways Preservation Treatment guidelines except to the extent that compliance with such guidelines is waived by the commissioner of conservation and recreation in consultation with the Massachusetts Historical Commission. The authority shall establish in the regulations and procedures a process for public input in the development of plans and projects relating to the parkways, bridges and other assets transferred to the division of roads and bridges pursuant to said section 55 consistent with the Historic Parkways Preservation Treatment guidelines.”

The amendment was adopted.

Messrs. Hedlund, Tarr, Brown, Tisei and Knapik moved that the bill be amended in Section 20 by adding at the end of subsection (j) of Section 4, of Chapter 81B the following language:— and provided further the authority is prohibited from collecting tolls on Routes 1, 2, 3, 6, 6A, 25, 91, 93, 95, 195, and 495 unless expressly authorized by the Legislature to do so.

Pending the question on the adoption of the amendment, Mr. Baddour moved that the amendment be further amended by striking out the text and inserting in place thereof the following; “Section 41 of proposed chapter 81B is hereby amended by striking out section 41 and inserting in place thereof the following:—

Section 41. Notwithstanding any general or special law to the contrary, the authority shall not seek federal approval for, nor undertake the design, installation and construction of, new toll facilities on the state highway system in the commonwealth.”

The further amendment was adopted.

The pending amendment (Hedlund) was then adopted as amended.

Mr. Petruccelli moved that the bill be amended by inserting after section 14 the following 6 sections:

“SECTION 14A. Section 1 of chapter 30B of the General Laws is hereby amended by striking out, in line 45, as appearing in the 2006 Official Edition the word “, designers”.

SECTION 14B. Subsection (b) of said section 1 of said chapter 30B is hereby amended by inserting after clause (32), as so appearing, the following clause:—

(32A) contracts with architects, engineers and related professionals;.

SECTION 14C. Section 2 of said chapter 30B, as so appearing, is hereby amended by inserting before the definition of “Bid” the following definition:—

“Architect and engineers, a person performing professional services of an architectural or engineering nature, as defined by law, which are required to be performed or approved by a person licensed, registered or certified to provide such services as described herein; professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, investigations, inspections, tests, evaluations, consultations, program management, value engineering, construction, alteration, or repair of real property and such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions and individuals in their employ may logically or justifiably perform, including studies; investigations; surveying and mapping; soil tests; construction phase services; drawing reviews; evaluations; consultations; comprehensive planning; program management; conceptual designs, plans and specifications; soils engineering; cost estimates or programs; preparation of drawings, plans, or specifications; supervision or administration of a construction contract; construction management or scheduling; preparation of operation and maintenance manuals and other related services.

SECTION 14D. Said section 2 of said chapter 30B, as so appearing, is hereby further amended by striking out the definition of “Designer”.

SECTION 14E. Said section 2 of said chapter 30B, as so appearing, is hereby further amended by inserting after the definition of “Purchase description” the following definition:— “Related professionals”, professionals engaged in professional services, including land surveying, landscape architecture, environmental science, planning, and licensed site professionals, which are required to be performed or approved by a person licensed, registered, or certified to provide such services as described herein, including professional services performed by contract that are associated with research, planning, development, design, investigations, inspections, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, value engineering, construction, alteration, or repair of real property and such other professional services or incidental services which members of the related professions and individuals in their employ may logically or justifiably perform, including master plans, studies, surveys, soil tests, cost estimates or programs; preparation of drawings, plans, or specifications; supervision or administration of a construction contract; construction management or scheduling; conceptual designs, plans and specifications; construction phase services, soils engineering, drawing reviews, cost estimating, preparation of operation and maintenance manuals and other related services; provided, however, that nothing herein shall be construed to constitute regulation or oversight of any designated firms or identified professional services.

SECTION 14F. Said chapter 30B is hereby further amended by adding the following section:—

Section 21. (a) For the purposes of this section the following terms shall have the following meanings:

“Agency”, a department, commission, council, board, bureau, committee, institution, agency, state college or university, government corporation, authority or other establishment or procurement office of the commonwealth.

“Architectural and engineering services”, (i) professional services of an architectural or engineering nature, as defined by state law, which are required to be performed or approved by a person licensed, registered or certified to provide those services as described herein; (ii) professional services of an architectural or engineering nature performed by contract that are associated with research planning, development, design, investigations, inspections, tests, evaluations, consultations, program management, value engineering, construction, alteration, or repair of real property; and (iii) such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions and individuals in their employ may logically or justifiably perform, including studies; investigations; surveying and mapping; soil tests; construction phase services; drawing reviews; evaluations; consultations; comprehensive planning; program management; conceptual designs, plan and specifications; soils engineering; cost estimates or programs; preparation of drawings, plans, or specifications; supervision or administration of a construction contract; construction management or scheduling; preparation of operation and maintenance manuals and other related services.

“Firm”, an individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture, engineering, land surveying, landscape architecture, environmental science, planning or program management.

“Project”, a capital improvement project or a design, study, plan, survey or new or existing program activity of a state agency, including the development of new or existing programs that require architectural, engineering or related professional services, but shall not include a public building construction project undertaken under section 149 or 149A of chapter 7.

“Related Professional Services”, (i) professional services, including land surveying, landscape architecture, environmental science and planning, which are required to be performed or approved by a person licensed, registered, or certified to provide such services as described herein; (ii) professional services performed by contract that are associated with research, planning, development, design, investigations, inspections, surveying and mapping, tests, evaluations, consultations, comprehensive planning; program management, value engineering, construction, alteration or repair of real property; and (iii) such other professional services, or incidental services, which members of the related professions as described herein and individuals in their employ may logically or justifiably perform, including master plans, studies, surveys, soil tests, cost estimates or programs; preparation of drawings, plans or specifications; supervision or administration of a construction contract; construction management or scheduling; conceptual designs, plans and specifications; construction phase services, soils engineering, drawing reviews, cost estimating, preparation of operation and maintenance manuals, and other related services; provided, however, that nothing herein shall be construed to constitute a regulation or oversight of any designated firms or identified professionals’ services.

(b) For those agencies that prequalify architectural, engineering, and related services, the agency head shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data.

(c) Whenever a project requiring architectural, engineering, or related professional services is proposed for a state agency, the agency shall provide no less than 14 days advance notice published in a professional services bulletin or advertised on the official state agency website setting forth the projects and services to be procured. The professional services bulletin shall be made available to each firm that requests the information. The professional services bulletin shall include a description of each project and shall state the time and place for an interested firm to submit a letter of interest and, if required by the public notice, a statement of qualifications. If the agency determines that a sole source selection of a qualified firm is in the best interest of the agency, then the public notice provisions of this subsection shall not apply.

(d) An agency shall evaluate the firms submitting letters of interest and other prequalified firms, taking into account qualifications, and the agency may consider, but shall not be limited to considering, ability of professional personnel, past record and experience, performance data on file, willingness to meet time requirements, location, workload of the firm and any other qualifications based on factors that the agency may determine in writing are applicable. The agency may conduct discussions with and require presentations by firms deemed to be the most qualified regarding their qualifications, approach to the project and ability to furnish the required services. In no case shall an agency, prior to selecting a firm for negotiation seek formal or informal submission of verbal or written estimates of costs or proposals in terms of dollars, hours required, percentage of construction cost, or any other measure of compensation.

(e) (1) An agency shall select architects, engineers and related professional firms on the basis of qualifications for the type of professional services required. An agency may solicit or use pricing policies and proposals or other pricing information to determine consultant compensation only after the agency has selected a firm and initiated negotiations with the selected firm.

(2) The procedures that an agency creates for the screening and selection of firms shall be within the sole discretion of the agency and may be adjusted to accommodate the agency’s scope, schedule and budget objectives for a particular project. Adjustments to accommodate an agency’s objectives may include provision for the direct appointment of a firm if the value of the project does not exceed \$25,000, or if the agency determines that a sole source selection of a qualified firm is in the best interest of the agency and the project is not publicly advertised.

(3) The decision of an agency that has complied with this chapter shall be final and binding.

(f) (1) The agency and the selected firm shall discuss and refine the scope of services for the project and shall negotiate conditions including, but not limited to, compensation level and performance schedule based on scope of services. The compensation level paid shall be reasonable and fair to the agency as determined solely by the agency. In making such determination, the agency shall take into account the estimated value of the services to be rendered, the scope, complexity, and professional nature thereof.

(2) If the agency and the selected firm are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair to the agency, the agency shall, in writing, formally terminate negotiations with the selected firm. The agency shall then negotiate with the second ranked most qualified firm. The negotiation process shall continue in this manner through successive ranked firms until an agreement is reached or the agency terminates the consultant contracting process.

(g) This chapter shall not apply to architectural, engineering and related professional services contracts of less than \$25,000 or sole source contracts that are awarded to a qualified firm as determined to be in the best interest of the agency, where only 1 firm has been solicited regarding the project and the project is not publicly advertised.

(h) This chapter shall not apply to the procurement of architectural, engineering, and related professional services by agencies: (i) when an agency determines in writing that it is in the best interest of the state to proceed with the immediate selection of a firm; or (ii) in emergencies when immediate services are necessary to protect the public health and safety including, but not limited to, earthquake, tornado, storm, or natural or man-made disaster.

(i) Each agency shall evaluate the performance of each firm upon completion of a contract. That evaluation shall be made available to the firm which may submit a written response, with the evaluation and response retained solely by the agency. The evaluation and response shall not be made available to any other person or firm shall be exempt from disclosure under section 10 of chapter 66.

(j) Each contract for architectural, engineering, and related professional services by an agency shall contain a certificate signed by

a representative of the agency and the firm that each has complied with this chapter.”

The amendment was adopted.

Messrs. Pacheco, Tarr and Montigny moved that the bill be amended by adding at the end thereof the following new section:—
“SECTION _____.

SECTION 1. Subsection (a) of Section 39M½ of Chapter 30 of the General Laws is hereby amended by striking out after the words “major contract” the words “a contract by which the commonwealth or any of its public agencies is to procure the construction of a highway, railway, bridge, tunnel or aviation facility or any component thereof and for which the certified estimate of cost exceeds \$50,000,000” and inserting in place thereof the following words: “a contract by which the commonwealth or any of its public agencies or authorities is to procure the construction, repair or rehabilitation of a publicly owned highway, railway, bridge, tunnel, building platform or any component thereof and for which the certified estimate of cost exceeds \$50,000,000 or a contract or lease by which the commonwealth or any of its public agencies or authorities is to procure directly or indirectly the construction, repair or rehabilitation of a privately owned and publicly used highway, railway, bridge, tunnel, building platform or any component thereof.”

The amendment was adopted.

Messrs. Hedlund, Tarr, Brown, Tisei and Knapik moved that the bill be amended in Section 20, by striking out section 53, of Chapter 81C.

The amendment was adopted.

Ms. Spilka moved that the bill be amended, in SECTION 2, in line 223 by inserting the following subsection at line 223:— (5) The long range transportation plan developed by the secretary of transportation under this section shall ensure that the Commonwealth’s total five year capital expenditures for road and bridge projects across all capital programs for such projects managed by the executive office, excluding competitive grant programs, shall be equitable across the districts established in section 3 of chapter 57. “Equitable” for purposes of the preceding sentence shall mean not less than seventy-five percent of the annual percentage of the total statewide collections of motor vehicle fuel tax generated by each such district, provided that the minimum percentage shall be eighty-five percent for districts in which the revenue generated by registered vehicles that have a Fast Lane transponder exceeds the average revenue generated by registered vehicles that have a Fast Lane transponder in districts statewide.

The amendment was adopted.

There being no objection, during consideration of the Orders of the Day, the following matters were taken out of order, and considered as follows:

The Senate Bill relative to an appeal process of insurance premium surcharges under managed competition (Senate, No. 2022, amended),— was considered, the question being on passing the bill to be engrossed.

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

Mr. Hart moved that the bill be amended by adding the following section:—

“SECTION 3. The commissioner of insurance shall file a report with the joint committee on financial services no later than July 1, 2009, or within 90 days of the effective date of this act, providing a summary of efforts made to facilitate the transition of exclusive representative producers to voluntary agents and the outcome of those efforts, including the remaining number of non-appointed agents in the market. The report shall further examine private passenger automobile insurance premium payment plans and down payments required by insurers in the voluntary and residual market. The commissioner shall meet with all exclusive representative producers and insurers writing private passenger automobile insurance in the commonwealth who request such a meeting to provide agents with technical assistance and encourage voluntary contracts between agents and insurers. The meetings shall take place within 30 days of the effective date of this act.”

After remarks, the amendment was rejected.

Mr. Buoniconti doubted the vote, and asked for a standing vote; subsequently by a standing vote of 10 to 0, the amendment was adopted.

After further remarks, the question on passing the bill to be engrossed was determined by a call of the yeas and nays, at sixteen minutes past four o’clock P.M., on motion of Mr. Hart, as follows, to wit (yeas 39 — nays 0) [Yeas and Nays No. 21]:

YEAS.

Baddour, Steven A. Knapik, Michael R.

Berry, Frederick E. McGee, Thomas M.

Brewer, Stephen M. Menard, Joan M.

Brown, Scott P. Montigny, Mark C.

Buoniconti, Stephen J. Moore, Michael O.

Candaras, Gale D. Moore, Richard T.

Chandler, Harriette L. Morrissey, Michael W.

Chang-Diaz, Sonia O’Leary, Robert A.

Creem, Cynthia Stone Pacheco, Marc R.

Donnelly, Kenneth J. Panagiotakos, Steven C.

Downing, Benjamin B. Petrucci, Anthony

Eldridge, James B. Rosenberg, Stanley C.

Fargo, Susan C. Spilka, Karen E.

Flanagan, Jennifer L. Tarr, Bruce E.
Galluccio, Anthony D. Timilty, James E.
Hart, John A., Jr. Tisei, Richard R.
Hedlund, Robert L. Tolman, Steven A.
Jehlen, Patricia D. Tucker, Susan C.
Joyce, Brian A. Walsh, Marian — 39.
Kennedy, Thomas P.

NAYS — 0.

The yeas and nays having been completed at twenty minutes past four o'clock P.M., the bill (Senate, No. 2022, amended) was passed to be engrossed.
Sent to the House for concurrence.

The engrossed Bill extending the Commonwealth's authority to guarantee obligations of the Massachusetts Turnpike Authority (see House Bill, printed in House, No. 100, amended) (which originated in the House), having been certified by the Senate Clerk to be rightly and truly prepared for final passage, — was laid before the Senate for its final passage.
After debate, the pending motion, previously moved by Mr. Montigny, to lay the matter on the table was considered; and it was negatived.

After further debate, Mr. Montigny moved that the engrossed bill be laid on the table; and, in accordance with the provisions of Senate Rule 24, the consideration of the motion to lay on the table was postponed, without question, until the next session.

The Senate Bill modernizing the transportation systems of the Commonwealth (Senate, No. 10), was further considered, the main question being on ordering it to a third reading.

Mr. Pacheco moved that the bill be amended in section 5, of proposed section 70 of chapter 7 by striking out the following words, "the commission's written approval of a request for proposal for design-build-finance-operate-maintain or design-build-operate-maintain services shall be deemed to satisfy the requirements of sections 52 to 55, inclusive of chapter 7."; and inserting after paragraph 6 in said section 70 the following:—

In order to submit the commission's written approval of a request for proposal for design-build-finance-operate-maintain or design-build-operate-maintain services to the state auditor, the commission's process shall be sufficient to satisfy the requirements of sections 52 to 55, inclusive of chapter 7."

The amendment was adopted.

Ms. Spilka, Ms. Creem, Messrs. McGee, Eldridge, Petruccelli, Brown and Michael O. Moore moved that the bill be amended, in SECTION 20, be amended by inserting after the words "the acts of 1995;" in line 1526, the following: "and provided, that the authority shall continue the toll discount program created on June 28, 2002 and apply that discount to all increases in tolls charged and collected after the effective date of section 45 of chapter 246 of the acts of 2002."

The amendment was adopted.

Ms. Spilka, Ms. Creem, Messrs. Brown, McGee, Eldridge, Petruccelli, and Downing moved that the bill be amended in SECTION 25 by adding at the end thereof the following words: "provided further, that the authority shall not increase tolls without first providing, at a public hearing, a written evaluation of the funding shortfall facing the authority and all feasible statewide revenue options at its disposal; and provided further, that the authority shall not authorize a toll increase that amounts, in the aggregate, to more than 15 percent of the identified funding shortfall unless such restriction shall violate a binding covenant of an existing trust agreement."

The amendment was adopted.

Mr. Galluccio, Ms. Fargo, Ms. Tucker and Mr. Donnelly moved that the bill be amended by striking section 58 in its entirety and inserting thereof the following section:—

SECTION 58. (a) The Massachusetts Bay Transportation Authority shall transfer all mass transportation facilities and equipment under its custody and control, the right to collect fare revenue for services in connection with such mass transportation facilities and equipment and all related assets, liabilities, expenses and obligations to the division of public transit in the Massachusetts Surface Transportation Authority not later than July 1, 2011.

(b) Any commercial, above ground sign advertising in or on such facilities and equipment must comply with local zoning ordinances and regulations, unless such sign (i) receives approval by the local governing body (ii) does not exceed the dimensions of the building or transit station or stop to which it is affixed (iii) is solely related to mass transportation services and operations or (iv) is affixed to a mobile transit vehicle. No structure shall be constructed with the purpose of circumventing the intent of this paragraph.

(c) The transfer by the Massachusetts Bay Transportation Authority of the mass transportation facilities and equipment required in this section may be made pursuant to such other terms and conditions as may be acceptable to the transferor and the Massachusetts Surface Transportation Authority, but such terms shall be consistent with and authorized by chapter 161a of the General Laws and any trust agreement to which the Massachusetts Bay Transportation Authority is a party as of the effective date of this act.

(d) On July 1, 2011, ownership, possession and control of the mass transportation facilities and equipment referred to in this section shall pass to and be vested in the Massachusetts Surface Transportation Authority without consideration or further evidence of transfer.

(e) All books, maps, papers, plans, records and documents of whatever description pertaining to the design, construction, operation and affairs of the mass transportation facilities and equipment which are in the possession of the Massachusetts Bay Transportation Authority on June 30, 2011, or which thereafter come into the possession of the Massachusetts Bay Transportation Authority shall be transferred and delivered for the Massachusetts Surface Transportation Authority to its use, ownership, possession and control.

(f) On July 1, 2011, all proceeds of bonds, grants and other aid which are held by the Massachusetts Bay Transportation Authority on the effective date of this act shall then and thereafter be deemed to be held in trust for, and shall upon demand of the Authority be transferred to the Massachusetts Surface Transportation Authority to be applied to projects for which such bonds, grants or other aid were authorized. All proceeds of bonds, grants or other aid referred to herein, which shall be so held in trust and transferred upon demand, shall be in the amount as certified by the general manager of the Massachusetts Bay Transportation Authority to the state treasurer; and by inserting at the end thereof the following new section:—

SECTION XX. Section 3 of chapter 161A of the general laws is hereby amended by striking subsections (i) and (n) in its entirety and inserting in its place thereof the following subsections:—

(i) To provide mass transportation service, whether directly, jointly or under contract, on an exclusive basis, in the area constituting the authority and without being subject to the jurisdiction and control of the department of telecommunications and energy in any manner except as to safety of equipment and operations and, with respect only to operations of the authority with equipment owned and operated by the authority, without, except as otherwise provided in this chapter, being subject to the jurisdiction and control of any city or town or other licensing authority; provided, that schedules and routes shall not be considered matters of safety subject to the jurisdiction and control of said department. Except as otherwise provided in this chapter, the board shall determine the character and extent of the services and facilities to be furnished, and in these respects their authority shall be exclusive and shall not be subject to the approval, control or direction of any state, municipal or other department, board or commission, except (a) that such facilities must comply with local zoning ordinances and regulations with respect to any commercial, above ground sign advertising in or on such facilities and equipment, unless such sign (i) receives approval by the local governing body (ii) does not exceed the dimensions of the building or transit station or stop to which it is affixed (iii) is solely related to mass transportation services and operations or (iv) is affixed to a mobile transit vehicle or (b) where the advisory board is given authority as provided in this chapter. Nothing contained in this paragraph shall be construed as exempting any privately owned or controlled carrier, whether operating independently, jointly or under contract with the authority, from obtaining any license required under section 1 of chapter 59A.

(n) To sell, lease or otherwise contract for advertising in or on the facilities of the authority, except that such facilities must comply with local zoning ordinances and regulations with respect to any commercial, above ground sign advertising in or on such facilities, unless such sign (i) receives approval by the local governing body (ii) does not exceed the dimensions of the building or transit station or stop to which it is affixed (iii) is solely related to mass transportation services and operations or (iv) is affixed to a mobile transit vehicle. No structure shall be constructed with the purpose of circumventing the intent of this paragraph. After remarks, the question on adoption of the amendment was determined by a call of the yeas and nays at six minutes before five o'clock P.M., on motion of Ms. Tucker as follows, to wit (yeas 12 — nays 26) [Yeas and Nays No. 22]:

YEAS.

Donnelly, Kenneth J. Morrissey, Michael W.
Fargo, Susan C. Panagiotakos, Steven C.
Galluccio, Anthony D. Tarr, Bruce E.
Hedlund, Robert L. Tisei, Richard R.
Jehlen, Patricia D. Tucker, Susan C.
Kennedy, Thomas P. Walsh, Marian —12.

NAYS.

Berry, Frederick E. Knapik, Michael R.
Brewer, Stephen M. McGee, Thomas M.
Brown, Scott P. Menard, Joan M.
Buoniconti, Stephen J. Montigny, Mark C.
Candaras, Gale D. Moore, Michael O.
Chandler, Harriette L. Moore, Richard T.
Chang-Diaz, Sonia O'Leary, Robert A.
Creem, Cynthia Stone Pacheco, Marc R.
Downing, Benjamin B. Petrucci, Anthony
Eldridge, James B. Rosenberg, Stanley C.
Flanagan, Jennifer L. Spilka, Karen E.
Hart, John A., Jr. Timilty, James E.
Joyce, Brian A. Tolman, Steven A. — 26.

ANSWERED "PRESENT".

Baddour, Steven A. — 1.

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

Mr. Panagiotakos moved that the bill be amended by striking out, in Section 5, in subsection (a) of section 58 of proposed chapter 7 of the General Laws, by striking out the words "provided, however, that such operation" and inserting in place thereof the following words:— "provided, however, that such proposal";

By striking out, in said Section 5, in clause (26) of subsection (c) of section 59 of said proposed chapter 7, the word "any" and inserting in place thereof the following words:— "the operator's";

By striking out, in said Section 5, in clause (27) of said subsection (c) of said section 59 of said proposed chapter 7, by striking out the word "any" and inserting in place thereof the following words:— "the operator's";

In Section 20, in section 2 of the proposed chapter 81B, by striking out the words, inserted by amendment #39, "No director shall have been a registered legislative agent, as defined in section 39 of chapter 3 for a period of at least 5 years prior to his appointment, no director shall have been a member of the General Court or employee of the Executive branch or of the General Court for a period of 2 years prior to his appointment, and no director shall have been employed by an organization that has business before the authority, or any predecessor agency or authority, for a period of at least 2 years prior to his appointment" and inserting in place thereof the following words:— Barnstable, Dukes or Nantucket county and 1 shall reside in either Bristol or Norfolk county.";

In said Section 20, in said section 2 of said proposed chapter 81B, by striking out the second paragraph and inserting in place thereof the following paragraph:— "No director shall have been a registered legislative agent, as defined in section 39 of chapter 3 for a period of at least 5 years prior to his appointment, no director shall have been a member or employee of the General Court or an employee of the Executive branch for a period of 2 years prior to his appointment, and no director shall have been employed by an organization that has business before the authority, or any predecessor agency or authority, for a period of at least 2 years prior to his appointment."

By striking out, in Section 20, in the fifth paragraph of section 2 of proposed chapter 81B of the General Laws, by striking out the words "Section 3 of chapter 12 shall not apply" and inserting in place thereof the following words:— "Section 3 of chapter 12 shall apply";

By striking out, in said Section 20, in the second sentence of section 10 of said proposed chapter 81B, by striking out the words "and provided further, that the agency may not charge and collect" and inserting in place thereof the following words:— "and provided further, that the authority may not charge and collect";

By in Section 49A, by striking out the word "may" and inserting in place thereof the following words:— "is hereby approved to";

In Section 62, by striking out the words, in line 5683, "subject to appropriation, the" and inserting in place thereof the following word:— The;

By inserting after Section 62 the following section:—

"SECTION 62A. (a) Upon transfer of assets within the custody and control the department of highways to the division of roads and bridges of the Massachusetts Surface Transportation Authority, established by chapter 81B of the General Laws, the employees in the department of highways shall be transferred to the division of roads and bridges.

(b) The employees of the department of highways, including those who, immediately before the effective date of this act: hold permanent appointment in positions classified under chapter 31 of the General Laws have tenure in their positions as provided in section 9A of chapter 30 of the General Laws; do not hold such tenure; or hold confidential positions, are hereby transferred to the division of roads and bridges, without interruption of service within the meaning of said section 9A of said chapter 30, without impairment of seniority, retirement or other rights of the employee, and without reduction in compensation or salary grade, notwithstanding any change in title or duties resulting from such reorganization and without loss of accrued rights to holidays, sick leave, vacation and further benefits, and without change in union representation or certified collective bargaining unit as certified by the state labor relations commission or change in local union representation or affiliation. Any collective bargaining agreement in effect immediately before July 1, 2009 shall continue in effect and the terms and conditions of employment therein shall continue as if the employees, to whom such agreement applies, had not been so transferred. The transfer shall not impair the civil service status of reassigned employees who, immediately before the effective date of this act, either hold a permanent appointment in a position classified under said chapter 31 or have tenure in a position by reason of said section 9A said chapter 30. Notwithstanding any general or special law to the contrary, such employees shall continue to retain their right to collectively bargain pursuant to chapter 150E of the General Laws and shall be considered employees for the purposes of said chapter 150E. This section shall not confer upon any employee any right not held immediately before July 1, 2009 or prohibit any reduction of salary or grade transfer, reassignment, suspension, discharge, layoff or abolition of position not prohibited before said date.

(c) All petitions, requests, investigations and other proceedings appropriately and duly brought or duly begun and pending before the effective date of this act, shall continue unabated and remain in force, but shall be assumed and completed by the division of roads and bridges.

(d) All orders, rules and regulations duly made and all approvals duly granted by the department of highways, which are in force immediately before the effective date of this act, shall continue in force and shall thereafter be enforced, until superseded, revised, rescinded or canceled, in accordance with law, by the division of roads and bridges.

(e) All books, papers, records, documents, equipment, buildings, facilities, cash and other property, both personal and real, including all such property held in trust, which immediately before the effective date of this act are in the custody of the department of highways shall be transferred to division of roads and bridges.

All questions regarding the identification of such property and of the agencies to which custody thereof is transferred shall be determined by the secretary of transportation.

(f) All duly existing contracts, leases and obligations of the department of highways as they relate to property transferred to the division of roads and bridges pursuant to this section shall continue in effect but shall be assumed by the division of roads and bridges. No existing right or remedy of any character shall be lost, impaired or affected by this section. This section shall be effective on July 1, 2009”;

By inserting after Section 77L the following 2 sections:

“SECTION 77M. On June 30, 2009, the state comptroller shall transfer the balance of the Central Artery and Statewide Road and Bridge Infrastructure Fund, established in section 63 of chapter 10 of the General Laws, and the Infrastructure Fund, established in section 20 of chapter 29 of the General Laws, which funds are repealed by sections 9 and 14, respectively, to the Surface Transportation Trust Fund, established pursuant to section 35LL of chapter 10 of the General Laws and inserted by section 8, to be used for transportation-related purposes; provided, however, that if either such repealed fund has a negative balance as of June 30, 2009, the comptroller shall first transfer positive balances from funds that contribute to consolidated net surplus, as defined in section 1 of chapter 29 of the General Laws, to eliminate such negative balance in such repealed fund.

SECTION 77N. On June 30, 2011, the state comptroller shall transfer the balance of the MBTA Infrastructure Renovation Fund, established by section 35U of the General Laws and repealed by section 7, to the Surface Transportation Trust Fund, established in section 35LL of chapter 10 of the General Laws and inserted by section 8, to be used for transportation-related purposes.”; and In Section 20, in proposed chapter 81B by striking the following:—

“Section 2. The authority shall be managed by a board of 11 directors, 1 of whom shall be the secretary of transportation who shall serve as chairman of the board and shall not be additionally compensated for such service and 10 of whom shall be appointed by the governor. Of these 10 appointments, 1 shall be the secretary for administration and finance or his designee, who shall not be additionally compensated for such service. None, except for the foregoing appointments, shall be members of the general court or employees of the executive branch or employees of the legislature. One director shall be selected by the governor from a list of 3 candidates proposed by the Massachusetts Association of Regional Transit Authorities; 1 shall be selected by the governor from a list of 3 candidates proposed by the Massachusetts Association of Regional Planning Agencies, who shall represent a metropolitan planning organization; 2 shall be representatives of the service area of the Massachusetts Bay Transportation Authority, or any successor agency thereof, but only 1 of whom shall be from the city of Boston; 1 shall be an expert in the field of construction of transportation projects; 2 shall be experts in the field of public or private finance or accounting; 1 shall be a representative of an environmental organization or environmental public interest group; and 1 shall be an expert in the field of transportation law or organizational change. No more than 6 of the 11 directors shall be members of the same political party. Directors shall reside in different geographic regions of the commonwealth such that at least 1 director shall reside in Berkshire, Franklin, Hampshire or Hampden county, at least 1 director shall reside in Worcester county, one director shall reside in Middlesex or Essex county; provided, however, that the director does not reside in a municipality that is a member of the Metropolitan Area Planning Council, 1 director shall reside in Plymouth, Barnstable, Dukes or Nantucket county, and 1 shall reside in either Bristol or Norfolk county. No director shall have been a registered legislative agent, as defined in section 39 of chapter 3 for a period of at least 5 years prior to his appointment and no director shall have been employed by an organization that has business before the authority, or any predecessor agency or authority, for a period of at least 2 years prior to his appointment.”; and inserting in place thereof:—

“Section 2. The authority shall be managed by a board of 11 directors, 1 of whom shall be the secretary of transportation who shall serve as chairman of the board and 10 of whom shall be appointed by the governor. No director shall be additionally compensated for such service. None, except for the foregoing appointment, shall be members of the general court or employees of the executive branch or employees of the legislature. One director shall be selected by the governor from a list of 3 candidates proposed by the Massachusetts Association of Regional Transit Authorities; 1 shall be representative of the service area of the Massachusetts Bay Transportation Authority, or any successor agency thereof; 1 shall be an expert in the field of construction of transportation projects; 2 shall be experts in the field of public or private finance or accounting; 1 shall be a representative of an environmental organization or environmental public interest group; 1 shall be shall a member of a national or international labor organization; and 1 shall be an expert in the field of transportation law or organizational change. No more than 6 of the 11 directors shall be members of the same political party. Directors shall reside in different geographic regions of the commonwealth such that at least: 1 director shall reside in Berkshire, Franklin, or Hampshire county; 1 director shall reside in Hampden county; 1 director shall reside in Worcester county; 1 director shall reside in Middlesex county; 1 director shall reside in Essex county; 1 director shall reside in Plymouth, Barnstable, Dukes or Nantucket county; and 1 director shall reside within the turnpike corridor between exits 11A east, at the interchange with route 495, and exit 14 at the interchange with Route 128. No director shall have been a registered legislative agent, as defined in section 39 of chapter 3 for a period of at least 5 years prior to his appointment, no director shall have been a member of the General Court or employee of the Executive branch or of the General Court for a period of 2 years prior to his appointment, and no director shall have been employed by an organization that has business before the authority, or any predecessor agency or authority, for a period of at least 2 years prior to his appointment. The amendment was adopted.

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

The bill (Senate, No. 2023, amended) was then ordered to a third reading and was read a third time.

The question on passing the bill to be engrossed was determined by a call of the yeas and nays at five minutes past five o'clock P.M., on motion of Mr. Tisei as follows, to wit (yeas 39 — nays 1) [Yeas and Nays No. 23]:

YEAS.

Baddour, Steven A. Knapik, Michael R.

Berry, Frederick E. McGee, Thomas M.

Brewer, Stephen M. Menard, Joan M.
Brown, Scott P. Moore, Michael O.
Buoniconti, Stephen J. Moore, Richard T..
Candaras, Gale D. Morrissey, Michael W.
Chandler, Harriette L. Murray, Therese
Chang-Diaz, Sonia O'Leary, Robert A.
Creem, Cynthia Stone Pacheco, Marc R.
Donnelly, Kenneth J. Panagiotakos, Steven C.
Downing, Benjamin B. Petruccelli, Anthony
Eldridge, James B. Rosenberg, Stanley C.
Fargo, Susan C. Spilka, Karen E.
Flanagan, Jennifer L. Tarr, Bruce E.
Galluccio, Anthony D. Timilty, James E.
Hart, John A., Jr. Tisei, Richard R.
Hedlund, Robert L. Tolman, Steven A.
Jehlen, Patricia D. Tucker, Susan C.
Joyce, Brian A. Walsh, Marian — 39.
Kennedy, Thomas P.

NAY.

Montigny, Mark C. — 1.

The yeas and nays having been completed at eight minutes past five o'clock P.M., the bill was passed to be engrossed [For text of bill printed as amended, see Senate, No. 2024].
Sent to the House for concurrence.

Order Adopted.

On motion of Ms. Fargo,—

Ordered, That when the Senate adjourns today, it adjourn to meet again tomorrow at eleven o'clock A.M.

On motion of Mr. Tisei, at nine minutes past five o'clock P.M., the Senate adjourned to meet again tomorrow at eleven o'clock A.M.