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

UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



Monday, July 20, 1998.

Met at thirteen minutes past twelve o'clock noon.

Distinguished Guests.

There being no objection, the President introduced, seated in the rear of the Senate, dignitaries from the country of Romania. Among the dignitaries were Ms. Calinóu, head of the Legislative Department for the Romanian Senate, Mr. Dumi-Tres-Cu, General Secretary of the Romanian Senate, Mr. Mílcu, Director of Press for the Romanian Senate, Mr. Po-Pés-Cu, Deputy General Secretary for the Romanian Senate and Mr. Mol-Do-Van from the Romanian Ombudsman Institution. They were the guests of Senator Fargo.

Report of a Committee.

By Ms. Fargo, for the committee on Local Affairs, on petition, a Bill relative to the investment of trust funds by the city of Worcester (Senate, No. 2261) [Local approval received];

Read and, under Senate Rule 26, placed in the Orders of the Day for the next session.

Orders of the Day.

The Orders of the Day were considered, as follows:

Bills

Authorizing the city of Marlborough to lease a certain parcel of recreational land (Senate, No. 2243);

Establishing the position of town administrator in the town of Manchester-by-the Sea (Senate, No. 2244):

Relative to health care facilities (Senate, No. 2252);

Designating a certain bridge in the Hyde Park section of the city of Boston as the Thomas J. Geraghty Bridge (House, No. 2036); Relative to school bus inspections (House, No. 2360);

Relative to real estate tax exemptions for certain veterans who reside in the city of Newton (House, No. 4544);

Providing for an increase in the requirements for nomination as a candidate for elective office in the city of Malden (House, No. 4594);

Providing for a four year term for the office of mayor of the city of Malden commencing in the year 2000 (House, No. 4595); Relative to self testing programs by banks (House, No. 4695);

Authorizing the county of Nantucket to convey certain land (House, No. 4770);

Relative to antique automobiles (House, No. 4785);

Relative to the Groton Country Club Authority (House, No. 5157);

Permitting the regulation of garbage collection in the city of Boston (House, No. 5171);

Relative to dental service corporations (House, No. 5386);

Relative to the qualifications of commissioner of code enforcement in the city of Springfield (House, No. 5388);

Authorizing the South Middlesex Regional Vocational Technical School to pay certain health insurance premiums (House, No.

5444);

Relative to the board of selectmen in the town of Boxborough (House, No. 5450); and

Exempting the position of chief of police in the town of Acton from the provisions of the civil service law (House, No. 5545); Were severally read a second time and ordered to a third reading.

The House Bill relative to nomination papers (House, No. 5074),—was considered, the main question being on ordering the bill to a third reading.

The motion, previously moved by Mr. Lees, that the bill be laid on the table was considered; and it was negatived. The bill was then ordered to a third reading.

Papers from the House. Engrossed Bills.

There being no objection, during the Orders of the Day, the following engrossed bills (all of which originated in the House), having been certified by the Senate Clerk to be rightly and truly prepared for final passage, were severally passed to be enacted and were signed by the President and passed to be enacted and were signed by the President and laid before the Acting Governor for his approbation, to wit:

Relative to the Nantucket historic district commission (see House, No. 4653);

Authorizing the town of Westborough to issue an additional license for the sale of all alcoholic beverages to be drunk on the premises (see House, No. 5132); and

Relative to the membership of the conservation commission of the town of West Tisbury (see House, No. 5182).

There being no objection, during consideration of the Orders of the Day, the following matter was considered, as follows: The Senate Bill relative to reports of abuse of patients receiving home health care (Senate, No. 1818, amended),— came from the House passed to be engrossed, in concurrence, with the following amendments:

In section 1 by inserting after the word "anguish", in line 10, the words "or assault and battery; provided, however, that verbal or mental abuse shall require a knowing and willful act directed at a specific person", by inserting after line 41 the following paragraph:

"Religious Accommodation", no person shall be considered to be abused or neglected for the reason that such person, in accordance with his express or implied consent, is being furnished or relies upon treatment by spiritual means through prayer alone in accordance with a religious method of healing in lieu of medical treatment", by inserting after line 108 the following paragraph:—

"For the purposes of this section, the term written report' shall include, without limitation, an electronically transmitted report and facsimile.", by inserting after the word "facility", in line 170 [D], the following sentence:— "A facility shall only hire or employ, on a paid, unpaid, temporary or permanent basis, a nurse aide who is listed in such registry as having demonstrated competency as defined by department regulations.", by inserting after the word "findings", in line 171, the words ", made in accordance with the provisions of this section"; by inserting after the following: "66A." (inserted by amendment of the Senate), in line 183, the following two sentences:- "All facilities, home health agencies and homemaker agencies shall contact the registry prior to hiring an employee to ascertain if there is any finding of patient or resident abuse, mistreatment, neglect, or misappropriation of patient or resident property against a nurse aide, home health aide or homemaker. No facility, home health agency or homemaker agency shall hire an individual whose name appears in the registry with an adjudicated finding of patient or resident abuse, mistreatment, neglect or misappropriation of patient or resident property if such individual is under a suspension imposed by the department under the terms of this section.", and by inserting after the word "individual", in line 197, the following two sentences: "Upon making such finding, the department may suspend the right of such individual to work as a nurse aide, home health aide or homemaker. The department shall include the terms of any such suspension in the registry and no facility, home health agency or homemaker agency shall hire said individual until such suspension has been served to its completion."; in section 2 (as printed) by striking out, in lines 14 to 16, inclusive, the words "a subjective assessment of whether the named individual is suited to provide services to any resident or patient," and inserting in place thereof the following words:— "whether the former employee was voluntarily or involuntarily released from service and the reasons for such employee's release from employment with the former employer."; and by adding at the end thereof the following two sections:—

"SECTION 2. Section 172C of chapter 6 of the General Laws, as appearing in the 1996 Official Edition, is hereby amended by striking out, in lines 4 and 5, the words between the ages of eighteen and fifty-nine, inclusive,'.

SECTION 3. Said section 172C of said chapter 6, as so appearing, is hereby further amended by adding the following paragraph:—

A violation of this section shall constitute a violation of section 2 of chapter 93A.".

The rules were suspended, on motion of Mr. Montigny, and the matter was considered forthwith.

Messrs. Montigny and Keating moved that the House amendments be amended by striking out, in line 170 [at "D"], the words "A facility shall only hire or employ on a paid, unpaid, temporary or permanent basis, a nurse aide who is listed in said registry as having demonstrated competency as defined by department regulations" and inserting in place thereof the following words:— "A facility, other than a rest home, shall only hire or employ on a paid, unpaid, temporary or permanent basis, a nurse aide who is listed in said registry as having demonstrated competency as defined by department regulations";

By striking out, in line 83, the words "Registry information shall be subject to chapter 66A." (previously inserted by amendment

by the Senate) and by adding he following three sections:—

"SECTION 4. said chapter 6 is hereby further amended by inserting after section 172D, inserted by section 1 of chapter 64 of the acts of 1998, the following section:—

Section 172E. (a) Notwithstanding the provisions of section 172, criminal offender record information shall be available to a long term care facility, as defined in section 72W of chapter 111, for the purpose of obtaining criminal offender record information on an applicant under final consideration for, or an individual currently employed in, a position that involves the provision of direct personal care or treatment to residents of such facility. Any such long term care facility shall obtain all available criminal offender record information from the criminal history systems board on an applicant under final consideration for a position that involves the provision of direct personal care or treatment to residents. A long term care facility which obtains information under this section shall prohibit the dissemination of such information for any purpose other than to further the protection of the elderly or disabled including, but not limited to, dissemination to another long term care facility or other entity.

(b) A long term care facility may employ an individual for a position that involves the provision of direct personal care or treatment to residents on a conditional basis prior to receiving the results of such individual's criminal offender records check from the criminal history systems board. No long term care facility shall be liable for civil damages to an individual so conditionally employed and subsequently discharged by reason of information received as a result of a criminal offender record information check completed pursuant to subsection (a).

The criminal history systems board may waive or reduce the fee assessable pursuant to section 172A for criminal offender record information made available pursuant to subsection (a).

SECTION 5. No long term care facility, as described in section 172E of chapter 6 of the General Laws, shall be required to obtain criminal offender record information as a condition of continued employment of a person who is currently employed or serving as a volunteer in a position or capacity set forth in said section 172E on the effective date of this act.

SECTION 6. Notwithstanding the provisions of any general or special law to the contrary, the division of medical assistance shall reimburse long term care facilities for the portion of the costs associated with obtaining criminal offender record information pursuant to section 172E of chapter 6 of the General Laws."

After debate, the question on the adoption of the amendment was determined by a call of the yeas and nays, at fourteen minutes before one o'clock P.M., on motion of Mr. Montigny, as follows, to wit (yeas 36 — nays 1):

YEAS.

Amorello, Matthew J. Magnani, David P. Antonioni, Robert A. Melconian, Linda J. Bernstein, Robert A. Montigny, Mark C. Berry, Frederick E. Moore, Richard T. Brewer, Stephen M. Morrissey, Michael W. Clancy, Edward J., Jr. Murray, Therese Norton, Thomas C. Creedon, Robert S., Jr. Durand, Robert A. Nuciforo, Andrea F., Jr. Fargo, Susan C. O'Brien, John D. Havern, Robert A. Panagiotakos, Steven C. Pines, Lois G. Hedlund, Robert L. Jacques, Cheryl A. Rosenberg, Stanley C. Tarr, Bruce E. Jajuga, James P. Joyce, Brian A. Tisei, Richard R. Keating, William R. Tolman, Warren E. Knapik, Michael R. Travaglini, Robert E. Lees, Brian P. Walsh, Marian Lynch, Stephen F. Wilkerson, Dianne

ABSENT OR NOT VOTING.

Pacheco, Marc R.

Shannon, Charles E.

— 2..

The yeas and nays having been completed at ten minutes before one o'clock P.M., the amendment (Montigny and Keating) was adopted. The House amendments, as amended, were then adopted. Sent to the House for concurrence in the further Senate amendment.

Report of Committees.

There being no objection, during the consideration of the Orders of the Day, the following matter was considered, as follows: By Mr. Norton, for the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the Senate petition of William R. Keating, John H. Rogers and Jo Ann Sprague for legislation relative to a certain sewer connection in the town of Walpole.

Senate Rule 36 was suspended, on motion of Mr. Norton, and the report was considered forthwith. Joint Rule 12 was suspended; and the petition (accompanied by bill) was referred to the committee on Natural Resources and Agriculture. Sent to the House for concurrence.

Papers from the House.

There being no objection, during consideration of the Orders of the Day, a petition (accompanied by bill, House, No. 5721) of Louis L. Kafka and William R. Keating for legislation to authorize the Water Resources Authority to supply access to its sewer system to certain property located in the town of Sharon,—was referred, in concurrence, under suspension of Joint Rule 12, to the committee on Natural Resources and Agriculture.

Senate Order Adopted.

There being no objection, during consideration of the Orders of the Day, the following matter was considered, as follows: Mr. Pacheco presented the following order, to wit:

Ordered, That, notwithstanding the provisions of Joint Rule 10, the joint committee on state administration be granted until Friday, July 24, 1998 in which to make its final report on Senate document numbered 2054, relative to cities and towns entering into contracts for the operation and maintenance, lease or sale and modification of water and wastewater treatment plants, sewers and pump stations.

The order was considered forthwith, and adopted.

Sent to the House for concurrence.

Recess.

At five minutes before one o'clock P.M., the President declared a recess subject to the call of the Chair; and, at twenty-eight minutes past two o'clock P.M., the Senate reassembled, the President in the Chair.

Orders of the Day.

The Orders of the Day were further considered.

The House Bill relative to the taxation of certain real property (House, No. 4669),—was read a third time. Mr. Clancy, for the committee on Bills in the Third Reading, reported, recommending that the bill be discharged from further consideration thereof. The report was accepted.

Pending the question on passing the bill to be engrossed, Mr. Magnani moved that the bill be amended by striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2279.

The amendment was adopted. The bill, as amended, was then passed to be engrossed, in concurrence, with the amendment.

Sent to the House for concurrence in the amendment.

Papers from the House. Conference Committee Reports.

The committee of conference on the disagreeing votes of the two branches, with reference to the Senate amendments to the House Bill making appropriations for the fiscal year nineteen hundred and ninety-nine for the maintenance of the departments, boards, commissions, institutions and certain activities of the Commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements (House, No. 5501) (amended by the Senate by striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2230; and by striking out the emergency preamble and inserting in place thereof a new emergency preamble), reported, in part, a "Bill to facilitate the implementation of the fiscal year 1999 general appropriations act" (House, No. 5716).

The report was read and accepted, in concurrence.

The committee of conference on the disagreeing votes of the two branches, with reference to the Senate amendments to the House Bill making appropriations for the fiscal year nineteen hundred and ninety-nine for the maintenance of the departments, boards, commissions, institutions and certain activities of the Commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements (House, No. 5501) (amended by the Senate by striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2230; and by striking out the emergency preamble and inserting in place thereof a new emergency preamble), reported, in part, a "Bill making appropriations for the fiscal year 1999 for the maintenance of the departments, boards, commissions, institutions and certain activities of the commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements" (House, No. 5700). The report was read.

After remarks, the question on accepting the committee report was determined by a call of the yeas and nays, at twenty-one minutes before three o'clock P.M., on motion of Mr. Rosenberg, as follows, to wit (yeas 37 — nays 0):

YEAS.

Jacques, Cheryl A. Amorello, Matthew J. Jajuga, James P. Antonioni, Robert A. Bernstein, Robert A. Joyce, Brian A. Berry, Frederick E. Keating, William R. Brewer, Stephen M. Knapik, Michael R. Clancy, Edward J., Jr. Lees, Brian P. Creedon, Robert S., Jr. Lynch, Stephen F. Durand, Robert A. Magnani, David P. Fargo, Susan C. Melconian, Linda J. Montigny, Mark C. Havern, Robert A. Moore, Richard T. Hedlund, Robert L. Morrissey, Michael W. Rosenberg, Stanley C. Murray, Therese Tarr, Bruce E. Norton, Thomas C. Tisei, Richard R. Nuciforo, Andrea F., Jr. Tolman, Warren E. O'Brien, John D. Travaglini, Robert E. Walsh, Marian Panagiotakos, Steven C. Pines, Lois G. Wilkerson, Dianne Rauschenbach, Henri S.

— 37.

NAYS. - 0

ABSENT OR NOT VOTING.

Shannon, Charles E.

Pacheco, Marc R.

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

A Bill making certain appropriations for the fiscal year ending June 30, 1999 prior to final action on the General Appropriation Bill for said fiscal year (printed in House, No. 5708,—being a message from His Honor the Lieutenant-Governor, Acting Governor),—was read.

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

Recess.

At eight minutes before three o'clock P.M., the President declared a recess subject to the call of the Chair; and, at nineteen minutes past three o'clock P.M., the Senate reassembled, the President in the Chair.

Papers from the House. Emergency Preamble Adopted.

An engrossed Bill to facilitate the implementation of the fiscal year 1999 General Appropriations Act (see House, No. 5716), having been certified by the Senate Clerk to be rightly and truly prepared for final passage and containing an emergency preamble,— was laid before the Senate; and, a separate vote being taken in accordance with the requirements of Article LXVII of the Amendments to the Constitution, the preamble was adopted, in concurrence, by a vote of 5 to 0. The bill was signed by the President and sent to the House for enactment.

Recess.

At twenty-one minutes past three o'clock P.M., the President declared a recess subject to the Chair; and, at sixteen minutes before four o'clock P.M., the Senate reassembled, the President in the Chair.

Papers from the House. Engrossed Bill — Land Taking for Conservation, etc. — State Loan.

An engrossed Bill to facilitate the implementation of the fiscal year 1999 General Appropriations Act (see House, No. 5716) (which originated in the House), having been certified by the Senate Clerk to be rightly and truly prepared for final passage,—was put upon its final passage; and, this being a bill providing for the taking of land and other easements used for conservation purposes, etc., as defined by Article XCVII of the Amendments to the Constitution; and, this being a bill that provided for the borrowing of money, in accordance with the provisions of Section 3 of Article LXII of the Amendments to the Constitution, the question on passing it to be enacted was determined by a call of the yeas and nays, at a quarter before four o'clock P.M., as follows, to wit (yeas 35 — nays 0):

YEAS.

Amorello, Matthew J. Melconian, Linda J. Antonioni, Robert A. Montigny, Mark C. Moore, Richard T. Bernstein, Robert A. Berry, Frederick E. Morrissey, Michael W. Brewer, Stephen M. Murray, Therese Creedon, Robert S., Jr. Norton, Thomas C. Nuciforo, Andrea F., Jr. Durand, Robert A. Fargo, Susan C. Panagiotakos, Steven C. Havern, Robert A. Pines, Lois G. Hedlund, Robert L. Rauschenbach, Henri S. Jacques, Cheryl A. Rosenberg, Stanley C. Jajuga, James P. Tarr, Bruce E.

Joyce, Brian A.
Keating, William R.
Knapik, Michael R.
Lees, Brian P.
Lynch, Stephen F.
Magnani, David P.

Tisei, Richard R.
Tolman, Warren E.
Travaglini, Robert E.
Walsh, Marian
Wilkerson, Dianne

— 35.

NAYS. — 0

Paired.

YEA. NAY.

Marc R. Pacheco, John D. O'Brien (present)

— 2.

ABSENT OR NOT VOTING.

Clancy, Edward J., Jr. Shannon, Charles E.

— 2.

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

Engrossed Bill.

An engrossed Bill making certain appropriations for the fiscal year ending June 30, 1999 prior to final action on the General Appropriation Bill for said fiscal year (see House Bill, printed in House No. 5708) (which originated in the House), having been certified by the Senate Clerk to be rightly and truly prepared for final passage, was passed to be enacted and was signed by the President and laid before the Acting Governor for his approbation.

Emergency Preambles Adopted.

An engrossed Bill relative to the reorganization of certain insurance companies (see House, No. 5101, amended), having been certified by the Senate Clerk to be rightly and truly prepared for final passage and containing an emergency preamble,— was laid before the Senate; and, a separate vote being taken in accordance with the requirements of Article LXVII of the Amendments to the Constitution, the preamble was adopted, in concurrence, by a vote of 18 to 0. The bill was signed by the President and sent to the House for enactment.

An engrossed Bill making appropriations for the fiscal year 1999 for the maintenance of the departments, boards, commissions, institutions and certain activities of the Commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements (see House, No. 5700), having been certified by the Senate Clerk to be rightly and truly prepared for final passage and containing an emergency preamble,— was laid before the Senate; and, a separate vote being taken in accordance with the requirements of Article LXVII of the Amendments to the Constitution, the preamble was adopted, in concurrence, by a vote of 9 to 0.

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

Senate Order Adopted.

Mr. Keating presented the following order, to wit:

Ordered, That, notwithstanding the provisions of Joint Rule 10, the committee on the Judiciary be granted until July 31, 1998

within which to make its final report on current Senate document numbered 2262.

The order was considered forthwith and adopted.

Sent to the House for concurrence.

Papers from the House. Engrossed Bill.

An engrossed Bill authorizing the city of Worcester to issue pension obligation bonds (see Senate, No. 2263, amended) (which originated in the Senate), having been certified by the senate Clerk to be rightly and truly prepared for final passage, was passed to be enacted and was signed by the President and laid before the Acting Governor for his approbation.

Engrossed Bill.

An engrossed Bill making appropriations for the fiscal year 1999 for the maintenance of the departments, boards, commissions, institutions and certain activities of the Commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements (see House, No. 5700) (which originated in the House), having been certified by the Senate Clerk to be rightly and truly prepared for final passage, was put upon its final passage.

The question on passing the bill to be enacted was determined by a call of the yeas and nays, at half past four o'clock P.M., on motion of Mr. Rosenberg, as follows, to wit (yeas 35 — nays 0):

YEAS.

Amorello, Matthew J. Melconian, Linda J. Antonioni, Robert A. Montigny, Mark C. Bernstein, Robert A. Moore, Richard T. Berry, Frederick E. Morrissey, Michael W. Brewer, Stephen M. Murray, Therese Creedon, Robert S., Jr. Norton, Thomas C. Durand, Robert A. Nuciforo, Andrea F., Jr. Fargo, Susan C. O'Brien, John D. Havern, Robert A. Panagiotakos, Steven C. Hedlund, Robert L. Pines, Lois G. Jacques, Cheryl A. Rauschenbach, Henri S. Jajuga, James P. Rosenberg, Stanley C. Joyce, Brian A. Tarr, Bruce E. Tisei, Richard R. Keating, William R. Knapik, Michael R. Tolman, Warren E. Lees, Brian P. Walsh, Marian Lynch, Stephen F. Wilkerson, Dianne Magnani, David P.

— 35.

NAYS. — 0

ABSENT OR NOT VOTING.

Clancy, Edward J., Jr. Shannon, Charles E. Pacheco, Marc R. Travaglini, Robert E.

The yeas and nays having been completed at twenty-five minutes before five o'clock P.M., the bill was passed to be enacted and it was signed by the President and laid before the Acting Governor for his approbation.

Recess.

At twenty-three minutes before five o'clock P.M., the President declared a recess subject to the call of the Chair; and, at four minutes before five o'clock P.M., the Senate reassembled, the President in the Chair.

Papers from the House. Engrossed Bill.

An engrossed Bill relative to gun control in the Commonwealth (see Senate, No. 1985, amended) (which originated in the Senate), having been certified by the Senate Clerk to be rightly and truly prepared for final passage, was passed to be enacted and was signed by the President and laid before the Acting Governor for his approbation.

Communication.

The Clerk read the following communication:

COMMONWEALTH OF MASSACHUSETTS MASSACHUSETTS SENATE STATE HOUSE, BOSTON 02133

July 20, 1998.

The Honorable Edward B. O'Neill Clerk of the Senate State House, Room 335 Boston, Massachusetts 02133

Dear Mr. O'Neill:

As you know, due to official state business, representing the Commonwealth at the World Expo 98, I was unable to be recorded on the following matters during today's session:

S.1818 - A Bill relative to the home health registry (on adoption of the amendment);

H.5700 - A Bill making appropriations for the fiscal year 1999 for the maintenance of the departments, boards, commissions, institutions and certain activities of the Commonwealth, for interest, sinking funds and serial bonds requirements and for certain permanent improvements (acceptance of conference committee report); H.5700 - A Bill making appropriations for the fiscal year 1999 for the maintenance of the departments, boards, commissions, institutions and certain activities of the Commonwealth, for interest, sinking funds and serial bonds requirements and for certain permanent improvements (enactment). Had I been present, I would have voted in the affirmative on each of the above matters. I respectfully request this communication be spread upon the record of the

Sincerely,

MARC R., PACHECO, State Senator.

On motion of Ms. Jacques, the above statement was ordered printed in the Journal of the Senate.

Order Adopted.

On motion of Ms. Jacques,—

Senate.

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

On motion of Mr. Tisei, at two minutes before five o'clock P.M., the Senate adjourned to meet on the following Wednesday at eleven o'clock A.M.