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UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



Thursday, July 23, 1998.

Met at eight minutes before two o'clock P.M.

Distinguished Guests.

There being no objection, the President introduced, seated in the gallery, Lisa Bowles and Shauna Woods from Ireland. The two teenage girls are part of the Children's Friendship Project for Northern Ireland. The project pairs together Catholic and Protestant teenagers from Northern Ireland to help them overcome decades of social differences. Shauna and Lisa are among 126 teenagers participating in this program in the United States. The girls are being hosted by Mr. and Mrs. John F. Leech of Millville, Massachusetts. They were the guests of Senator Moore.

Papers from the House.

Engrossed Bills — Land Taking for Conservation, Etc.

An engrossed Bill authorizing the South Hadley Housing Authority to convey a parcel of land (see House, No. 5599, changed) (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 or other easements used for conservation purposes, etc., as defined by Article XCVII 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 three minutes past two o'clock P.M., as follows, to wit (yeas 38 — nays 0):

YEAS.

Amorello, Matthew J.
Antonioni, Robert A.
Bernstein, Robert A.
Berry, Frederick E.
Brewer, Stephen M.
Clancy, Edward J., Jr.
Creedon, Robert S., Jr.
Durand, Robert A.
Fargo, Susan C.
Hedlund, Robert L.
Jacques, Cheryl A.

Montigny, Mark C.
Moore, Richard T.
Morrissey, Michael W.
Murray, Therese
Norton, Thomas C.
Nuciforo, Andrea F., Jr.
O'Brien, John D.
Pacheco, Marc R.
Panagiotakos, Steven C.
Pines, Lois G.
Rauschenbach, Henri S.

Jajuga, James P.
Joyce, Brian A.
Keating, William R.
Knapik, Michael R.
Lees, Brian P.
Lynch, Stephen F.
Magnani, David P.
Melconian, Linda J.

Rosenberg, Stanley C.
Shannon, Charles E.
Tarr, Bruce E.
Tisei, Richard R.
Tolman, Warren E.
Travaglini, Robert E.
Walsh, Marian
Wilkerson, Dianne

— 38.

NAYS. — 0

ABSENT OR NOT VOTING.

Havern, Robert A.

— 1.

The yeas and nays having been completed at seven minutes past two 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.

An engrossed Bill authorizing the Division of Capital Planning and Operations to convey a certain parcel of land in the town of Halifax (see Senate, No. 2093) (which originated in the Senate), 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 or other easements used for conservation purposes, etc., as defined by Article XCVII 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 eight minutes past two o'clock P.M., as follows, to wit (yeas 38 — nays 0):

YEAS.

Amorello, Matthew J.
Antonioni, Robert A.
Bernstein, Robert A.
Berry, Frederick E.
Brewer, Stephen M.
Clancy, Edward J., Jr.
Creedon, Robert S., Jr.
Durand, Robert A.
Fargo, Susan C.
Hedlund, Robert L.
Jacques, Cheryl A.
Jajuga, James P.
Joyce, Brian A.
Keating, William R.
Knapik, Michael R.
Lees, Brian P.

Montigny, Mark C.
Moore, Richard T.
Morrissey, Michael W.
Murray, Therese
Norton, Thomas C.
Nuciforo, Andrea F., Jr.
O'Brien, John D.
Pacheco, Marc R.
Panagiotakos, Steven C.
Pines, Lois G.
Rauschenbach, Henri S.
Rosenberg, Stanley C.
Shannon, Charles E.
Tarr, Bruce E.
Tisei, Richard R.
Tolman, Warren E.

Lynch, Stephen F.
Magnani, David P.
Melconian, Linda J.

Travaglini, Robert E.
Walsh, Marian
Wilkerson, Dianne

— 38.

NAYS. — 0

ABSENT OR NOT VOTING.

Havern, Robert A.

— 1.

The yeas and nays having been completed at eleven minutes past two 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 relative to the reorganization of certain insurance companies (see House, No. 5101, amended) (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.

After debate, the question on passing the bill to be enacted was determined by a call of the yeas and nays, at twenty-four minutes before three o'clock P.M., on motion of Ms. Melconian, as follows, to wit (yeas 34 — nays 4):

YEAS.

Amorello, Matthew J.
Antonioni, Robert A.
Bernstein, Robert A.
Berry, Frederick E.
Brewer, Stephen M.
Clancy, Edward J., Jr.
Creedon, Robert S., Jr.
Durand, Robert A.
Fargo, Susan C.
Hedlund, Robert L.
Jacques, Cheryl A.
Jajuga, James P.
Joyce, Brian A.
Knapik, Michael R.
Lees, Brian P.
Lynch, Stephen F.
Magnani, David P.

Melconian, Linda J.
Moore, Richard T.
Murray, Therese
Norton, Thomas C.
Nuciforo, Andrea F., Jr.
O'Brien, John D.
Pacheco, Marc R.
Panagiotakos, Steven C.
Rauschenbach, Henri S.
Rosenberg, Stanley C.
Shannon, Charles E.
Tarr, Bruce E.
Tisei, Richard R.
Tolman, Warren E.
Travaglini, Robert E.
Walsh, Marian
Wilkerson, Dianne

— 34.

NAYS.

Keating, William R.
Montigny, Mark C.

Morrissey, Michael W.
Pines, Lois G.

— 4.

ABSENT OR NOT VOTING.

Havern, Robert A.

— 1.

The yeas and nays having been completed at nineteen minutes before three 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.

Orders of the Day.

The Orders of the Day were considered, as follows:

The House Bill authorizing the town of Tyngsborough to issue an additional license for the sale of all alcoholic beverages to be drunk on the premises (House, No. 5543),— **was read a second time and ordered to a third reading.**

The Senate Bill designating Special Needs Awareness Day (Senate, No. 2172) (its title having been changed by the committee on Bills in the Third Reading),— **was read a third time and passed to be engrossed.**

Sent to the House for concurrence.

The House bills

Relative to a certain advisory committee of the Department of Mental Health (House, No. 2492); 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 third time and passed to be engrossed, in concurrence.

The Senate Bill authorizing the city of Marlborough to lease a certain parcel of recreational land (Senate, No. 2243),— **was read a third time and passed to be engrossed.**

Sent to the House for concurrence.

The Senate Bill to maintain privacy (Senate, No. 2144),— 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. Knapik moved that the bill be amended by substituting a new draft with the same title (Senate, No. 2284). The amendment was adopted.

After remarks, the question on passing the bill to be engrossed was determined by a call of the yeas and nays, at eleven minutes before three o'clock P.M., on motion of Mr. Knapik, as follows, to wit (yeas 37 — nays 0):

YEAS.

Amorello, Matthew J.
Antonioni, Robert A.
Bernstein, Robert A.
Berry, Frederick E.
Brewer, Stephen M.
Clancy, Edward J., Jr.
Creedon, Robert S., Jr.
Durand, Robert A.
Fargo, Susan C.
Hedlund, Robert L.
Jacques, Cheryl A.
Jajuga, James P.

Moore, Richard T.
Morrissey, Michael W.
Murray, Therese
Norton, Thomas C.
Nuciforo, Andrea F., Jr.
O'Brien, John D.
Pacheco, Marc R.
Panagiotakos, Steven C.
Pines, Lois G.
Rauschenbach, Henri S.
Rosenberg, Stanley C.
Shannon, Charles E.

Joyce, Brian A.
Keating, William R.
Knapik, Michael R.
Lees, Brian P.
Magnani, David P.
Melconian, Linda J.
Montigny, Mark C.

Tarr, Bruce E.
Tisei, Richard R.
Tolman, Warren E.
Travaglini, Robert E.
Walsh, Marian
Wilkerson, Dianne — 37.

— 37.

NAYS. — 0

ABSENT OR NOT VOTING.

Havern, Robert A.

Lynch, Stephen F.

— 2.

The yeas and nays having been completed at six minutes before three o'clock P.M., the bill (Senate, No. 2284) was passed to be engrossed.

Sent to the House for concurrence.

The Senate Bill relative to annoying communications (Senate, No. 2162, amended),— was read a third time.

After remarks, the question on passing the bill to be engrossed was determined by a call of the yeas and nays, at two minutes before three o'clock P.M., on motion of Mr. Bernstein, as follows, to wit (yeas 37 — nays 0):

YEAS.

Amorello, Matthew J.
Antonioni, Robert A.
Bernstein, Robert A.
Berry, Frederick E.
Brewer, Stephen M.
Clancy, Edward J., Jr.
Creedon, Robert S., Jr.
Durand, Robert A.
Fargo, Susan C.
Hedlund, Robert L.
Jacques, Cheryl A.
Jajuga, James P.
Joyce, Brian A.
Keating, William R.
Knapik, Michael R.
Lees, Brian P.
Magnani, David P.
Melconian, Linda J.
Montigny, Mark C.

Moore, Richard T.
Morrissey, Michael W.
Murray, Therese
Norton, Thomas C.
Nuciforo, Andrea F., Jr.
O'Brien, John D.
Pacheco, Marc R.
Panagiotakos, Steven C.
Pines, Lois G.
Rauschenbach, Henri S.
Rosenberg, Stanley C.
Shannon, Charles E.
Tarr, Bruce E.
Tisei, Richard R.
Tolman, Warren E.
Travaglini, Robert E.
Walsh, Marian
Wilkerson, Dianne

NAYS. — 0

ABSENT OR NOT VOTING.

Havern, Robert A.

Lynch, Stephen F.

— 2.

The yeas and nays having been completed at two minutes past three o'clock P.M., the bill (Senate, No. 2162, amended) was passed to be engrossed.

Sent to the House for concurrence.

Papers from the House

There being no objection, during the consideration of the Orders of the Day, the following matter was considered, as follows: The House Bill providing for the improvement of court facilities in the Commonwealth (House, No. 1635, amended),— came from the House with the endorsement that the House had concurred in the further Senate amendments:

In section 1 at the end thereof the following paragraph:

"The general court finds and declares that the prompt accomplishment of the important public purposes of this act requires the speedy completion of each courthouse project for which this act authorizes funds. The commonwealth wishes to avoid the substantial risk of construction delay and resulting additional costs caused by labor disharmony in connection with the construction of larger projects, for which the total cost exceeds \$10,000,000, and finds that for such designated larger projects a project labor agreement is necessary to accomplish these goals. Therefore, the commonwealth, in its capacity as a market participant, has decided to require a project labor agreement, including a uniform grievance and arbitration procedure and an obligation not to strike, for construction work on each of these larger projects pursuant to section 2."; and in section 2, in items 0330-2206, 0330-2207, 0330-2208 and 0330-2209, striking out, in each instance, the words "; provided that the commissioner of capital planning and operations acting solely within his discretion may designate which contracts and subcontracts for construction, renovation, reconstruction, alteration, improvement, demolition, expansion, and repair of said courthouses and related parking facilities pursuant hereto shall be performed pursuant to a project labor agreement; provided, that the total project cost of any such project designated by said commissioner for construction, renovation, reconstruction, alteration, improvement, demolition, expansion and repair shall not be less than \$70 million dollars and shall be unique in project scope and size; provided further, that a project labor agreement for all such contracts and subcontracts for construction, renovation, reconstruction, alteration, improvement, demolition, expansion, and repair of said courthouses and related parking facilities so designated by the commissioner for a project labor agreement shall apply to all trade contracts for each such designated project shall be subject to the following conditions:" (inserted by amendment by the House) and inserting in place thereof, in each instance, the following: "provided further, that, for each project undertaken pursuant to this item for which the total cost exceeds \$10,000,000, the funds authorized by this item shall be expended only in accordance with the following conditions: (a) the provisions of sections 26 to 27F, inclusive, and section 29 of chapter 149 of the General Laws shall apply to all contracts for said project; and (b)",— *with still further amendments:*

In section 1 by striking out the last paragraph (added by amendment by the Senate);

By striking out section sections 2 and 3 (as amended) and inserting in place thereof the following three sections:

"SECTION 1A. The general court finds and declares that the prompt accomplishment of the important public purposes of this act by promoting the public interest and labor harmony requires the construction by project labor agreement of only four courthouse projects that are sufficiently extensive in size, complexity and duration for which this act authorizes funds, namely the downtown Worcester court complex, renovations to the historic Suffolk county courthouse, renovations or replacement of the high-rise Suffolk county courthouse, and the new downtown Fall River courthouse facility. Therefore, the commonwealth, in its capacity as a market participant for public construction projects, hereby requires a project labor agreement, including a uniform grievance and arbitration procedure and an obligation not to strike, for construction and renovation only work on each of these specified projects pursuant to item 0330-2206 of section 2.

SECTION 2.

JUDICIARY.

Trial Court.

0330-2206

For planning, development, land acquisition and construction of a new courthouse facility to be located in downtown Fall River, provided that said facility shall house the Bristol county Superior Court located at Fall River, the Fall River

district court and a law library; and for projects in preliminary design, including downtown Worcester court complex, so-called, renovations to the historic Suffolk county courthouse, and renovations or replacement of the highrise Suffolk county courthouse; provided, that expenditures made from this item for the acquisition of land, buildings, and interests therein, planning and studies, the preparation of plans and specifications, construction, renovation, reconstruction, alteration, improvement, demolition, expansion, and repair of the courthouse facility projects, including furnishings and equipment, relocation, compliance with life safety codes and remediation of environmental hazards shall be completed pursuant to the provisions of chapters 7, 30, and 149 of the General Laws or pursuant to the provisions of section 5 of this act; and provided further, that for each of the four courthouse projects specified in this item, the funds authorized by this item or otherwise by this act shall be expended only in accordance with the following conditions: (a) the provisions of sections 26 to 27F, inclusive, and section 29 of chapter 149 of the General Laws shall apply to all contracts for said project; and (b) all construction employees employed in the construction of said project shall be paid not less than the wage rate established for such work pursuant to a project labor agreement with the appropriate labor organization or labor organizations, which includes (1) a uniform grievance and arbitration procedure for the resolution of work-related disputes on job sites; (2) mutually agreeable uniform work rules and schedules for the project; and (3) an obligation for any such labor organization and its constituent members not to strike with respect to work on such project; provided, that it shall not be a precondition to the award of a contract that a bidder has previously entered into a collective bargaining agreement with a labor organization, but only that the bidder be willing to execute and comply with said project labor agreement for the designated project if it is awarded a contract for such designated project

.....285,000,000
0330-2207

For capital needs; provided, that expenditures made from this item shall be based upon the recommendations of the masterplan required by section 7 and to meet the costs of repairs to court facilities that have been or will be transferred to the commonwealth, which shall include, but not be limited to, expenditures for the following projects: the reconstruction or replacement of the trial court facilities in the city of Salem; the construction of a new trial court facility in Berkshire county to be located in the downtown area of the city of Pittsfield; the reconstruction or replacement of the trial court facilities and law library in Norfolk county; the construction of a new trial court facility in Falmouth; the construction of an Eastern Hampshire district court facility to be located in the town of Belchertown; the construction of a Franklin county trial court facility to be located in the town of Greenfield; the reconstruction or replacement of trial court facilities in Lowell; the reconstruction or replacement of the trial court facilities in Lynn; the construction of a new trial court facility in Middlesex county and the replacement of the Middlesex family and probate court; the renovation of the trial court facility in Newton, the renovation of the existing Plymouth superior courthouse for use by the probate and family court; the design and construction of a new Plymouth trial court; the renovation of the South Boston division of the trial court; the construction of a new trial court in Westfield; the design and construction of a new probate and family court in the county of Norfolk, including adequate space for a new law library in said court; and for renovations, repairs, construction, or reconstruction of the Charlestown district court; provided further, that expenditures made from this item for the acquisition of land, buildings, and interests therein, planning and studies, the preparation of plans and specifications, construction, renovation, reconstruction, alteration, improvement, demolition, expansion, and repair of the courthouse facility projects, including furnishings and equipment, relocation, compliance with life safety codes and remediation of environmental hazards shall be completed pursuant to the provisions of chapters 7, 30, and 149 of the General Laws or pursuant to the provisions of section 5 of this act

.....255,000,000
0330-2208

For other court needs, including the costs of preparing the masterplan required by section 7, to meet the costs of court repairs identified through said masterplan and to meet the costs of repairs to court facilities that have been or will be transferred to the commonwealth: provided, that expenditures made from this item shall include, but not be limited to, expenditures for the following projects: the study of a facility in or about the town of Dedham to house the archival needs of the Norfolk county trial courts, including the storage of certain court documents and records of the probate and family court; improvements to the northern Worcester county trial court facility in the city of Fitchburg; the renovation and repair of the district court facility located in East Boston; the renovation and provision for handicapped accessibility, security, and parking at the trial court facility located in Haverhill; a study of the necessary improvements to the superior court building and the existing building housing the district court located in the downtown area of the city of Taunton; the acquisition and construction of a parking facility for the new district court facility in the city of Taunton; assessment and designs, if necessary, for needed renovations or additions to the district court facility located in the city of Quincy; and for costs associated with the design and construction of a new superior court in the downtown area in the city of New Bedford; provided further, that expenditures from this item for the acquisition of land, buildings, and interests therein, planning and studies, the preparation of plans and specifications, construction, renovation, reconstruction, alteration, improvement, demolition, expansion, and repair of the courthouse facility projects, including furnishings and equipment, relocation, compliance with life safety codes and remediation of environmental hazards shall be completed pursuant to the provisions of chapters 7, 30, and 149 of the General Laws or pursuant to the provisions of section 5 of this act

.....143,000,000
0330-2209

For life safety repairs, the remediation of life safety code violations and for security improvements, so-called, at court facilities owned by the commonwealth or by political subdivisions of the commonwealth, notwithstanding any contrary provision of section 1, including the construction, renovation, and repair of courthouse detention facilities; provided, that expenditures made from this item shall include, but not be limited to, expenditures for the following projects: the construction, renovation, and repair of detention facilities and remediation of court facilities within Berkshire county; repairs, renovations, security improvements, handicapped access including, but not limited to, elevator service and air quality improvements at the superior court located in the town of Dedham, air quality improvements and handicapped access at the Norfolk county registry of deeds building, the trial courts in Stoughton and Wrentham and the district court located in the town of Dedham; temporary parking improvements at the interim third district court in Falmouth; the construction of an addition and renovation of the district court located in the town of Dudley, including the construction of additional parking areas, roof repairs and construction of additional parking areas at the district court located in the town of Milford; the renovation and repairs of the prisoners' dock and expansion of the parking lot for judges and court personnel in the New Bedford division of the district court department; the renovation of the existing Lawrence District courthouse in the city of Lawrence located at 381 Common street in said city; the reconstruction or replacement of court facilities in the city of Gloucester; the relocation of the Ipswich district court facility to the building in Ipswich known as the Ipswich Whipple Middle School and the improvement thereof: the replacement of the wastewater pipe serving the district court facility located in the town of Clinton; and for costs, in addition to the amount authorized by chapter 277 of the acts of 1995, of the Brockton trial court, including the remediation of environmental hazards, additional space, security, furnishings and other courthouse needs and for acquisition and improvement of land in the block bounded by Clinton avenue, West Elm street, Belmont street and Warren avenue located in the city of Brockton for additional parking spaces for said Brockton trial court; provided further, that expenditures made from this item for the acquisition of land, buildings, and interests therein, planning and studies, the preparation of plans and specifications, construction, renovation, reconstruction, alteration, improvement, demolition, expansion, and repair of the courthouse facility projects, including furnishings and equipment, relocation, compliance with life safety codes and remediation of environmental hazards shall be completed pursuant to the provisions of chapters 7, 30, and 149 of the General Laws or pursuant to the provisions of section 5 of this act

.....47,300,000

SECTION 3. To meet the expenditures necessary to carry out the provisions of this act, the state treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth, in an amount specified by the governor from time to time, but not exceeding in the aggregate, the sum of \$730,300,000. All bonds issued by the commonwealth as aforesaid, shall be designated on their face, Court Improvement Loan, Act of 1998, and shall be issued for such maximum term of years, not exceeding 20 years, as the governor may recommend to the General Court pursuant to Section 3 of Article LXII of the Amendments to the Constitution of the Commonwealth; provided, however, that all such bonds shall be payable not later than June 30, 2023. Bonds and interest thereon issued under the authority of this section, notwithstanding any other provisions of this act, shall be general obligations of the commonwealth.

For each of the four courthouse projects specified in item 0330-2206, the funds authorized by said item or otherwise by this act shall be expended only in accordance with the following conditions:

(a) the provisions of sections 26 to 27F, inclusive, and section 29 of chapter 149 of the General Laws shall apply to all contracts for said project; and (b) all construction employees employed in the construction of said project shall be paid not less than the wage rate established for such work pursuant to a project labor agreement with the appropriate labor organization or labor organizations, which includes (1) a uniform grievance and arbitration procedure for the resolution of work-related disputes on job sites; (2) mutually agreeable uniform work rules and schedules for the project; and (3) an obligation for any such labor organization and its constituent members not to strike with respect to work on such project; provided, that it shall not be a precondition to the award of a contract that a bidder has previously entered into a collective bargaining agreement with a labor organization, but only that the bidder be willing to execute and comply with said project labor agreement for the designated project if it is awarded a contract for such designated project."; and by inserting after section 28 the following section:

"SECTION 28A. A special commission is hereby established to consider the circumstances under which project labor agreements should be utilized, including consideration of their appropriateness and function and the size, complexity and duration of the public construction projects for which they should be utilized. Said commission shall consist of the secretary of administration and finance or designee thereof, the attorney general or designee thereof, the auditor or designee thereof, the commissioner of capital planning and operations or designee thereof, a representative of the Construction Industries of Massachusetts and a representative of the Massachusetts Building Trades Council. Said commission shall report its findings, together with drafts of any legislation it recommends, to the joint committee on commerce and labor not later than July 1, 2000."

The rules were suspended, on motion of Mr. Rosenberg, and the still further House amendments were considered forthwith and adopted, in concurrence.

Orders of the Day.

The Orders of the Day were further considered.

The House Bill further regulating the renewal of licenses of elevator mechanics (House, No. 4974) (its title having been changed by the committee on Bills in the Third Reading) was read a third time.

Pending the question on passing the bill to be engrossed,

Mr. Jajuga moved that the bill be amended by inserting after the word "employed", in line 19, the following words:—"or retained".

The amendment was adopted.

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

Sent to the House for concurrence in the amendment.

The Senate Bill relative to health care facilities (Senate, No. 2252),— was read a third time.

Pending the question on passing the bill to be engrossed, Ms. Walsh moved that the 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 House Bill relative to motor vehicle liability policies for antique automobiles (House, No. 4785) (its title having been changed by the committee on Bills in the Third Reading),— **was read a third time and passed to be engrossed, in concurrence.**

The House Bill relative to dental service corporations (House, No. 5386),— was read a third time.

After debate on the question on passing the bill to be engrossed, on motion of Ms. Melconian, the further consideration thereof was postponed until the remaining matters passed for consideration in the Orders of the Day had been disposed of.

Subsequently, the matters passed for consideration in the Orders of the Day having been disposed of, the bill was further considered; and it was passed to be engrossed, in concurrence.

The House Bill relative to the equitable taxation of insurance companies (House, No. 5479),— was read a third time.

Pending the question on passing the bill to be engrossed, Mr. Durand moved that the bill be further amended by inserting after section 8 the following section:—

"SECTION 8A. Section 6 of chapter 62 as of the General Laws, as most recently amended by section 63 of chapter 43 of the acts of 1997, is hereby further amended by adding the following subsection:—

(j)(1) As used in this subsection, the following words shall, unless the context requires otherwise, have the following meaning:

'Administration services', includes, but is not limited to, clerical, fund or shareholder accounting, participant record keeping, transfer agency, bookkeeping, data processing, custodial, internal auditing, legal and tax services performed for a regulated investment company or employee benefit plan, but only if the provider of such service or services during the taxable year in which such service or services are provided also provides or is affiliated with a person that provides management or distribution services to any regulated investment company or employee benefit plan.

'Affiliated person', the meaning set forth in 15 USC section 80a—2(a)(3)(C).

'Allocable share', a fraction, the numerator of which shall be the mutual fund company's income allocated to the taxpayer and the denominator of which shall be the mutual fund company's total income.

'Base period employment level', as defined in paragraph (1) of subsection (m) of section 38 of chapter 63, determined as if the company were a corporation doing business in the commonwealth.

'Distribution services', includes, but is not limited to, the services of advertising, servicing, marketing or selling shares of a regulated investment company or providing such services to an employee benefit plan but in the case of advertising, servicing or marketing shares, only where such service is performed by a person who is, or in the case of a closed-end company was, either engaged in the service of selling regulated investment shares or selling management services to an employee benefit plan or affiliated with a person that is engaged in the service of selling regulated investment company shares or management services to an employee benefit plan. Except in the case of a closed-end company, such service of selling shares shall be performed pursuant to a contract entered into pursuant to 15 USC section a—15(b), or an investment management contract entered into directly or indirectly with an employee benefit plan.

'Hypothetical tax', the product of the following less certain credits:

(I) the rate of tax contained in clause (2) of subsection (a) of section 32 of chapter 63; and

(ii) the portion of the net income as defined in section 17 of chapter 62 for the taxable year that is apportioned to Massachusetts.

Tax credits that would have been available to the mutual fund service company if it had been organized as a corporation subject to tax under chapter 63 shall be used to reduce the above amount.

For purposes of this subsection, the amount of net income apportioned to Massachusetts shall be determined using the three factor apportionment formula contained in subsection of section 38 of chapter 63.

'Hypothetical property tax', the difference between the amount of property tax actually paid by the mutual fund service company pursuant to all applicable sections of chapter 59 for the taxable year, after any and all abatements allowed, and the product of the following: (I) the value of the mutual fund service corporation's personal property owned on January 1 of the taxable year and located in Massachusetts; (ii) multiplied by the rate of tax contained in clause (1) of subsection (a) of section 32 of chapter 63 as modified by section 31B of said chapter 63.

'Management services', includes, but is not limited to, the rendering of investment advice, directly or indirectly, to a regulated investment company or employee benefit plan, making determinations as to when sales and purchases of securities are to be made on behalf of a regulated investment company or employee benefit plan, or the selling or purchasing of securities constituting assets of a regulated investment company or employee benefit plan, and related activities, but only where such activity or activities are performed: (I) pursuant to a contract with the regulated investment company entered into pursuant to 15

USC section 80a—15(a), or an investment management contract entered into directly or indirectly with an employee benefit plan; or (ii) on behalf of a person that is affiliated with a person that has entered into such contract with a regulated investment company or employee benefit plan.

'Mutual fund service company', any company doing business in the commonwealth which is organized as a general partnership, a limited partnership, a limited liability partnership, a limited liability company, or as any other type of entity, other than a corporation subject to tax under chapter 63, and which derives more than 50 percent of its gross income from the provision directly or indirectly, of management, distribution or administration services for or on behalf of a regulated investment company or employee benefit plan and from trustees, sponsors and participants of employee benefit plans which have accounts in a regulated investment company, a common trust fund or a common investment fund.

'Qualified employee in this commonwealth', as defined in paragraph (1) of subsection (m) of section 38 of chapter 63, determined as if the company were a corporation doing business in the commonwealth.

'Qualified employees worldwide', as defined in paragraph (1) of subsection (m) of section 38 of chapter 63, determined as if the company were a corporation doing business in the commonwealth.

(2)(I) Subject to the limitations contained herein, a credit is hereby granted against the tax imposed by this chapter equal to the taxpayer's allocable share multiplied by the hypothetical property tax. In order to receive this credit, such mutual fund service company must satisfy the requirements of paragraphs (3) and (4).

(ii) The credit provided in subparagraph (I) shall not, in any taxable year, exceed 30 per cent of the hypothetical tax of such mutual fund service company for such taxable year.

(iii) Any amount which would have been allowed as a credit under subparagraph (I) but for the limitation of subparagraph (ii) shall be carried forward until utilized for up to five subsequent years and shall be treated as personal property taxes paid in subsequent years.

(3) A mutual fund service company satisfies the requirements of this paragraph if its employment level for the taxable year equals or exceeds the job commitment level for such taxable year as set out in paragraph (1) of subsection (m) of section 38 of chapter 63, determined as if the company were a corporation doing business in the commonwealth.

(4) A mutual fund service company satisfies the requirements of this paragraph if it submits, as part of its tax return, a report, with such supporting documentation as the commissioner may require, containing the following:

(I) the number, nature and aggregate wages of the qualified employees in this commonwealth and qualified employees worldwide as of the end of the taxable year and the number of jobs added or lost as compared to the previous taxable year;

(ii) the number of qualified employees in this commonwealth as of the last day of the taxable year sorted by place of employment;

(iii) the base period employment level;

(iv) the volume of sales attributable to this commonwealth and worldwide;

(v) the taxable income in this commonwealth;

(vi) new assets under management in this commonwealth and worldwide;

(vii) the median income of all its qualified employees in this commonwealth and of all its qualified employees worldwide; and

(viii) total property taxes paid by the mutual fund service company, listed separately by city or town and further listed separately as real or personal.

The information provided by each individual mutual fund service company shall be treated as confidential under the provisions of section 21 of chapter 62C. Said information shall be used by the commissioner of revenue to prepare a comprehensive annual report setting forth the changes in the aggregate from the previous taxable year for each of the items listed above. The commissioner's report shall also set forth any recommendations the commissioner may have for any amendments to the provisions of this section, and the reasons for any such recommendations. The commissioner's report shall be filed by October 1 of each year with the clerk of the senate and the clerk of the house of representatives who shall forward the same to the respective committees on ways and means and the joint committee on taxation.

(5) The commissioner of revenue shall promulgate regulations necessary to carry out the provisions of this subsection."; by inserting after section 4 the following section:—

"SECTION 4A. The first sentence of section 5 of chapter 264 of the acts of 1996 is hereby amended by inserting after the word 'act' the following words:— and by section 1 of chapter ___ of the acts of 1998."; and by adding the following section:—

"SECTION 14. Subject to the provisions contained herein, the provisions of section 8A of this act shall take effect as of July 1, 1997. For tax years beginning before July 1, 1997, and ending on or after July 1, 1997, the hypothetical property tax shall be the hypothetical property tax as calculated pursuant to the definition contained in said section 8A multiplied by a fraction, the numerator of which fraction shall be the number of days in such taxable year on or after July 1, 1997 and the denominator of which shall be the total number of days in such taxable year.

The provisions of section 4A of this act shall take effect as of January 1, 1997."

The amendment was *rejected*.

Messrs. Tarr and Montigny moved to further amend the bill, in section 3, by inserting after the word "communities", in line 133, the following words:— "; or, (6) provides an investment in the commonwealth's commercial fishing industry"; and in section 4, by inserting after the word "communities", in line 139, the following words:— "; or (6) provides an investment in the commonwealth's commercial fishing industry."

The amendment was *rejected*.

Mr. Lees and Ms. Melconian moved to further amend the bill by adding the following two sections:—

"SECTION . Subsection (a) of section 3 of chapter 176J of the General Laws, as appearing in the 1996 Official Edition, is hereby

amended by inserting after paragraph (8) the following paragraph:—

(9) A carrier may establish a discount for eligible small businesses that are members of a bona fide association, as hereinafter defined, in connection with the carrier's health benefit plans issued between November 1, 1996 and October 31, 1997; provided, however that a carrier may not increase premiums for eligible small businesses receiving said discount by more than 3 per cent in any one year when renewing said plans through October 31, 1999; and provided further, that said such discount may not be based upon health status, claims experience, sex or gender. For purposes of this section, a bona fide association is one that:

(I) is in existence and has been active for at least five years;

(ii) has been formed and maintained in good faith for purposes other than obtaining insurance;

(iii) does not condition membership on any health status-related factor relating to an individual, including an employee of an employer or a dependent of an employee;

(iv) makes health insurance coverage offered through the association available to all members regardless of any health status-related factor relating to such members, or individuals eligible for coverage through a member; and

(v) does not make health insurance coverage offered through the association available other than in connection with a member of the association.

Said group shall not enroll additional members after the effective date of this section.

SECTION . Said section 3 of said chapter 176J, as so appearing, is hereby amended by inserting after the word adjustment', in line 101, the following words:— multiplied by the bona fide association discount."

The amendment was *rejected*.

Mr. Hedlund moved to further amend the bill by adding at the end thereof the following section:—

"SECTION . Section 113B of chapter 175 of the General Laws, as appearing in the 1996 Official Edition, is hereby amended by adding the following paragraph:—

Notwithstanding the provisions of any general or special law, rule, regulation or administrative decision to the contrary, nothing in this section shall be construed so as to recognize driving experience in any nation, country, place or jurisdiction other than a state, commonwealth, territory or possession of the United States for purposes of qualifying for good driving experience under the safe driver insurance plan."

After remarks on the question on adoption of the amendment, Mr. Jajuga arose to a point of order, which, being stated, was that the amendment went beyond the scope of the bill.

The President ruled that the point of order was NOT well taken.

The amendment further considered; and it was *rejected*.

Mr. Morrissey moved that the bill be further amended by adding at the end thereof the following two sections:

"SECTION 14. Section 24D of chapter 175 of the General Laws, as appearing in the 1996 Official Edition, is hereby amended by striking out the last sentence and inserting in place thereof the following paragraph:—

For the purposes of this section, the word claimant' shall mean an individual who brings a claim against an insured under a liability insurance policy or the liability coverage portion of a multiperil policy, or a beneficiary under a life insurance policy.

SECTION 15. The governor shall appoint a committee consisting of the commissioner of revenue or his designee the commissioner of insurance or his designee and a representative of the property insurance industry. Said committee shall present a report to the legislature no later than December 31, 1998 on the projected amount of child support collections that would result from adding first party claims under non-commercial policies to the system established by section 14."

After remarks, the amendment was *rejected*.

After remarks, the question on passing the bill to be engrossed was determined by a call of the yeas and nays, at eighteen minutes before four o'clock P.M., on motion of Ms. Melconian, as follows, to wit (yeas 38 — nays 0):

YEAS.

Amorello, Matthew J.

Antonioni, Robert A.

Bernstein, Robert A.

Berry, Frederick E.

Brewer, Stephen M.

Clancy, Edward J., Jr.

Creedon, Robert S., Jr.

Durand, Robert A.

Fargo, Susan C.

Havern, Robert A.

Hedlund, Robert L.

Jacques, Cheryl A.

Montigny, Mark C.

Moore, Richard T.

Morrissey, Michael W.

Murray, Therese

Norton, Thomas C.

Nuciforo, Andrea F., Jr.

O'Brien, John D.

Pacheco, Marc R.

Panagiotakos, Steven C.

Pines, Lois G.

Rauschenbach, Henri S.

Rosenberg, Stanley C.

Jajuga, James P.
Joyce, Brian A.
Keating, William R.
Knapik, Michael R.
Lees, Brian P.
Magnani, David P.
Melconian, Linda J.

Shannon, Charles E.
Tarr, Bruce E.
Tisei, Richard R.
Tolman, Warren E.
Travaglini, Robert E.
Walsh, Marian
Wilkerson, Dianne

— 38.

NAYS. — 0

ABSENT OR NOT VOTING.

Lynch, Stephen F.

— 1.

Ms. Melconian in the Chair,— the yeas and nays having been completed at fourteen minutes before four o'clock P.M., the bill (House, No. 5479) was passed to be engrossed, in concurrence, with amendments adopted by the Senate. Sent to the House for concurrence in the amendments previously adopted by the Senate.

Papers from the House.
Emergency Preamble Adopted.

The President in the Chair, there being no objection, during the consideration of the Orders of the Day, an engrossed Bill providing for the improvement of court facilities in the Commonwealth (see House, No.], amended), having been certified by the Senate Clerk to be rightly and truly prepared for final passage and containing an emergency preamble,— **was laid before the Senate; and a separate vote being taken in accordance with the requirements of Article LXVII of the Amendments to the Constitution, the preamble was adopted, in concurrence, by a vote of 11 to 0.**

The bill was signed by Ms. Melconian, Acting President (having been appointed by the President, under authority conferred by Senate Rule 4 to perform the duties of the Chair). The bill was then sent to the House for enactment.

Ms. Melconian in the Chair,— there being no objection, during the consideration of the Orders of the Day, petitions were referred, in concurrence, as follows:

Petition (accompanied by bill, House, No. 5726) of Joseph T. Geller, John A. Businger, Steven A. Tolman, Lois G. Pines, David T. Donnelly and Paul C. Demakis (by vote of the town) relative to the number of signatures required for petitioned articles for town meetings in the town of Brookline;

To the committee on Election Laws.

Petition (accompanied by bill, House, No. 5736) of William C. Galvin and Francis L. Marini relative to the purchase of wine from wineries located outside of the Commonwealth;

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

Reports of Committees.

There being no objection, during the consideration of the Orders of the Day, the following matters were 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 Brian A. Joyce for legislation relative to certain volunteer efforts and the dissemination of criminal offender record information.

Senate Rule 36 was suspended, on motion of Mr. Keating, and the report was considered forthwith. Joint Rule 12 was suspended; and the petition (accompanied by bill) was referred to the committee on Criminal Justice.

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 Brian A. Joyce for legislation to authorize distinctive registration plates for retired military personnel.

Senate Rule 36 was suspended, on motion of Mr. Keating, and the report was considered forthwith. Joint Rule 12 was suspended; and the petition (accompanied by bill) was referred to the committee on Public Safety.

Severally sent to the House for concurrence.

Bill Previously Recalled from the Acting Governor Laid Before the Senate.

There being no objection, during the consideration of the Orders of the Day, the engrossed Bill relative to the charter of the town of Eastham (see House, No. 4661) which, at a previous session, had been returned by His Honor the Lieutenant-Governor, Acting Governor, at the request of the Senate,— was laid before the Senate.

There being no objection, on motion of Mr. Rauschenbach, the Senate reconsidered the vote by which, at a previous session, it had passed the bill to be enacted.

On motion of the same Senator, Senate Rule 49 was suspended and the bill was amended, on further motion of the same Senator, by inserting after section 1 the following section:—

"SECTION 1A. Section 3-8-2 of said chapter 3 of said charter of the town of Eastham is hereby amended by striking out the last sentence and inserting in place thereof the following sentence:— He shall appoint members to the Cape Cod Regional Vocational High School Committee, three members of the Finance Committee and members to Town Meeting standing and temporary committees as the Town Meeting may vote."

Sent to the House for concurrence in the amendment.

Papers from the House.

Engrossed Bill.

There being no objection, during the consideration of the Orders of the Day, an engrossed Bill relative to the charter of the town of Bellingham (see House, No. 5491) (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 Ms. Melconian, Acting President (having been appointed by the President, under authority conferred by Senate Rule 4, to perform the duties of the Chair). The bill was then laid before the Acting Governor for his approbation.**

Report of a Committee.

By Ms. Fargo, for the committee on Local Affairs, on petition, a Bill authorizing the town of Hardwick to convey land to the Hardwick Farmers Co-operative (Senate, No. 2280) [Local approval received].

The bill was read. There being no objection, the rules were suspended, on motion of Mr. Brewer, and the bill was read a second time, ordered to a third reading, read a third time and passed to be engrossed, its title having been changed by the committee on Bills in the Third Reading, to read as follows: "An Act authorizing the town of Hardwick to convey land to the Hardwick Farmers Co-operative Exchange."

Sent to the House for concurrence.

Resolutions.

The President in the Chair,— resolutions (filed by Mr. Durand) "upon the retirement of William Peters after 24 years of dedicated service to the Marlborough police department", were referred, under the rule, to the committee on Rules.

Subsequently, Mr. Norton, for the said committee, reported, recommending that the resolutions ought to be adopted; and they were considered forthwith, under a suspension of the rules, moved by Mr. Jajuga, and adopted.

Resolutions (filed by Mr. Pacheco) "congratulating the town of Carver on the grand opening of its new town hall and public library on Old Home Day", were referred, under the rule, to the committee on Rules.

Subsequently, Mr. Norton, for the said committee, reported, recommending that the resolutions ought to be adopted; and they were considered forthwith, under a suspension of the rules, moved by Mr. Jajuga, and adopted.

Order Adopted.

On motion of Mr. Durand,—

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

Papers from the House.

Engrossed Bill — State Loan — State Credit.

An engrossed Bill providing for the improvement of court facilities in the Commonwealth (see House, No. 1635, amended) (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 borrowing of money, in accordance with the provisions of Section 3 of Article LXII of the Amendments to the Constitution; and it also being a bill that provided for the gift, loan or pledge of the credit of the Commonwealth, in accordance with the provisions of Section 1 of Article LXII of the Amendments to the Constitution, after debate, the question on passing it to be re-enacted was determined by a call of the yeas and nays, at twenty-three minutes before five o'clock P.M., as follows, to wit (yeas 38 — 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
Clancy, Edward J., Jr.	Nuciforo, Andrea F., Jr.
Creedon, Robert S., Jr.	O'Brien, John D.
Durand, Robert A.	Pacheco, Marc R.
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.	Shannon, Charles E.
Joyce, Brian A.	Tarr, Bruce E.
Keating, William R.	Tisei, Richard R.
Knapik, Michael R.	Tolman, Warren E.
Lees, Brian P.	Travaglini, Robert E.
Lynch, Stephen F.	Walsh, Marian
Magnani, David P.	Wilkerson, Dianne

— 38.

NAYS. — 0

ABSENT OR NOT VOTING.

Norton, Thomas C.

— 1.

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

Engrossed Bill.

An engrossed Bill relative to the taxation of certain real property (see House, No. 4669, amended) (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.**

Communications.

The Clerk read the following communication:

COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS SENATE
STATE HOUSE, BOSTON 02133

July 23, 1998.

Mr. Edward B. O'Neill
Clerk of the Senate
State House, Room 335
Boston, MA 02133

Dear Mr. O'Neill:

Due to a personal emergency, I was unable to be present in the Chamber on Thursday, July 23, 1998 for the Senate vote on the following matters:

H.5559 - South Hadley Land Taking

S.2093 - Halifax Land Taking

H.5101 - Insurance Companies — Reorganization Enactment

S.2144 - Right of Privacy Enactment

S.2162 - Annoying Communication Engrossment Had I been present, I would have voted in the affirmative on each of the above matters. I respectfully request that this communication be noted in the record of the Senate.

Sincerely,

ROBERT A. HAVERN,
State Senator.

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

A communication from Senator Brian P. Lees, in compliance with Massachusetts General Laws, Chapter 268A,— **was placed on file.**

Adjournment in memory of Alan Bartlett Shepard, Jr.

Mr. Brewer moved that when the Senate adjourns today, it adjourn in memory of Alan Bartlett Shepard, Jr., who on May 5, 1961, became America's first man in space. This motion prevailed.

Accordingly, as a mark of respect to the memory of Alan Bartlett Shepard, Jr., at seventeen minutes before five o'clock P.M., on motion of Mr. Lees, the Senate adjourned to meet on the following Monday at eleven o'clock A.M.