

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

UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



JOURNAL OF THE SENATE.

Thursday, July 8, 2004.

Met at two minutes past eleven o'clock A.M.

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

Communication.

A communication was received from the Senate President announcing the appointment of Senator Brian A. Joyce to serve as the Senate designee to the special commission (established pursuant to section 392 of chapter 149 of the Acts of 2004) for the purpose of considering a Governor's Residence at Brookwood Farm.

Report.

A report of the Department of Telecommunications and Energy (under the provisions of Section 193 of Chapter 164 of the Acts of 1997) submitting its 2003 annual report concerning self-generation (received Thursday, July 8, 2004),— **was placed on file.**

Report of a Committee.

By Ms. Wilkerson, for the committee on State Administration, on petition, a Bill relative to the disposition of certain land in the city of Lowell (Senate, No. 2421, changed by striking out Section 10 and by inserting before the enacting clause the following emergency preamble:—

"Whereas, The deferred operation of this act would tend to defeat its purpose, which is to promote the health and safety of the citizens of the City of Lowell and the surrounding municipalities and to encourage and enhance the mission of the University of Massachusetts Lowell in promoting a sound, stable, regional economy by providing a highly trained and educated workforce, supporting and improving the health care delivery system of the region, and for spurring the creation of jobs necessary to allow for the maintenance and growth of technology and manufacturing sectors of the Commonwealth now and in the future, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.";

Read and, under Senate Rule 27, referred to the committee on Ways and Means.

PAPERS FROM THE HOUSE.

Petitions were referred, in concurrence, as follows:

Petition (accompanied by bill, House, No. 4955) of Thomas P. Kennedy, Geraldine Creedon and Christine E. Canavan (with the approval of the mayor and city council) relative to the installation, financing and the operation of solar energy facilities in the city

of Brockton;

To the committee on Energy.

Petition (accompanied by bill, House, No. 4956) of Viriato Manuel deMacedo, Therese Murray and Thomas J. O'Brien (by vote of the town) relative to the charter of the town of Plymouth;

Petition (accompanied by bill, House, No. 4957) of Vincent P. Ciampa, Timothy J. Toomey, Jr. and Charles E. Shannon (with the approval of the mayor and city council) relative to transferring certain employees of the school committee of the city of Somerville to the department of public works of said city;

Petition (accompanied by bill, House, No. 4958) of Vincent P. Ciampa, Timothy J. Toomey, Jr. and Charles E. Shannon (with the approval of the mayor and city council) relative to placing the health inspector of the city of Somerville under the supervision of the Division of Inspectional Services; and

Petition (accompanied by bill, House, No. 4959) of William Lantigua, Barry R. Finegold, David M. Torrissi and Susan C. Tucker (with the approval of the mayor and city council) relative to the filling of vacancies in the city of Lawrence; Severally to the committee on Local Affairs and Regional Government.

Petition (accompanied by bill, House, No. 4960) of Robert Correia, Joan M. Menard, Michael J. Rodrigues and David B. Sullivan (with the approval of the mayor and city council) that the city of Fall River be authorized to increase the pension payable to Dennis O'Neil, a retired police officer;

Petition (accompanied by bill, House, No. 4961) of Paul J. Donato, J. James Marzilli, Jr., Charles E. Shannon and Vincent P. Ciampa (with the approval of the mayor and city council) providing for an early retirement incentive program for the city of Medford;

Petition (accompanied by bill, House, No. 4962) of Brian Knuuttila, Emile J. Goguen, Mary Jane Simmons and Robert A. Antonioni (with approval of the mayor and city council) that the city of Gardner be authorized to provide a career incentive pay program for police officers; and

Petition (accompanied by bill, House, No. 4963) of Elizabeth Poirier and Scott P. Brown (by vote of the town) relative to the appointment of Eric K. Gouck as a firefighter in the town of North Attleborough;

Severally to the committee on Public Service.

Resolutions.

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

Resolutions (filed by Mr. Pacheco) “congratulating Captain Matthew T. Crumley”; and

Resolutions (filed by Mr. Pacheco) “congratulating Nancy Nordstrom.”

Communication.

The Clerk read the following communication:

COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS SENATE
STATE HOUSE, BOSTON 02133-1053

July 7, 2004.

Mr. William F. Welch
Clerk of the Massachusetts Senate
State House, Room 335
Boston, MA 02133

Dear Mr. Clerk:

On July 7, 2004, I was delayed in my arrival in the Senate Chamber due to a commitment outside the building. Therefore, I was unable to be present for the first roll call taken on the following matter:

Engrossment of Senate 972, “An Act Relative To Dangerous Buildings”.

Had I been present, I would have voted in the affirmative on the above matter. I would appreciate your assistance with the printing of this communication in today's Senate Journal. Thank you.

Sincerely,
ROBERT S. CREEDON, JR.,
Senator,
Second Plymouth and Bristol District.

On motion of Mr. Nuciforo, the above communication was ordered printed in the Journal of the Senate.

Reports of Committees.

A report of the committee on Taxation, ought NOT to pass (under Joint Rule 10), on the petition (accompanied by bill, Senate, No. 2259) of Michael W. Morrissey, Bruce J. Ayers, Ronald Mariano and A. Stephen Tobin (with approval of the mayor and city council) for legislation to authorize the city of Quincy to establish interest rates payable on deferred property taxes and water charges (the time within which said committee had to report having expired).

There being no objection, on motion of Mr. Nuciforo, the petition was recommitted to the committee on Taxation.

By Mr. Brewer, for the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the Senate petition of Andrea F. Nuciforo, Jr. for legislation relative to the successful operation of Berkshire enterprises.

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

PAPER FROM THE HOUSE.

A Bill authorizing the town of Brookline to fix reasonable fees for permits granted by the chief of its fire department (House, No. 4403,— on petition),— was read.

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

Order Adopted.

Mr. Moore presented the following order, to wit:

Ordered, That a special committee of the Senate be appointed to represent the Senate at the annual meeting of the National Conference of State Legislatures (NCSL) in Salt Lake City, Utah, July 19-23, 2004, and that the Senator from Worcester and Norfolk, Mr. Moore, a member of the Executive Committee of the NCSL, be appointed to said committee.

There being no objection, the order was considered forthwith, and it was adopted.

Report of a Committee.

Mr. Magnani for the committee on Steering and Policy, reported that the following matter be placed in the Orders of the Day for the next session:

The House Bill prohibiting certain practices in home mortgage lending (House, No. 4880) (the committee on Ways and Means having recommended that the bill be amended in section 1, by inserting after the definition of "High cost home mortgage loan", the following definition:

"'Home mortgage loan', a loan, other than a reverse mortgage transaction, in which: (i) the principal amount of the loan does not exceed the conforming loan size limit for a single-family dwelling as established from time to time by the Federal National Mortgage Association or a comparable entity designated by the division of banks; (ii) the borrower is a natural person; (iii) the debt is incurred by the borrower primarily for personal, family or household purposes; and, (iv) the loan is secured by a mortgage or deed of trust on real estate upon which there is located or there will be located a structure designed principally for occupancy of from 1 to 4 families which is or will be occupied by the borrower as the borrower's principal place of residence."; by striking out the word "meet", in line 185, and inserting in place thereof the following word:— "pay"; and by striking out, in lines 275 and 276, the words "(i) dividing any loan transaction into separate parts; or, (ii) engaging in any other subterfuge for the purpose of evading the provisions of this chapter" and inserting in place thereof the following words:— "dividing any loan transaction into separate parts"; by striking out section 2 and section 6; and in section 7, by striking out the word "and", in line 5, and inserting in place thereof the following word:— "where").

There being no objection the rules were suspended, on motion of Mr. Nuciforo, and the bill was read a second time.

Pending the question on adoption of the amendment recommended by the committee on Ways and Means, Mr. Nuciforo moved that the Ways and Means amendment be amended by striking the words, "By striking out section 2;".

The amendment was adopted.

The Ways and Means amendment was then adopted, as amended.

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

PAPERS FROM THE HOUSE.

Engrossed Bills.

The following engrossed bills (both of which originated in the House), having been certified by the Senate Clerk to be rightly and truly prepared for final passage, were severally passed to be enacted and were signed by the President and laid before the Governor for his approbation, to wit:

Establishing uniform primary procedures for unenrolled voters (see House, No. 2229); and

Relative to the appointment of retired police officers in the city of Fitchburg (see House, No. 4617).

Bills Returned with Recommendation of Amendment.

A message from His Excellency the Governor, returning with recommendation of amendment the engrossed Bill relative to appropriations for the fiscal year 2005 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. 4903) as relates to section 28 [for message, see attachment D of House, No. 4901],— came from the House with endorsement that the House *rejected* the amendment (as approved by the committee on Bills in the Third Reading).

The message was read; and, under the provisions of Article LVI of the Amendments to the Constitution, the bill was before the Senate subject to amendment and re-enactment.

The Senate then *rejected* the amendment.

Sent to the House for re-enactment.

A message from His Excellency the Governor, returning with recommendation of amendment the engrossed Bill relative to appropriations for the fiscal year 2005 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. 4904) as relates to section 35 [for message, see attachment E of House, No. 4901],— came from the House with endorsement that the House *rejected* the amendment (as approved by the committee on Bills in the Third Reading).

The message was read; and, under the provisions of Article LVI of the Amendments to the Constitution, the bill was before the Senate subject to amendment and re-enactment.

The Senate then *rejected* the amendment.

Sent to the House for re-enactment.

Recess.

There being no objection, at twenty-one minutes past eleven o'clock A.M., the President declared a recess subject to the call of the Chair; and, at twenty-two minutes before six o'clock P.M., the Senate reassembled, Ms. Menard in the Chair (having been appointed by the President, under authority conferred by Senate Rule 4, to perform the duties of the Chair).

PAPERS FROM THE HOUSE.

The House Bill relative to the financial stability in the city of Springfield (printed in House, No. 4799, amended),— came from the House with the endorsement that the House had NON-concurred in the Senate amendment striking out all after the enacting clause and inserting in place thereof the text contained in Senate document numbered 2422.

The rules were suspended, on motion of Mr. Moore, and the bill was further considered.

Mr. Lees and Ms. Melconian presented a request that the Senate recede from its amendment and offer another amendment, in section 2, by striking out, in lines 22 to 24, the words "the fiscal year immediately following the fiscal year in which any amounts are loaned from this item" and inserting in place thereof the following words:— "fiscal year 2008";

By striking out, in line 25, the figure "2010" and inserting in place thereof the following figure:— "2012";

By striking out, in line 30, the figure "2011" and inserting in place thereof the following figure:— "2013"; and

By inserting after section 4 the following section:—

“SECTION 4A. Within 30 days after the appointment of the board, but no later than September 1, 2004, the board shall make a preliminary report to the secretary of administration and finance and to the chairpersons of the house and senate committees on ways and means. The report shall present a preliminary analysis of the fiscal crisis in Springfield and the boards preliminary finance and Management plans to address the city’s operating and structural deficits. The board shall examine the feasibility and advisability of measures to mitigate or relieve the burden of school transportation costs.”

There being no objection, the Senate receded from its amendment, and adopted the amendment presented by Senators Lees and Melconian.

Sent to the House for concurrence in the amendment.

Emergency Preamble Adopted.

An engrossed Bill authorizing the division of capital asset management and maintenance to lease certain property (see senate, No. 2234, 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 3 to 0.

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

Engrossed Bills.

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 Acting President and laid before the Governor for his approbation, to wit:

Authorizing the town of Raynham to establish a betterment reserve fund (see House, No. 4075);

Providing that certain employees of the Taunton Municipal Lighting Plant of the city of Taunton be under the civil service law (see House, No. 4185);

Authorizing the certification and eligibility as firefighters in the city of Taunton (see House, No. 4186);

Relative to the discontinuance of a portion of Dock Lane in the city of Beverly (see House, No. 4189);

Authorizing the town of Marion to develop and maintain a subsidized housing plan for low and moderate income housing (see House, No. 4631); and

Relative to the charter of the town of Needham (see House, No. 4875, changed).

Bills Returned with Recommendation of Amendment.

A message from His Excellency the Governor, returning with recommendation of amendment the engrossed Bill relative to appropriations for the fiscal year 2005 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. 4918) as relates to section 251 [for message, see attachment S of House, No. 4901],— came from the House with endorsement that the House *rejected* the amendment (as approved by committee on Bills in the Third Reading).

The message was read; and, under the provisions of Article LVI of the Amendments to the Constitution, the bill was before the Senate subject to amendment and re-enactment.

The Senate then *rejected* the amendment.

Sent to the House for re-enactment.

A message from His Excellency the Governor, returning with recommendation of amendment the engrossed Bill relative to appropriations for the fiscal year 2005 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. 4915) as relates to section 208 [for message, see attachment P of House, No. 4901],— came from the House with endorsement that the House *rejected* the amendment (as approved by committee on Bills in the Third Reading).

The message was read; and, under the provisions of Article LVI of the Amendments to the Constitution, the bill was before the Senate subject to amendment and re-enactment.

The Senate then *rejected* the amendment.

Sent to the House for re-enactment.

A message from His Excellency the Governor, returning with recommendation of amendment the engrossed Bill relative to appropriations for the fiscal year 2005 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. 4916) as relates to section 209 [for message, see attachment Q of House No. 4901],— came from the House with endorsement that the House *rejected* the amendment (as approved by committee on Bills in the Third Reading).

The message was read; and, under the provisions of Article LVI of the Amendments to the Constitution, the bill was before the Senate subject to amendment and re-enactment.

**The Senate then *rejected* the amendment
Sent to the House for re-enactment.**

A message from His Excellency the Governor, returning with recommendation of amendment the engrossed Bill relative to appropriations for the fiscal year 2005 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. 4914) as relates to section 126 [for message, see attachment O of House, No. 4901],— came from the House with endorsement that the House *rejected* the amendment (as approved by committee on Bills in the Third Reading).

The message was read; and, under the provisions of Article LVI of the Amendments to the Constitution, the bill was before the Senate subject to amendment and re-enactment.

**The Senate then *rejected* the amendment.
Sent to the House for re-enactment.**

A message from His Excellency the Governor, returning with recommendation of amendment the engrossed Bill relative to appropriations for the fiscal year 2005 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. 4930) as relates to section 424 [for message, see attachment DD of House, No. 4901],— came from the House with endorsement that the House adopted the amendment (as approved by committee on Bills in the Third Reading).

The message was read; and, under the provisions of Article LVI of the Amendments to the Constitution, the bill was before the Senate subject to amendment and re-enactment.

**The Senate then adopted the amendment, in concurrence.
Sent to the House for re-enactment.**

A message from His Excellency the Governor, returning with recommendation of amendment the engrossed Bill relative to appropriations for the fiscal year 2005 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. 4926) as relates to section 368 [for message, see attachment AA of House, No. 4901],— came from the House with endorsement that House *rejected* the amendment (as approved by committee on Bills in the Third Reading).

The message was read; and, under the provisions of Article LVI of the Amendments to the Constitution, the bill was before the Senate subject to amendment and re-enactment.

**The Senate then *rejected* the amendment.
Sent to the House for re-enactment.**

Engrossed Bill.

An engrossed Bill authorizing the division of capital asset management and maintenance to lease certain property (see Senate, No. 2234, 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 Governor for his approbation.**

Bills Returned with Recommendation of Amendment.

A message from His Excellency the Governor, returning with recommendation of amendment the engrossed Bill relative to appropriations for the fiscal year 2005 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. 4925) as relates to section 355 [for message, see attachment Z of House, No. 4901],— came from the House with endorsement that the House *rejected* the amendment (as approved by committee on Bills in the Third Reading), and had adopted a further amendment.

The message was read; and, under the provisions of Article LVI of the Amendments to the Constitution, the bill was before the Senate subject to amendment and re-enactment.

The Senate then *rejected* the amendment recommended by His Excellency the Governor.

The House amendment striking out in section 1 the date “June 15, 2005” and inserting in place thereof the date “April 1, 2005”,— was then considered and it was adopted, in concurrence.

Sent to the House for re-enactment.

A message from His Excellency the Governor, returning with recommendation of amendment the engrossed Bill relative to appropriations for the fiscal year 2005 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. 4923) as relates to section 324 [for message, see attachment X of House, No. 4901],— came from the House with endorsement that the House *rejected* the amendment (as approved by committee on Bills in the Third Reading), and had adopted a further amendment.

The message was read; and, under the provisions of Article LVI of the Amendments to the Constitution, the bill was before the Senate subject to amendment and re-enactment.

The Senate then *rejected* the amendment recommended by His Excellency the Governor.

The House amendment striking out all after the enacting clause and inserting in place thereof the following:—

“SECTION 1. Notwithstanding the provision of any general or special law to the contrary, the chief medical examiner or his designee shall provide a copy of an autopsy report to a medical peer review committee as defined by section 1 of chapter 111 of the General Laws, provided that said committee is investigating the death of a patient who expired in the care of one of its member health care providers; and provided further, that the chief medical examiner shall not be required to provide an autopsy report to said medical peer review committee if there is a law enforcement investigation of the death.,— was then considered and it was *rejected*.

The Senate then adopted the text of section 324 of the General Appropriation Act.

Sent to the House for concurrence.

A message from His Excellency the Governor, returning with recommendation of amendment the engrossed Bill relative to appropriations for the fiscal year 2005 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. 4917) as relates to section 239 [for message, see attachment R of House, No. 4901],— came from the House with endorsement that the House *rejected* the amendment (as approved by committee on Bills in the Third Reading).

The message was read; and, under the provisions of Article LVI of the Amendments to the Constitution, the bill was before the Senate subject to amendment and re-enactment.

The Senate then *rejected* the amendment.

Sent to the House for re-enactment.

A message from His Excellency the Governor, returning with recommendation of amendment the engrossed Bill relative to appropriations for the fiscal year 2005 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. 4924) as relates to section 339 [for message, see attachment Y of House, No. 4901],— came from the House with endorsement that the House *rejected* the amendment (as approved by committee on Bills in the Third Reading).

The message was read; and, under the provisions of Article LVI of the Amendments to the Constitution, the bill was before the Senate subject to amendment and re-enactment.

The Senate then *rejected* the amendment.

Sent to the House for re-enactment.

A message from His Excellency the Governor, returning with recommendation of amendment the engrossed Bill relative to appropriations for the fiscal year 2005 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. 4927) as relates to section 372 [for message, see attachment R of House, No. 4901],— came from the House with endorsement that the House *rejected* the amendment (as approved by committee on Bills in the Third Reading), and had adopted a further amendment.

The message was read; and, under the provisions of Article LVI of the Amendments to the Constitution, the bill was before the Senate subject to amendment and re-enactment.

The Senate then *rejected* the amendment recommended by His Excellency the Governor.

The House amendment striking out, in section 1, the first paragraph and inserting in place thereof the following paragraph:

“There shall be a commission to study the provision of counsel to indigent persons who are entitled to the assistance of assigned counsel either by constitutional provision, or by statute, or by rule of court. The commission shall be composed of 17 persons, including the governor’s chief legal counsel, 1 member appointed by the governor, 3 members to be appointed by the speaker of the house of representatives, 3 by the president of the senate; 1 by the house chair and 1 by the senate chair of the committee on the judiciary; the chief justice of the supreme judicial court or her designee; the chief justice for administration and management of the trial court or his designee; the commissioner of probation or his designee; the chief counsel of the committee for public counsel services; the chairman of the committee for public counsel services; a staff attorney employed by, and a private attorney who accepts assignments from, the committee for public counsel services, to be appointed by said committee.”,— was considered.

Pending the question on concurring in the House amendment, Ms. Murray moved that the amendment be amended by striking out the figure “17” and inserting in place thereof the figure “16”; and

By striking out the words “the governor’s chief legal counsel,”.

The further amendment was adopted.

**The House amendment was then adopted, as amended.
Sent to the House for concurrence in the further amendment.**

The Senate Bill further regulating public construction in the commonwealth (Senate, No. 2358, amended),— came from the House with the endorsement that the House had NON-concurred in the Senate amendment in Section 32; and concurred in the residue of the Senate amendment *with a further amendment* striking out section 30 (as printed) of the bill and inserting in place thereof the following two sections:

“SECTION 30. The second paragraph of section 18 of chapter 773 of the acts of 1960 is hereby amended by inserting at the end thereof the following sentence:— As used in this section, the term ‘nongovernmental sources’ shall be limited to private donations, gifts, contracts, or grants, including commercial ventures and intellectual property contracts, or grants or contracts from the federal government or the administrative overhead associated with such grants and contracts; but, the term shall not mean revenue derived from fees, tuition or charges of any kind paid by students, faculty, or staff.

SECTION 30A. The provisions of section 30 shall expire on August 1, 2006.”

The rules were suspended, on motion of Mr. Tarr, and the House amendment was considered forthwith.
On further motion of Mr. Baddour, the Senate insisted on its amendment in Section 32, and concurred with the House in the residue.
Sent to the House for its action.

Suspension of Senate Rule 38A.

The President in the Chair, Mr. Tolman moved that Senate Rule 38A be suspended to allow the Senate to continue in session beyond the hour of eight o’clock P.M.; **and, there being no objection, on further motion of the same Senator, the rule was suspended without a recorded yea and nay vote.**

Recess.

There being no objection, at a quarter past nine o’clock P.M., the President declared a recess subject to the call of the Chair; and, at fourteen minutes before ten o’clock P.M., the Senate reassembled, Ms. Menard in the Chair (having been appointed by the President, under authority conferred by Senate Rule 4, to perform the duties of the Chair).

Committee of Conference — Membership Change.

The Chair (Ms. Menard) announced the resignation of Senators Panagiotakos and Knapik at their request from the conference committee on the House Bill making appropriations for the fiscal year 2005 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. 4601). The Chair further announced the appointments of Senators Baddour and Tarr to take their place.

There being no objection, the Chair (Ms. Menard) announced the amended committee membership.

PAPERS FROM THE HOUSE.

A Bill making appropriations for the fiscal year 2004 to provide for supplementing certain existing appropriations and for certain other activities and projects (House, No. 1000,— on House, No. 4800, in part),— was read.

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

A message from His Excellency the Governor, returning with recommendation of amendment the engrossed Bill relative to appropriations for the fiscal year 2005 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. 4911) as relates to section 113 [for message, see attachment L of House, No. 4901],— came from the House with endorsement that the House *rejected* the amendment (as approved by committee on Bills in the Third Reading), and had adopted a further amendment.

The message was read; and, under the provisions of Article LVI of the Amendments to the Constitution, the bill was before the Senate subject to amendment and re-enactment.

The Senate then rejected the amendment recommended by His Excellency the Governor.

The House amendment striking out all after the enacting clause and inserting in place thereof the following:—

“SECTION 1. Section 61 of chapter 62 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out, in line 53, the word ‘five’ and inserting in place thereof the following figure:— 10.

SECTION 2. Said section 6I of said chapter 62, as so appearing, is hereby further amended by striking out, in line 54, the figure '2005' and inserting in place thereof the following figure:— 2010.

SECTION 3. Said section 6I of said chapter 62, as so appearing, is hereby further amended by inserting after the word 'project', in line 79, the following words:— provided further, that a taxpayer shall not be eligible for the credit if the taxpayer has received state financial assistance authorized under section 7A of chapter 244 of the acts of 2002 for the same project for which the taxpayer seeks the credit authorized in this section.

SECTION 4. Said section 6I of chapter 62 is hereby amended by inserting after subsection (h) the following 2 new sections:

(i) The department may provide that upon application for federal tax credits issued by the department, such taxpayer may elect to receive such state tax credit in the form of a loan generated by transferring the credit to the department or its designee. Neither a direct tax refund nor a loan received as the result of the transfer of the credit shall be considered taxable income under this chapter. A taxpayer who elects to transfer the credit allowed by this section to the department shall receive a loan from the department or its designee for the amount of the credit. The terms of the loan shall be specified by the department in accordance with the department's qualified allocation plan.

(j) The department may pursue methods of enhancing the efficiency of the Massachusetts low-income housing tax credit program including but not limited to:— pursuing opinions from the United States department of treasury's internal revenue service in the form of general counsel rulings, private letter rulings and other rulings or guidelines; by reviewing other state low income housing tax programs which utilize an option for taxpayers to receive such tax credit in the form of a loan generated by transferring the credit to a designated state entity; and any other such methods.

SECTION 5. Section 31H of chapter 63 of the General Laws, as so appearing, is hereby amended by striking out, in line 55, the word 'five' and inserting in place thereof the following figure:— 10.

SECTION 6. Said section 31H of said chapter 63, as so appearing, is hereby further amended by striking out, in line 56, the figure '2005' and inserting in place thereof the following figure:— 2010.

SECTION 7. Said section 31H of said chapter 63, as so appearing, is hereby further amended by inserting after the word 'project', in line 81, the following words:— provided further, that a taxpayer shall not be eligible for the credit if the taxpayer has received state financial assistance authorized under section 7A of chapter 244 of the acts of 2002 for the same project for which the taxpayer seeks the credit authorized in this section.

SECTION 8. Said section 31H of chapter 63 is hereby amended by inserting after subsection (h) the following 2 new subsections:—

(i) The department may provide that upon application for federal tax credits issued by the department, such taxpayer may elect to receive such state tax credit in the form of a loan generated by transferring the credit to the department or its designee. Neither a direct tax refund nor a loan received as the result of the transfer of the credit shall be considered taxable income under this chapter. A taxpayer who elects to transfer the credit allowed by this section to the department shall receive a loan from the department or its designee for the amount of the credit. The terms of the loan shall be specified by the department in accordance with the department's qualified allocation plan.

(j) The department may pursue methods of enhancing the efficiency of the Massachusetts low-income housing tax credit program including but not limited to:— pursuing opinions from the United States department of treasury's internal revenue service in the form of general counsel rulings, private letter rulings and other rulings or guidelines and reviewing other state low income housing tax programs which utilize an option for taxpayers to receive such tax credit in the form of a loan generated by transferring the credit to a designated state entity.

SECTION 9. Said section 2 of said chapter 244 is hereby further amended by inserting after item 7004-7016 the following item:

7004-7017

For the purpose of financing construction and preservation of affordable housing in the commonwealth in projects eligible for funding under the state low-income housing tax credit program established by section 6I of chapter 62 and section 31H of chapter 63 of the General Laws, as provided in section 7A of this act; provided, that the department of housing and community development may expend an amount not to exceed 2 per cent of these authorizations for administrative costs directly attributable to the purposes of this section, including costs of clerical and support personnel, provided the director of the department shall file an annual spending plan with the fiscal affairs division and the house and senate committees on ways and means detailing, by subsidiary, all personnel costs and administrative costs charged to expenditures made pursuant to this section; provided further, that bonds or notes issued to meet expenditures authorized by this item shall, notwithstanding other provisions of this act, be for a term not to exceed 5 years 100,000,000

SECTION 10. Section 3 of said chapter 244 is hereby amended by striking out the figure ‘\$508,500,000’ and inserting in place thereof the following figure:— \$608,500,000.

SECTION 11. The second sentence of section 4 of said chapter 244 is hereby amended by inserting after the words ‘June 30, 2008’ the following words:— , except for notes issued to meet expenditures authorized by item 7004-7017 in section 2, which notes shall have final maturities not later than June 30, 2011.

SECTION 12. Said chapter 244 is hereby further amended by inserting after section 7 thereof the following 2 sections:—

Section 7A. The department of housing and community development may enter into contracts for state financial assistance in the form of grants or deferred payment, below market interest rate loans, from the commonwealth, acting by and through the department of housing and community development for projects eligible for funding through the state low-income housing tax credit established by section 6I of chapter 62 and section 31H of chapter 63. Assistance provided under this section shall be equivalent to assistance that is otherwise available pursuant to the state low-income housing tax credit program. Assistance for a project shall be in an amount not to exceed the amount that the department determines is equivalent to the equity yield of the maximum state low-income housing tax credit allocable to the project under department guidelines. The proportion of housing units to be subject to affordability restrictions, the term of affordability, and the eligibility of occupants in the affordable units shall, to the extent practicable, be consistent with the requirements for projects assisted through the state low-income housing tax credit program pursuant to section 6I of chapter 62 or section 31H of chapter 63. The department shall use the instruments as are necessary to enforce the requirements of this section, including, but not limited to affordability restrictions, below market interest rate mortgages, and regulatory agreements which provide for the deferred payment of the mortgages. If, on the date such loans become due and payable to the commonwealth, an outstanding balance exists, such loans may be extended for such periods, each period not to extend beyond 10 years, as the department determines, provided that the project continues to remain affordable housing as set forth in the contract or agreement entered into for the duration of the project by the department. In the event that the terms of repayment detailed in this section would cause a project authorized by this section to become ineligible to receive federal funds which would otherwise assist in the development of that project, the department may waive the terms of repayment which would cause the project to become ineligible. On or before January 1, 2005 the department shall promulgate regulations and guidelines in consultation with the advisory committee established in section 7B necessary to effectuate the purposes of this section. The initial contracts for state financial assistance shall be announced on or before June 1, 2005.

Section 7B. There shall be an advisory committee to make policy recommendations to the department regarding the programs, funding activities and assistance provided for in section 7A and to make recommendations regarding the cost effectiveness of the Massachusetts state low income housing tax credit program to maximize the number of affordable housing units financed through such program including but not limited to: attracting new investors to such program; seeking favorable internal revenue opinions regarding such program; and making recommendations for improvements to such program, including an alternative of a taxpayer electing to receive the credit in the form of a loan generated by transferring the credit to a designated state entity. The committee shall be comprised of the following 7 members;— the director of the department of housing and community development or his designee; the commissioner of the department of revenue or his designee; the secretary of the division of the executive office of administration and finance or his designee; the executive director of the Massachusetts Housing Finance Agency or his designee; the executive director of the Massachusetts Housing Partnership Fund or his designee; and a representative appointed by each of the following organizations: the Citizens’ Housing and Planning Association, Inc. and the Massachusetts Housing Investment Corporation. Committee members shall serve at the pleasure of the appointing authorities. Chapter 268A of the General Laws shall apply to committee members as special state employees. The department may purchase from, sell to, borrow from, loan to, contract with or otherwise deal with any person in which any committee member is in any way interested or involved, if the interest or involvement is disclosed in advance to the members of the committee and recorded in the minutes of the committee meeting. A committee member having an interest or involvement shall not participate in an action of the committee relating to that person. Employment by the commonwealth or service in any agency thereof shall not be considered to be such an interest or involvement. Such advisory committee shall report its findings and recommendations to the department on or before January 1, 2006.”

Pending the question on adoption of the amendment, Ms. Murray moved that the amendment be amended by striking out the text and inserting in place thereof the text contained in Senate document numbered 2434.

The further amendment was adopted.

The House amendment was then adopted, as amended.

Sent to the House for concurrence in the further amendment.

Engrossed Bills.

The following engrossed bills (both of which originated in the House), having been certified by the Senate Clerk to be rightly and truly prepared for final passage, were severally passed to be re-enacted and were signed by the Acting President and again laid before the Governor on Friday, July 9, 2004 for his approbation, to wit:

Providing for an investigation by a special commission relative to the effects of Oxycontin and other drug use (see House, No. 4925, amended); and

Clarifying the funding period for certain appropriations (see House, No. 4930, amended).

Emergency Preambles Adopted.

An engrossed Bill establishing an alternative education grant program (see House, No. 4914), 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 3 to 0.

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

An engrossed Bill relative to certain court fees (see House, No. 4915), 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 2 to 0.

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

An engrossed Bill relative to the fees of certain superior court cases (see House, No. 4916), 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 2 to 0.

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

An engrossed Bill relative to monies received from the disposition of certain surplus property (see House, No. 4917), 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 2 to 0.

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

An engrossed Bill directing the department of conservation and recreation to repair certain culverts (see House, No. 4918), 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 2 to 0.

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

An engrossed Bill relative to requiring the Executive Office of Public Safety to make recommendations to the legislature on a formula for distributing community policing grants (see House, No. 4926), 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 2 to 0.

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

An engrossed Bill relative to community based juvenile justice programs (see House, No. 4924), 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 2 to 0.

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

Engrossed Bills.

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 re-enacted and were signed by the Acting President and again laid before the Governor, on Friday, July 9, 2004 for his approbation, to wit:

Establishing an alternative education grant program (see House, No. 4914);

Relative to certain court fees (see House, No. 4915);

Relative to the fees of certain superior court cases (see House, No. 4916);

Relative to monies received from the disposition of certain surplus property (see House, No. 4917);

Directing the department of conservation and recreation to repair certain culverts (see House, No. 4918); and

Establishing a formula for the distribution of community policing grants (see House, No. 4926).

The House Bill relative to community based juvenile justice programs (House, No. 4924, amended),— came from the House amended as follows:— by striking out the word “Hampden” and inserting in place thereof the word “Hampshire”.

The rules were suspended, on motion of Mr. Tarr, and the House amendment was considered forthwith and adopted, in concurrence.

The Senate Bill further regulating public construction in the Commonwealth (Senate, No. 2358, amended),— came from the House with the endorsement that the House had receded from its NON-concurrence with the Senate in its amendment in Section 32, and concurred therein with the a further amendment in Section 32 by striking out the following sentence: “The corporations established pursuant to chapter 138 of the acts of 1992 and chapter 163 of the acts of 1997 shall not be considered auxiliary organizations of the university.”; and by inserting after section 32 the following two sections:

“SECTION 32A. The corporations established pursuant to chapter 138 of the acts of 1992 and chapter 163 of the acts of 1997 shall not be considered auxiliary organizations of the university.

SECTION 32B. Section 32A shall expire on August 1, 2006.”.

The rules were suspended, on motion of Mr. Tarr, and the House amendment was considered forthwith and adopted, in concurrence.

Engrossed Bill.

An engrossed Bill relative to the financial stability in the city of Springfield (see House Bill, printed in House, No. 4799) (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, two-thirds of the members present having voted in the affirmative, and it was signed by the Acting President and laid before the Governor on Friday, July 9, 2004 for his approbation.

Order Adopted.

On motion of Mr. Tarr,—

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

On motion of the same Senator, at six minutes past twelve o’clock midnight, the Senate adjourned to meet today at eleven o’clock A.M.