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UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



JOURNAL OF THE SENATE.

Thursday, April 29, 2010.

Met at one minute past one o'clock P.M. (Mr. Brewer in the Chair).

Distinguished Guests.

There being no objection, during consideration of the Orders of the Day, the President handed the gavel to Mr. Joyce for purpose of an introduction. Mr. Joyce then introduced, in the rear of the Chamber, Milton Hospital President, Joseph Morrissey and other members of the hospitals organization.

Report.

A report of the Barnstable County Registry of Deeds (under the provisions Section 2KKK of Chapter 29 of the General Laws) submitting its plan for expenditure from the County Registers Technological Fund (copies having been forwarded as required to the Senate Committees on Ways and Means and Post Audit and Oversight) (received Wednesday, April 28, 2009),-- **was placed on file**

Petition.

By Mr. Montigny, a petition (subject to Joint Rule 12) of Mark C. Montigny for legislation to establish a sick leave bank for Melissa Gordon, an employee of the Trial Court;

Referred, under Senate Rule 20, to the committees on Rules of the two branches, acting concurrently.

Reports of Committees.

By Mr. McGee, for the committee on Public Service, on petition, a Bill establishing a sick leave bank for Jacqueline Enno (Senate, No. 2389);

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

By Mr. Richard T. Moore, for the committee on Health Care Financing, that the Senate Bill to eliminate racial and ethnic health disparities in the Commonwealth (Senate, No. 810),-- **ought NOT to pass.**

Referred, under Senate Rule 26, to the committee on Ethics and Rules.

Committees Discharged.

Ms. Richard Moore, for the committee on Health Care Financing, reported, asking to be discharged from further consideration of the Senate Bill relative to increasing coverage for infertility treatments (Senate, No. 485),-- **and recommending that the same be referred to the Senate committee on Ways and Means.**

Under Senate Rule 36, the report was considered forthwith and accepted.

Sent to the House for concurrence

Mr. Berry, for the committees on Rules of the two branches, acting concurrently, reported, asking to be discharged from further consideration

Of the Senate Order relative to authorizing the joint committee on Children, Families and Persons with Disabilities to make an investigation and study of certain current Senate documents relative to children, families and persons with disabilities (Senate, No. 2395);

Of the Senate Order authorizing the joint committee on Financial Services to make an investigation and study of certain current Senate documents relative to financial services (Senate, No. 2396);

Of the Senate Order authorizing the joint committee on Financial Services to make an investigation and study of certain current Senate documents relative to financial services (Senate, No. 2397);

Of the Senate Order authorizing the joint committee on State Administration and Regulatory Oversight to make an investigation and study of a certain current Senate document relative to state administration (Senate, No. 2398);

Of the Senate Order authorizing the joint committee on Tourism, Arts and Cultural Development to make an investigation and study of certain current Senate documents relative to cultural issues (Senate, No. 2399); and

Of the Senate Order authorizing the joint committee on Tourism, Arts and Cultural Development to make an investigation and study of certain current Senate documents Senate, No. 2400);

And recommending that the same severally be referred to the Senate committee on Ethics and Rules.

Under Senate Rule 36, the reports were considered forthwith and accepted.

PAPERS FROM THE HOUSE.

Bills

Authorizing Edward Grace to take civil service examinations notwithstanding maximum age requirements (House, No. 2551, amended,-- on petition); and

Authorizing the town of Millbury to pay certain unpaid bills (printed in House, No. 4525,- being a message from His Excellency the Governor);

Were read and, under Senate Rule 26, referred to the committee on Ethics and Rules.

There being no objection, at two minutes past one o'clock A.M., the Chair (Mr. Brewer) declared a recess subject to the call of the Chair; and, at a quarter before three o'clock A.M., the Senate reassembled, the President in the Chair.

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

Resolutions.

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

Resolutions (filed by Mr. Hedlund) "honoring the memory of the late Police Chief Steven D. Carlson on the occasion of the dedication of the Chief Steven D. Carlson Memorial Athletic Fields in the Town of Hingham."

Report of a Committee.

Mr. O'Leary, for the committee of conference, to whom was referred the matters of difference between the two branches with reference to the House amendment to the Senate Bill relative to bullying in schools (Senate, No. 2323) (amended by the House by striking out all after the enacting clause and inserting in place thereof the text of House document numbered 4571, printed as amended), reported, a "Bill relative to bullying in schools" (Senate, No. 2404).

The rules were suspended, on motion of Mr. O'Leary, and the report was considered forthwith.

After remarks, the question on accepting the report was then determined by a call of the yeas and nays, at two o'clock P.M., on motion of Mr. O'Leary, as follows, to wit (*yeas 38 — nays 0*) [**Yeas and Nays No. 225**]:

Insert Roll Call "225"

The yeas and nays having been completed at four minutes past two o'clock P.M., the report of the committee of conference was accepted. Sent to the House for concurrence.

Orders of the Day.

The Orders of the Day were considered, as follows:

The Senate Bill authorizing the town of Hubbardston to send certain information to the voters of said town (Senate, No. 2090),-- **was read a second time and ordered to a third reading.**

The Senate Bill relative to housing rights for victims of domestic violence (Senate, No. 2274, amended),-- **was read a third time.**

Pending the question on passing the bill to be engrossed, on motion of Mr. Tolman, the further consideration thereof was postponed until Thursday, May 13.

The Senate Bill further regulating tanning facilities (Senate, No. 2339),-- **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 twenty-six minutes past two o'clock P.M., on motion of Mr. Timilty, as follows, to wit (*yeas 38 — nays 0*) [**Yeas and Nays No. 226**]:

Insert Roll Call "226"

The yeas and nays having been completed at a half past two o'clock P.M., the bill was passed to be engrossed Sent to the House for concurrence.

The Senate Bill protecting consumers from unsolicited loans (Senate, No. 2393),-- **was read a third time.**

Ms. Menard in the Chair, after debate, the question on passing the bill to be engrossed was determined by a call of the yeas and nays, at twenty-three minutes before three o'clock P.M., on motion of Mr. Baddour, as follows, to wit (*yeas 37 — nays 0*) [**Yeas and Nays No. 227**]:

Insert Roll Call "227"

The yeas and nays having been completed at twenty minutes before three o'clock P.M., the bill was passed to be engrossed Sent to the House for concurrence.

The Senate Bill relative to the disposition of museum property (Senate, No. 2402),-- **was read a third time and after remarks, was passed to be engrossed. Sent to the House for concurrence.**

The Senate Bill relative to the sale of antique barometers, thermometers and clocks (Senate, No. 2403),-- **was read a third time and after remarks, was passed to be engrossed . Sent to the House for concurrence.**

The Senate Bill to establish employment leave and safety remedies to victims of domestic violence, stalking and sexual assault (Senate, No. 2382),-- **was considered, the question being on passing the bill to be engrossed. Pending the question on passing the bill to be engrossed, on motion of Mr. Tolman, the further consideration thereof was postponed until Thursday, May 13.**

The House Bill requiring proof of liquor legal liability insurance (House, No. 947, amended) (its title having been changed by the committee on Bills in the third Reading),-- **was read a third time and after remarks, was passed to be engrossed, in concurrence, with amendment previously adopted by the Senate. Sent to the House for concurrence in the amendment previously adopted by the Senate.**

There being no objection, during consideration of the Orders of the Day, the following matter was considered, as follows:

PAPER FROM THE HOUSE.

Engrossed Bill—Land Taking for Conservation Etc.

An Act relative to the conveyance of certain conservation land in the town of Sharon (see House, No. 4468) (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 two minutes past three o'clock P.M., as follows, to wit (*yeas 37 - nays 0*) [**Yeas and Nays No. 228**]:

INSERT ROLL CALL [228]

The yeas and nays having been completed at six minutes past three 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 Acting President (Ms. Menard) (having been appointed by the President, under authority conferred by Senate Rule 4, to perform the duties of the Chair) and laid before the Governor for his approbation.

Orders of the Day.

The President in the Chair, the Orders of the Day were further considered, as follows:

The Senate Bill to stabilize neighborhoods (Senate, No. 2394),-- **was read a third time.**

Pending the question on passing the bill to be engrossed, Ms. Menard moved that the bill be amended by striking out section 7 and inserting in place thereof the following section:-

“SECTION 7. Chapter 244 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out section 35A and inserting in place thereof the following section:-

Section 35A. (a) As used in this section and section 35B, the following words shall, unless the context clearly requires otherwise, have the following meanings:

“Borrower”, a mortgagor of a mortgage loan.

“Borrower’s representative”, an employee of an HUD-certified non-profit organization located in the commonwealth; provided, however, that “borrower’s representative” shall not include a person or entity which is compensated by the borrower.

“Creditor”, any person or entity that holds or controls, partially, wholly, indirectly, directly or in a nominee capacity, a mortgage loan securing a residential property, including, without limitation, an originator, holder, investor, assignee, successor, trust, trustee, nominee holder, Mortgage Electronic Registration System or mortgage servicer, including the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; provided, however, that “creditor” shall also include any servant, employee or agent of a creditor.

“Creditor’s Representative”, a person who has the authority to negotiate and modify a mortgage loan.

“Mortgage loan”, a loan to a natural person made primarily for personal, family or household purposes secured wholly or partially by a mortgage on residential property.

“Net Present Value”, calculation using the federal Home Affordable Modification Program Base Net Present Value Model, the FDIC Loan Modification Program, a program administered by a state housing financing agency or other quasi-public institution or an individual lender’s program that compares the expected economic outcome of a loan with or without a loan modification.

“Residential property”, real property located in the commonwealth having a dwelling house with accommodations for 4 or fewer separate households on that property, which is occupied in whole or in part by the borrower; provided, however, that “residential property” shall be limited to the principal residence of a person, and not an investment property or second home.

(b) Any mortgagor of residential property shall have 150 days from the date of the notice to cure a default of a required payment as provided in the residential mortgage or note secured by the residential property by full payment of all amounts that are due without acceleration of the maturity of the unpaid balance of the mortgage; provided, however, that if a creditor acknowledges that (i) the creditor has engaged in a good faith effort to resolve the mortgage loan; (ii) the creditor’s good faith effort has involved at least 1 meeting, telephone conversation or electronic communication between a creditor’s representative or agent and the mortgagor or the mortgagor’s attorney or borrower’s representative; and (iii) after such meeting the mortgagor and the creditor were not successful in resolving their dispute, then the lender may begin foreclosure proceedings after the expiration of a right to cure period lasting only 90 days; provided, further, that a borrower who fails to either contact the creditor following the receipt of said notice or fails to provide the required documentation requested by the creditor within 30 days from the date of such notice shall forfeit the right to a 150 day right to cure period and shall be subject to a right to cure period lasting 90 days.

(c) For purposes of subsection (b), the determination as to whether a creditor has made a good faith effort to negotiate and agree upon a commercially reasonable alternative to foreclosure shall mean that the creditor has considered, without limitation: (i) an assessment of the borrower’s current circumstances, including without limitation, the borrower’s current income, debts and obligations; (ii) the net present value of receiving payments under a modified mortgage loan as compared to the anticipated net recovery following foreclosure; and (iii) the interests of the creditor.

(d) A creditor shall be deemed to comply with the requirement to engage in a good faith effort to negotiate if, the creditor assesses the borrower’s circumstances and the viability of a potential modification by utilizing: (i) the Home Affordable Modification Program; (ii) the Federal Deposit Insurance Corporation’s Loan Modification Program; (iii) any modification program the lender uses that is based on accepted principles and the safety and soundness of the institution; (iv) the Federal Housing Agency (FHA) or similar federal refinance plan; or (v) and other repayment or workout plan established by said lender.

(e) Nothing in this section shall be construed to prevent a creditor from offering or accepting alternatives to foreclosure, such as a short sale or deed-in-lieu of foreclosure, if the borrower requests such alternatives, rejects a loan modification offered under this subsection or does not qualify for a loan modification under this subsection.

The amendment was *rejected*.

Ms. Spilka moved that the bill be amended in section 7, by striking out subsection (b) in the proposed section 35A of chapter 244 of the General Laws, and inserting in place thereof the following subsection:-

“(b) Any mortgagor of residential property shall have a 150-day right to cure a default of a required payment as provided in the residential mortgage or note secured by the residential property by full payment of all amounts that are due without acceleration of the maturity of the unpaid balance of the mortgage; provided, however, that if a creditor certifies that: (i) it has engaged in a good faith effort to negotiate and agree upon a commercially reasonable alternative to foreclosure as described in subsection (c); (ii) its good faith effort has involved at least 1 mediation session between a creditor’s representative with authority to agree to a settlement and the borrower and the borrower’s attorney or the borrower’s representative; and (iii) after such mediation session, if the borrower and the creditor were not successful in resolving their dispute, then the creditor may begin foreclosure proceedings after the expiration of a right to cure period lasting 90 days. Mediation sessions shall be conducted by a neutral third party mediator working under the District Court Community Mediation Program, or other mediation programs approved by the attorney general. Not more than 5 days after the conclusion of the mediation, the mediator shall provide a report to both parties describing the proceedings and specifying the issues resolved, if any, and any issues not resolved pursuant to the mediation. The reasonable cost of mediation shall be paid for by the parties; provided, however, that the portion of the cost borne by the borrower shall be based on the borrower’s ability to pay. A borrower who fails to respond within 60 days to any mailed communication offering to negotiate and agree upon a commercially reasonable alternative to foreclosure sent via certified and first class mail from the lender shall be deemed to have forfeited the right to a 150-day cure period and shall be subject to a right to cure period lasting said 90 days. Nothing in this section shall prohibit the borrower from affirmatively selecting a 150-day right to cure period instead of attending a mediation session with the creditor to negotiate and agree upon a commercially reasonable alternative to foreclosure. The right to cure a default of a required payment shall be granted once during any 3-year period, regardless of mortgage holder.”;

In said Section 7, by striking out, in lines 231 and 232, the words “meeting, telephone conversation or meeting pursuant to section (b)” and inserting in place thereof the following words: “the mediation session pursuant to subsection (b)”;

In said Section 7, by striking out subsection (f), in lines 246 to 251, inclusive, and inserting in place thereof the following subsection:-

“(f) Prior to the conclusion of the right to cure period, the creditor shall certify compliance with this section in an affidavit listing the time and place of the mediation described in subsection (b), the parties participating, the relief offered to the borrower, a summary of the creditors’ net present value analysis and applicable inputs of the analysis and certify that the modification or any option offered complies with current federal law or policy, and the creditor shall attach a copy of the mediator’s report provided to the parties pursuant to subsection (b). A creditor shall provide a copy of the affidavit to the homeowner and file a copy of the affidavit with the land court in advance of initiating foreclosure procedures.”

The amendment was *rejected*.

Mr. Buoniconti and Mr. Brewer move to amend the bill (Senate, No. 2394) by striking out Section 6 and inserting in place thereof the following section:-

SECTION 6. The General Laws are hereby amended by inserting after chapter 186, the following chapter:-

CHAPTER 186A.
TENANT PROTECTIONS IN FORECLOSED PROPERTIES.

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

‘Bona fide lease or bona fide tenancy’, a lease or tenancy shall not be considered bona fide unless: the mortgagor, or the child, spouse or parent of the mortgagor under the contract, is not the tenant; (2) the lease or tenancy was the result of an arms-length transaction; and (3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property.

‘Entity’, a business organization, or any other kind of organization including, without limitation, a corporation, partnership, trust, limited liability corporation, limited liability partnership, joint venture, sole proprietorship or any other category of organization and any employee, agent, servant or other representative of such entity.

‘Eviction’, an action, without limitation, by a foreclosing owner of a housing accommodation which is intended to actually or constructively evict a tenant or otherwise compel a tenant to vacate such housing accommodation.

‘Foreclosing owner’, an entity that holds title in any capacity, directly or indirectly, without limitation, whether in its own name, as trustee or as beneficiary, to a housing accommodation that has been foreclosed upon and either: (1) held or owned a mortgage or other security interest in the housing accommodation at any point prior to the foreclosure of the housing accommodation or is

the subsidiary, parent, trustee, or agent thereof; or (2) is an institutional mortgagee that acquires or holds title to the housing accommodation within 3 years of the filing of a foreclosure deed on the housing accommodation; or (3) is the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

'Foreclosure', a legal proceeding to terminate a mortgagor's interest in property, instituted by the mortgagee, and regulated under chapter 244.

'Housing accommodation', any building or structure, or part thereof or land appurtenant thereto, and any other real or personal property used, rented or offered for rent for living or dwelling purposes, together with all services connected with the use or occupancy of such property.

'Institutional mortgagee', any entity, or any entity which is the subsidiary, parent, trustee or agent thereof or otherwise related to any such entity, that holds or owns mortgages or other security interests in 3 or more housing accommodations or that acts as a mortgage servicer of 3 or more mortgages of housing accommodations.

'Just cause', any 1 of the following: (a) the tenant has failed to pay the rent in effect prior to the foreclosure or failed to pay use and occupancy charges, as long as the foreclosing owner notified the tenant in writing of the amount of rent or the amount of use and occupancy that was to be paid and to whom it was to be paid; (b) the tenant has violated an obligation or covenant of the tenancy or occupancy, other than the obligation to surrender possession upon proper notice, and has failed to cure such violation within 60 days after having received written notice thereof from the foreclosing owner; (c) the tenant is committing a nuisance in the unit, is permitting a nuisance to exist in the unit, is causing substantial damage to the unit or is creating a substantial interference with the quiet enjoyment of other occupants; (d) the tenant is convicted of using or permitting the unit to be used for any illegal purpose; (e) the tenant who had a written bona fide lease or other rental agreement which terminated, on or after the effective date of this chapter, has refused, after written request or demand by the foreclosing owner, to execute a written extension or renewal thereof for a further term of like duration and in such terms that are not inconsistent with this chapter; (f) the tenant has refused the foreclosing owner reasonable access to the unit for the purpose of making necessary repairs or improvement required by the laws of the United States, the commonwealth or any subdivision thereof, or for the purpose of inspection as permitted or required by agreement or by law or for the purpose of showing the unit to a prospective purchaser or mortgagee provided that none of the preceding events shall be deemed just cause unless the foreclosing owner has delivered to each tenant at the time of the delivery of the written notice specified in the paragraph below, a written disclosure of the tenant's right to a court hearing prior to eviction.

The actions sets forth in clauses (a) and (b) shall not be deemed to be just cause unless the foreclosing owner, within 30 days of the foreclosure, posted in a prominent location in the building in which the rental housing unit is located a written notice stating the names, addresses, telephone numbers and telephone contact information of the foreclosing owner, the building manager or other representative of the foreclosing owner responsible for the management of such building and stating the address to which rent and use and occupancy charges shall be sent; provided, however, that the foreclosing owner has delivered such written notice to each tenant of said housing accommodation;

Nothing in this chapter shall limit the rights of a third-party owner to evict a tenant at the expiration of an existing lease.

'Mortgagee', an entity to whom property is mortgaged, the mortgage creditor or lender including, but not limited to, mortgage servicers, lenders in a mortgage agreement and any agent, servant or employee of the mortgagee or any successor in interest or assignee of the mortgagee's rights, interests or obligations under the mortgage agreement.

'Mortgage servicer', an entity which administers or at any point administered the mortgage; provided, however that such administration shall include, but not be limited to, calculating principal and interest, collecting payments from the mortgagor, acting as escrow agent or foreclosing in the event of a default.

'Tenant' any person or group of persons who at the time of foreclosure is entitled to occupy a housing accommodation pursuant to a bona fide lease or tenancy or a tenancy at will. Any person who moves into the housing accommodation owned by the foreclosing owner, subsequent to the foreclosure sale, without the express written permission of the owner shall not be considered a tenant under this chapter.

'Unit' or 'residential unit', the room or group of rooms within a housing accommodation which is used or intended for use as a residence by 1 household.

Section 2. Notwithstanding any other special or general law to the contrary, a foreclosing owner shall not evict a tenant except for just cause or unless a binding purchase and sale agreement has been executed for a bona fide third party to purchase said housing accommodation from a foreclosing owner.

Section 3. If a foreclosing owner disagrees with the amount of rent or use and occupancy rates that a tenant-at-will or lessee pays

to the foreclosing owner, the foreclosing owner may bring a claim in district or superior court or the housing court to claim that the rent is unreasonable and set a new use and occupancy rate. A bona fide lease between the foreclosed-upon owner and the lessee or proof of rental payment to the foreclosed-upon owner shall be presumed reasonable.

Section 4. A foreclosing owner that evicts a tenant in violation of this chapter or any ordinance or by-law adopted pursuant to this chapter, shall be punished by a fine of not less than \$5,000. Each such illegal eviction shall constitute a separate offense.

The district and superior courts and the housing court shall have jurisdiction over an action arising from a violation of this chapter or of any ordinance or by-law adopted pursuant to this chapter, and shall have jurisdiction in equity to restrain any such violation. It shall be a defense to an eviction proceeding that the foreclosing owner attempted to evict a tenant in violation of this chapter or any ordinance or by-law adopted pursuant to this chapter.”

After debate, the amendment was adopted.

Ms. Chang-Díaz moved that the bill be amended in section 7, in proposed subsection (h) of section 35A of chapter 266 of the General Laws, by striking out, clause (4) and inserting in place thereof the following clause:-

“(4) facts sufficient to identify the mortgage and parties to the mortgage, including but not limited to, the name of the present holder of the mortgage, the original mortgagee, the lender which intends to foreclose, any servicer or agent acting on the servicer’s behalf and the name, address and working telephone number of the entity responsible for responding to inquiries by the residential mortgage debtor;” and in section 8, in proposed subsection (c) of section 35A. of chapter 244 of the General Laws by striking out clause (4) and inserting in place thereof the following clause:- “facts sufficient to identify the mortgage and parties to the mortgage, including but not limited to, the name of the present holder of the mortgage, the original mortgagee, the lender which intends to foreclose, any servicer or agent acting on the servicer’s behalf and the name, address and working telephone number of the entity responsible for responding to inquiries by the residential mortgage debtor;”.

The amendment was *rejected*.

Ms. Chang-Díaz moved that the bill be amended in section 7, by striking out clause (11), in lines 292 to 295, inclusive, and inserting in place thereof the following clause:- “(11) a declaration, appearing on the first page of the notice stating: “This is an important notice concerning your right to live in your home. Have it translated at once.” The division of banks shall adopt regulations in accordance with this section; provided, however, that such regulations shall provide that the declaration shall be printed in: (i) the 5 most commonly used non-English primary languages in Massachusetts, according to the most recent data available from the United States Census Bureau; (ii) the 5 most commonly used non-English primary languages in a particular region of the commonwealth according to census data for that region; or (iii) whichever language the creditor has regularly used in its communication with the borrower.”; and in Section 8, by striking out clause (11), in lines 361 to 364, inclusive, and inserting in place thereof the following clause:-“(11) a declaration, appearing on the first page of the notice stating: “This is an important notice concerning your right to live in your home. Have it translated at once.” The division of banks shall adopt regulations in accordance with this section; provided, however, that such regulations shall provide that the declaration shall be printed in: (i) the 5 most commonly used non-English primary languages in Massachusetts, according to the most recent data available from the United States Census Bureau; (ii) the 5 most commonly used non-English primary languages in a particular region of the commonwealth according to census data for that region; or (iii) whichever language the creditor has regularly used in its communication with the borrower.”;

The amendment was adopted.

Ms. Chang-Díaz moved that the bill be amended in section 7, by inserting after the words “payment records”, in line 291, the following words:- “, which, if requested, shall be provided by the mortgagee to the mortgagor within 20 days of such request”; in said section 7, by inserting after the word “provisions.”, in line 295, the following sentence:- “If a mortgagor requests a copy of the mortgage, note, disclosure statement or payment records, in accordance with clause (10), the mortgagee shall provide such documentation to the mortgagor within 20 days of such request.”; in section 8, by inserting after the words “payment records” , in line 360, the following words:- “, which, if requested, shall be provided by the mortgagee to the mortgagor within 20 days of such request”; and in said section 8, by inserting after the word “provisions”, in line 364, the following sentence:- “If a mortgagor requests a copy of the mortgage, note, disclosure statement or payment records, in accordance with clause (10), the mortgagee shall provide such documentation to the mortgagor within 20 days of such request.”

The amendment was *rejected*.

Ms. Chang-Díaz moved that the bill be amended by inserting, in line 120, after the word “has” the following word:- “materially”. The amendment was *rejected*.

Ms. Tucker moved that the bill be amended by striking out sections 12 and 13 and inserting in place thereof the following 2 sections:-

“SECTION 12. Notwithstanding any general or special law to the contrary, the commissioner of banks shall establish a 2-year pilot program to implement a state Massachusetts abandoned property registry, hereinafter referred to as MAP. Such registry

shall require all property owners, including lenders, trustees and services companies, to properly register and maintain vacant or foreclosing properties located in the commonwealth. Law enforcement entities including, but not limited to, the attorney general and municipalities shall have access to the MAP. The commissioner of banks shall have enforcement authority of the pilot program including, but not limited to, the authority to impose civil assessments. Said commissioner shall adopt rules and regulations governing the implementation and administration of the MAP pilot program.

SECTION 13. The commissioner of banks shall adopt the rules and regulations required under section 12 not later than 120 days after the effective date of this act.”

After remarks, the amendment was adopted.

Mr. Joyce moved that the bill be amended by striking out section 14 and inserting in place thereof the following section:-

“SECTION 14. Section 4 shall take effect 90 days after the effective date of this act. Sections 2 and 3 shall take effect 90 days after the effective date of this act; provided, however, that the in-person counseling requirement in subsection (b) of section 7A of chapter 167E of the General Laws and in subsection (b) of section 65C1/2 of chapter 171 of the General Laws shall take effect 18 months after the effective date of this act.”

After remarks, the amendment was adopted.

Mr. Tisei moved that the bill be amended by striking out sections 2 and 3.

During consideration of the matter, at nineteen minutes before four o'clock, P.M., Mr. Tisei doubted the presence of a quorum. The President, having determined that a quorum was not in attendance, then directed the Sergeant-at-Arms to secure the presence of a quorum.

Subsequently, at eighteen minutes before four o'clock P.M., a quorum was declared present.

After further debate, the question on adoption of the amendment was determined by a call of the yeas and nays, at twenty-two minutes past four o'clock P.M., on motion of Mr. Tisei, as follows, to wit (*yeas 4 — nays 33*) [**Yeas and Nays No. 229**]:

Insert Roll Call “229”

The yeas and nays having been completed at twenty-two minutes past two o'clock P.M., the amendment was *rejected*

Ms. Chang-Díaz moved that the bill be amended in section 7, in proposed subsection (f) of section 35A of chapter 244 of the General Laws by striking out, the first sentence and inserting in place thereof the following 2 sentences:- “Prior to the conclusion of the right to cure period the creditor shall certify compliance with this section in an affidavit. The affidavit shall include the time and place of the meeting, parties participating, relief offered to the borrower, and certification that a summary of the creditor’s net present value analysis and applicable inputs of the analysis was provided by the creditor to the borrower by first class mail and certified mail not less than 10 days prior to the meeting as required by subsection (c) and certification that any modification or option offered complies with current federal law or policy.”

The amendment was adopted.

Ms. Chang-Díaz moved that the bill be amended in section 7, by adding the following 2 sentences:- “The commissioner of banking shall promulgate a model notice which meets the requirements of this section. Use of such a form notice, if it does not contain materially inaccurate information, shall constitute compliance with this section.”; and in section 8, by adding the following 2 sentences:- The commissioner of banking shall promulgate a model notice which meets the requirements of this section. Use of such a form notice, if it does not contain materially inaccurate information, shall constitute compliance with this section.”

The amendment was adopted.

Ms. Chang-Díaz moved that the bill be amended by inserting after the words “subsection (b)”, in line 232, the following words:- ; provided, further, that such documentation shall include: (i) a summary of the creditors’ net present value analysis and applicable data and inputs of the analysis; (ii) options of relief offered to the borrower; (iii) a certification that the options of relief or any other foreclosure alternative offered complies with current federal law or policy; and (iv) documentation of factors considered by the creditor other than those specifically enumerated in this subsection.

The amendment was adopted.

Mr. Panagiotakos moved that the bill be amended in section 7, by striking out, in lines 196 to198, inclusive, the words “(iii) a program administered by the Massachusetts Housing Finance Agency that compares the expected economic outcome of a loan with or without a loan modification” and inserting in place thereof the following words:- “(iii) for the Massachusetts Housing Finance Agency’s loan program used solely by the agency to compare the expected economic outcome of a loan with or without a loan modification.”;

In section 7, by striking out, in lines 209 and 210, the words “its good faith effort has involved at least 1 meeting between a creditor’s representative with authority to agree to a settlement and the borrower and the borrower’s attorney or borrower’s

representative” and inserting in place thereof the following words:- “its good faith effort has involved at least 1 meeting, either in person or by telephone, between a creditor’s representative and the borrower, the borrower’s attorney or the borrower’s representative”;

In section 7, by inserting after the word “mail”, in line 215, the following words:- “or similar service by a private carrier”;

In said section 7, by inserting after the word “mail”, in line 230, the following words:- “or similar service by a private carrier”;

In section 7, in line 235, by inserting after the word “receipt”, the following words:- “of first class or certified mail”;

In said section 7, by inserting after the words “certified mail”, in line 258, the following words:- “or similar service by a private carrier”;

In section 7, by striking out, in lines 280 to 282, inclusive, the words “(6) that the mortgagor may be eligible for assistance from the Massachusetts Housing Finance Agency and the division of banks and the local or toll free telephone numbers the mortgagor may call to request this assistance” and inserting in place thereof the following words:- “(6) that the mortgagor may be eligible for assistance from the Homeownership Preservation Foundation or other foreclosure counseling agency, and the local or toll free telephone numbers the mortgagor may call to request this assistance”; and

In section 8, by inserting after the words “certified mail”, in line 327, the following words:- “or similar service by a private carrier”.

The amendment was adopted.

Subsequently, the question on passing the bill, as amended, to be engrossed was determined by a call of the yeas and nays, at twenty-two minutes before five o’clock P.M., on motion of Ms. Tucker, as follows, to wit (*yeas 37 — nays 0*) [**Yeas and Nays No. 230**]:

Insert Roll Call “230”

The yeas and nays having been completed at a half past two o’clock P.M., the bill was passed to be engrossed [For text of bill printed as amended, see Senate, No. 2407]. Sent to the House for concurrence.

The Senate Bill relative to the estate of homestead (Senate, No. 2401),-- **was read a third time.**

Pending the question on passing the bill to be engrossed, Mr. Panagiotakos moved that the bill be amended in section 1, in line 27, by striking out the figure “250,000.00” and inserting in place thereof the following figure:- “250,000”;

In said section 1, by striking out, in line 30, the words “provided further,” and inserting in place thereof the following figure:- “(5)”;

In said section 1, by striking out, in lines 38 and 39, the words “as defined herein”, each time they appear;

In said section 1, by striking out, in line 67, the words “clause (1) of”;

In said section 1, by striking out, in line 70, the words “such occupy or intend” and inserting in place thereof the following words:- “each owner occupies or intends”;

In said section 1, in proposed section 1A of chapter 188, by striking out subsection (e);

In said section 1, by striking out, in line 107, the figure “\$500,000” and inserting in place thereof the following words:- “the declared homestead exemption”;

In said section 1, by striking out, in lines 110 and 111, the words “owner signing the declaration and the owner’s” and inserting in place thereof the following:- “declarant and each declarant’s”;

In said section 1, by striking out, in line 117, the words “payment payment of” and inserting in place thereof the following words:- “a sale for”;

In said section 1, by striking out, line 206, the word “or”;

In said section 1, by inserting after the figure “(3)”, in line 210, the following words:- “; or

(5) the subsequent recorded declaration of an estate of homestead under section 1B on other property, except that such declaration shall terminate only the rights of the owner making such subsequent declaration and the rights of that owner's spouse and minor children who reside or intend to reside in the other property as their principal residence";

In said section 1, by striking out, in line 214, the word ", trustee";

In said section 1, by inserting after the figure "(4)", in line 215, the following words:- "of subsection (a)";

In said section 1, in proposed section 7 of chapter 188, in subsection (c), by inserting before the first sentence the following sentence:- If a subsequent declaration on other property which terminates a homestead under clause (5) is later invalidated, the prior declaration shall not be reinstated.; and

In said section 1, by inserting after the word "home", in line 231, the following words:- "the person intends";

In said section 1, by adding the following section:

"Section 10. A deed, release or mortgage containing a statement of the marital status of a grantor may be relied upon by a good faith purchaser for value. As to acts undertaken in good faith reliance on such deed, release or mortgage, an affidavit executed and acknowledged by the grantor, releaser or mortgagor under penalty of perjury stating that, at the time of delivery of the deed, release or mortgage, the affiant had no spouse then entitled to claim the benefit of an existing estate of homestead, shall be conclusive proof of the nonexistence of such benefit at that time. The affidavit may be recorded in connection with the execution and delivery of a deed, release or mortgage and shall be accepted in the appropriate registry of deeds and registry district of the land court. The subsequent residency or renewal of residency in the home by a spouse of the grantor, releaser or mortgagor shall not defeat the priority of a mortgage, release or conveyance accepted in reliance on such affidavit."; and

By striking out section 3 and inserting in place thereof the following section:-

"SECTION 3. All existing estates of homestead in effect on the effective date of this act shall continue in full force and effect notwithstanding the repeal of any law under which they were created and shall be governed by this act, notwithstanding their failure to comply with the execution requirements of section 2 of chapter 188 of the General Laws, as appearing in section 1 of this act".

The amendment was adopted.

Ms. Creem and Ms. Candaras moved that the bill be amended by inserting before section 1 the following section:-

"SECTION A1. Section 3A of chapter 60 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by adding the following paragraph:-

Every bill or notice provided pursuant to this section shall include a notice of the right to declare homestead protection pursuant to chapter 188 of the General Laws. The notice shall include, but not be limited to, a summary of the differences between the automatic homestead protection and the enhanced benefits acquired by making a declaration of homestead pursuant to said chapter 188."; and

In section 1, in section 1 of proposed chapter 188, by inserting before the definition of "declared homestead exemption" the following definition:-

"Automatic homestead exemption", \$125,000, provided, however, that: (1) with respect to a home owned as joint tenants or as tenants by the entirety, the maximum automatic homestead exemption shall remain whole and unallocated between the owners, provided that the owners together shall not be entitled to an automatic homestead exemption in excess of \$125,000; and (2) with respect to a home owned by multiple owners as tenants in common or as trust beneficiaries, the maximum automatic homestead exemption shall be allocated among all owners in proportion to their respective ownership interests.";

In said section 1 of proposed chapter 188, by inserting after section 1B the following section:-

"Section 1C. In the absence of a valid declaration of homestead recorded under this chapter, an estate of homestead to the extent of the automatic homestead exemption shall exist in a home for the benefit of the owner and the owner's family members who occupy or intend to occupy the home as a principal residence. The homestead rights of non-titled family members shall consist of the right to use, occupy and enjoy the home as a principal residence. The estate shall be held subject to this chapter, except for section 1A, 1B and 2.

In the event that spouses occupy or intend to occupy separate homes, then both estates of homestead together shall not exceed the automatic homestead exemption. The recording of a declaration of homestead under this chapter shall supersede the automatic

homestead exemption provided by this section, but shall not terminate the automatic homestead exemption applicable to the period between the creation of the automatic homestead and the later recording of a declaration of homestead. If a superseding declaration of homestead on the same home is later invalidated or terminated, the estate of homestead provided in this section shall be reinstated as of the date of its original creation.”;

In said section 1, by striking out, in line 173, the words “section 1B” and inserting in place thereof the following words:- “sections 1B or 1C”;

In said section 1, by striking out, in line 194, the words “section 1B” and inserting in place thereof the following words:- “sections 1B or 1C”;

In said section 1, by striking out, in line 212, the words “section 1B” and inserting in place thereof the following words:- “sections 1B or 1C”;

In said section 1, by striking out, in line 239, the words “the declared homestead exemption” and inserting in place thereof the following words:- “either the automatic homestead exemption or the declared homestead exemption, as applicable”;

In section 2, by striking out, in line 256, the words “the declared homestead exemption” and inserting in place thereof the following words:- “either the automatic homestead exemption or the declared homestead exemption, as applicable”; and by adding the following section:-

Section 10. In all mortgage transactions, the closing attorney or settlement agent shall provide the mortgagor with notice of the right to declare homestead protection pursuant to chapter 188 of the General Laws, receipt of which shall be acknowledge in writing by the mortgagor. The notice shall include, but not be limited to, a summary of the differences between the automatic homestead protection and the enhanced benefits acquired by making a declaration of homestead.

The amendment was adopted.

The bill, as amended was then passed to be engrossed. [For text of bill printed as amended, see Senate, No. 2406].

Sent to the House for concurrence.

PAPERS FROM THE HOUSE.

Engrossed Bill — Amended.

The engrossed Bill relative to bullying in schools (see Senate, No. 2404) (which originated in the Senate), having been certified by the Senate Clerk to be rightly and truly prepared for final passage,— **came before the Senate for its final passage.**

On motion of Mr. O’Leary, Senate Rule 49 was suspended.

The same Senator moved that the engrossed bill be amended 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 provide forthwith for the prevention of bullying in schools, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.”

The amendment was adopted.

Sent to the House for concurrence in the amendment

Reports of Committees.

Mr. Berry, for the committee on Ethics and Rules, reported that the following matter be placed in the Orders of the Day for the next session:

The Senate Bill relative to rock wall climbing safeguards (Senate, No. 959).

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

Pending the question on ordering the bill to a third reading, Mr. McGee moved that the bill be amended in section 1, by striking out the figure "10", in lines 4, 7 and 11, and inserting in place thereof, in each instance, the following figure: --"12";

In Section 2, by striking out, in line 20, the date "January 1, 2010" and inserting in place thereof the following date: --"June 30, 2010";

By striking out Section 3 and inserting in place thereof the following section:-

“SECTION 3. Section 1 shall take effect July 31, 2010. Section 2 shall take effect upon its passage.”; 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 forthwith provide rock wall climbing safeguards, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety.”

The amendment was adopted.

The bill (Senate, No. 959, amended) was then ordered to a third reading, read a third time and was passed to be engrossed, in concurrence.

The following report was laid before the Senate, the time within which the said committee was required to report having expired:---

Of the committee on Public Service, ought NOT to pass (under Joint Rule 10), on the petition (accompanied by bill, Senate, No. 2263) of Patricia D. Jehlen Timothy J. Toomey and others (with the approval of the mayor and city council) for legislation to exempt the position of deputy chief of police in the city of Somerville from the provisions of the civil service.

On motion of Ms. Jehlen, the rules were suspended; and, on further motion of the same Senator, the petition was recommitted to the committee on Consumer Protection and Professional Licensure.

By Mr. Berry, for the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the Senate petition of Richard R. Tisei for legislation relative to billboards.

The rules were suspended, on motion of Mr. Hedlund, and the report was considered forthwith. Joint Rule 12 was suspended; and the petition (accompanied by bill) was referred to the committee on Municipalities and Regional Government.

PAPERS FROM THE HOUSE.

Engrossed Bills.

An engrossed Bill validating certain nomination papers filed in the town of Millville for the 2010 Annual Election (see House Bill, printed in House, No. 4583) (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 signed by the President and laid before the Governor for his approbation.

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

Designating a portion of Route 2 as the Dennis Rindone Roadway (see House, No. 1889);

Relative to the Brewster Board of Water Commissioners (see House, No. 4279);

Establishing a regional wastewater district for the towns of Mansfield, Foxborough and Norton (see House, No. 4307, amended); and

Designating the library at the Corrigan Mental Health Center in the city of Fall River as the Ralph A. Roberts Library (see House, No. 4364).

A petition (accompanied by bill, House, No. 4640) of Kevin Aguiar that the honor roll erected on the U.S.S. Massachusetts honoring deceased veterans of World War II be authorized to include a section in memory of the members of the armed forces from the Commonwealth who died in Afghanistan and Iraq,- was referred, in concurrence, under suspension of Joint Rule 12, to the committee on Veterans and Federal Affairs.

Order Adopted.

On motion of Ms. Menard,--

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

Emergency Preamble Adopted; Engrossed Bill Enacted.

Mr. O'Leary in the Chair (having been appointed by the President, under authority conferred by Senate Rule 4, to perform the duties of the Chair), An engrossed Bill relative to bullying in schools (see Senate, No. 2404, 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 2 to 0.**

The bill was signed by the Acting President (Mr. O'Leary) and sent to the House for enactment.

Subsequently, the bill, which originated in the House, came from the House with the endorsement that it had been enacted in that branch.

The Senate then passed the bill to be enacted; and it was signed by the Acting President (Mr. O'Leary) and laid before the Governor for his approbation.

Adjournment in Memory of Robert "Tex" McClain, Jr.

The President in the Chair, the Senator from Worcester and Norfolk, Mr. Richard T. Moore, requested that when the Senate adjourns today, it adjourn in memory of Robert "Tex" McClain, Jr.

Robert "Tex" McClain served the Commonwealth for decades on legislative commissions on taxation, fiscal affairs, and the State Constitution and Reorganization of State Government with the Department of Revenue. He also worked for the Commonwealth for 40 years, beginning in 1950 serving until his retirement in 1990 as the Undersecretary of Administration and Finance.

"Tex" also served as the past president of the American Society for Public Administration and was a member of the National Academy of Public Administration. He later became an adjunct faculty member at Northeastern University Graduate School where he taught in their public administration program.

A native of Texas, "Tex" retired to West Yarmouth from Boston in 1997. He admirably served his country during World War II as a member of the Navy. Tex is survived by his wife, Ruth, his brother, Richard, many nieces, nephews, great-nieces and great-nephews, and an abundant network of friends and family.

Mr. O'Leary in the Chair, accordingly, as a mark of respect to the memory of Robert "Tex" McClain, Jr. at twenty-nine minutes before six o'clock P.M., on motion of Mr. Hedlund, the Senate adjourned to meet again on Monday next at eleven o'clock A.M.