

Defendant's Exhibit E

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SENATE COPY - JULY 16, 1998 (7-16-1998)

SENATE.....SHNS.....JULY 16, 1998.....The Senate convened at 1pm with Senate President Thomas Birmingham of Chelsea presiding.

GUESTS....Sen. Birmingham welcomed guests of Sen. Jacques, the Needham High School girls lacrosse team, undefeated state champions.

TAXES.....Question came on enacting a bill reducing income taxes and unemployment insurance rates and providing for workforce training.

Sen. Rosenberg asked for a roll call and there was support.

Sen. Birmingham began to order the roll call and then recognized Sen. Lees, who asked if the chair of ways and means could offer an explanation.

Sen. Tolman said I rise at this momentous occasion where the Senate passed a very significant tax cut for the people of Massachusetts and the working families of Massachusetts. This tax package goes to the people who need it most. It means the family of four who is earning \$40,000 shares at the same amount as the individual making \$400,000. They receive the same tax relief. I think that's fair and appropriate. In the first year this will cost about \$500 million and when fully phased in, it's \$680 million. This Senate passed a doubling of the exemption on earned income so everyone commensurately shares in the benefit. The amount is increased from \$2,200 to \$4,400 for single filers, a \$131 tax cut per filer. It's doubled the head of household exemption, a savings of \$202 per filer. And we double the exemption for earned income for joint filers for a \$262 tax cut per filer no matter how much money your making. We're reducing the rate on dividend and interest income. This is the income that hits senior citizens the hardest. People on fixed income, CDs, bank deposits, mutual funds. They can ill afford the 12 percent rate. With this it's reduced to 5.95 percent. That's a step in the right direction. We are increasing the capacity of the stabilization fund. The full value of that is \$475 million so that when that inevitable rainy day comes, when the revenue coffers are not overflowing we will have a rainy day fund to fall back on. It's a prudent investment. We take a step further, reducing the unemployment insurance rate from Schedule C to B, for a full value of \$116 million. Part of that schedule B will be utilized for incumbent worker training. I have learned one thing employers are looking for is skilled workers. The one thing that keeps the economy ticking along is the fact that we have a skilled workforce. A number of other things we dowe bring the Mass. state tax code into compliance with exemptions and changes passed by this chamber and Congress. Tens of thousands of people have been waiting for us to pass the Mass. Roth IRA. It encourages people to invest in their future, to set aside these accounts and to allow retirement accounts to grow over time without being taxed. These are the type of investments we want Massachusetts citizens to have.

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Sen. Tolman said we also include the educational IRAs so citizens will invest in their education and they can take money out tax free to spend on their children's education. We address the sale of a principal residence with exemptions from capital gains. We have aligned our treatment of short-term capital gains with the federal system. I hope this is adopted.

Sen. Pines said she supports the tax initiative. I want to focus on one provision. This measure goes a long way toward correcting inequities in the Massachusetts tax structure. The most important measure is that which reduces the rate of taxation on unearned income and dividend and interest income. With the passage of this, that terrible word Taxachusetts is no longer a part of our dictionary in our state. A competitive fair taxation system will be put in place. I started my career as a tax and corporate lawyer many years ago. I would recommend to people that they consider becoming a resident of another state - Florida, New Hampshire. The provisions in our state have put people at a competitive disadvantage. States have lured our residents with promises of good weather and lower taxes. As of today we will have come full circle from the days when people had to leave Massachusetts to avoid onerous taxation. I fought to eliminate the estate tax. We substituted a sponge tax. I am proud to have played a role to bring about that change. The measure before us should not be regarded as a tax break for the rich. It's not a tax break. It's the application of tax fairness and fiscal sanity. Second, it's not just for the rich. It's for all of our citizens that save and invest. Fifty-nine percent of tax filers who claim income subject to the 12 percent rate earn less than \$50,000 a year. It is not unearned income. Income that is derived from investments is income that is earned by the growth and expansion of industry, and by the availability of competitive goods and services. It should be viewed as a reward for the risk of putting money to work in the Massachusetts economy. A special thank you to the chairman of ways and means, who negotiated this package.

Sen. Hedlund said I recognize the hard work and the historic nature of this package, but I think it's a lost opportunity. I will vote no. We really could have done a lot better at returning money that rightfully belongs to the people of the Commonwealth. We are going to see now with the second increases in a year in a half an increase in the stabilization fund from 5 percent to 7.5 percent of revenues. This will put us at \$1.4 billion-plus, second only to Alaska which funds their stabilization fund through oil revenues and does not have an income tax. It is unlikely that we will see the tax reduction fund allow returns to the taxpayers. It is a lost opportunity to not move to the 5 percent income tax rate. We had a promise to live up to - eliminate the surtax imposed in the late 80s now that the bonds have been paid off. We are enacting a major piece of tax policy change with the stabilization fund and there have been no hearings on this issue. Is this an amount that's justified? I don't know.

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Sen. Hedlund said it's unfortunate that what is driving this change is not a discussion on economic prosperity. It's an attempt to hide money from taxpayers. That troubles me. Of the 45 states that have a rainy day fund, we are one of the only ones that have no rules governing the use of that fund, which some call a legislative slush fund. It can be used for almost any purpose.

Sen. Knapik said this is a historic occasion. What a difference a decade makes. This state has come light years from where we were just ten years ago. Very shortly we will vote on our ninth balanced budget. We have passed over 21 tax cuts to make Massachusetts a competitive state. Today is a great and historic day for the Commonwealth. It's very rare that we can say there's probably something for everyone in this. On unearned income, many of us believed this cut should be as broad-based as possible. We narrowed the scope of our application of unearned income and we came out of conference with the broader-based version. A woman called me who said that when her husband died, she had to invest life insurance policies to have some form of income with her daughters. They have social security and income from the death benefits. She would not have benefited under the plan originally crafted. She will be able to benefit by the lowering of the tax on unearned income. She is not a rich woman. She would give away her investment to have her husband back, but you have made a difference in her life and that's a good thing.

Sen. Lynch said I would be remiss if I did not point out the worker training investment fund and reduction in premiums on unemployment insurance. It has been an enormous accomplishment. Today, the UI trust fund is at a record high by

about a half a billion dollars. We have exceeded the highest levels ever with regard to the balance. In recognition of that, we can allocate some monies to address an inequity. I think it's a notable accomplishment.

Sen. Lees said this is a happy day for all of the taxpayers in the Commonwealth and all of the businesses and the workers. Not only are we doubling the deduction, not only are we lowering unearned income to the earned income rate, but we are saying to businesses who have funded a trust fund that we are giving something back to them in the form of a \$98 million tax break. Businesses can directly receive grants to train workers. I don't think there are any of us who have gone to companies who have not told us that they need skilled workers. We are realizing the taxpayers know better what to do with their money than we do. We are not all of the way there yet. We are about half way, but this is a great start. We can say in the next 10 days that we want to help you even further. This is a beginning but it's a very very positive beginning. I wish upping the rainy day fund was not in here, but all it is is words on a piece of paper. It shouldn't bother anyone that Massachusetts has a rainy day fund that is set up and allows money to go into it. Whether we vote to put more money in is an argument for another day. I hope we don't do that. This is the largest permanent tax cut in the history of this Commonwealth. The economic boom isn't going to last forever. But the things we have done in this bill will help the working people of Massachusetts. -more-

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Sen. Amorello said he hopes the legislation is passed. The \$18 million training program will help companies to reeducate their workforce and provide better jobs. We are helping families to send their kids to college. I am sure this will be a unanimous or close to unanimous vote.

BY A ROLL CALL VOTE OF 37-1, TAX CUT BILL ENACTED.

GUN CONTROL.....Question came on acceptance of the conference committee report on S 1985 assault weapons, recommending the Senate recede to House amendments and make further amendments to be accepted by the House.

Sen. Jacques said I'd like to thank Sens. Fargo, Walsh and Wilkerson for their help on this bill. We want to make sure that no parent out there ever experiences what Mark Matthews of New Bedford did. We want to make clear that if you're convicted of a crime, you won't be licensed for guns. We strengthen the penalties for all kinds of crimes. AG Harshbarger has been working hard to eradicate junk guns, and this bill helps do that, and outlaws gadget guns. We put the power in the hands of local police chiefs to say who in their communities can handle guns.

At 2pm, Sen. Lees moved for a Republican caucus until 3 pm. The Senate recessed for that purpose. The Senate reconvened at 3pm with Sen. Birmingham presiding.

Question recurred on the conference committee report on gun control.

Sen. Pines said she supports the report. Assault weapons are weapons of overkill. There is not a rational defense for allowing battlefield weapons to be available on the streets. It is only 1 percent of guns but it is a disproportionately deadly 1 percent. That's why chiefs of police support a ban on the sale of assault weapons. I'm less concerned with the statistics than the lives of those people they represent. In 1993, I made a successful proposal that the Commonwealth provide each and every police officer with a bullet-proof vest. It's only right that we take these weapons off the street. I'm pleased that this conference committee report includes increased penalties, including on the use of a gun in committing a felony, illegal gun trafficking and possession of a firearm by a convicted felon. I hope that sometime in the future we will deal with the older assault weapons, but by voting for this, we send a clear and positive message - the commonwealth will not let criminals outgun the police.

Sen. Moore said he hopes the report is rejected. Nothing could be further from the truth than the remarks of the earlier speaker that this is to reduce crime. It will not. It will make honest law-abiding citizens criminals by statute rather than by their committing any crime. The bill imposes new requirements, burdens and costs by the lessening of their rights.

Crime without this bill has been coming down quite well.

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Sen. Moore continued We had a version of this 20 years ago, the so-called Bartley-Fox legislation, which has not punished many criminals. It has really not done anything in resolving crime. It was supposed to do everything this bill will do. After it passed, crime went up markedly, murders went up markedly. The bill that left this chamber would have harmed more than 300,000 law-abiding citizens. The bill that came out harms about 1.5 million residents, many of whom live in your districts. There is no evidence that people being regulated by this bill have caused the problems. We have fallen victim to media hype and the ambitions of some who suggest this is going to solve all kinds of problems. It's not going to do that at all. It will promote significant civil disobedience and end up clogging our court system. The members know how they will vote. This will cause significant bureaucracy, red tape and confusion and create criminals of a number of our law-abiding citizens. There is no evidence that people being regulated by this bill have caused the problems. We have fallen victim to media hype and the ambitions of some who suggest this is going to solve all kinds of problems. It's not going to do that at all. It will promote significant civil disobedience and end up clogging our court system. The members know how they will vote. This will cause significant bureaucracy, red tape and confusion and create criminals of a number of our law-abiding citizens. There is no evidence that people being regulated by this bill have caused the problems. In fact, the term assault weapons complicates the confusion surrounding the bill. As we have learned, an assault weapon has the capability to fire at a rapid capacity. Those are not available in our society except for those that can obtain a class 3 ATF license, which are very very few in our society. Attacking the issue of negligent storage of firearms is long overdue. The issue of felons using firearms in the commission of a crime is long overdue. There are many other measures that are going to be subject of great controversy, but I rise to thank the conferees. They were receptive to a wide array of issues and understanding and respectful to different points of view. I suggest S 1985 that left this chamber is not the issue before us. The bill before us is radically different. It contains no ban because people were listening. It removes onerous provisions because people were listening. It has been improved.

Sen. Walsh said she hopes the report is accepted. It's completely reasonable for there to be great confusion. The bill has been filed for several years. There was an inherently difficult conflict. To have government come in and offer more regulations and rules was absolutely offensive to lawfully-held gun owners. The Suffolk County Courthouse has about 60,000 cases a year involving a gun. If we have all these crimes adjudicated 1,000 feet away and they all involve guns, then obviously we are not doing a job regulating guns. A lawfully-held gun can be stolen. We can thank the NRA and GOAL for giving us data and information. It's not onerous that you can no longer have a gun owner identification card for life. I have concern about the 150 gun dealers who sell firearms out of their homes. ATF has a major problem with that. We need data, resources, information and communication. People who want to hunt and target practice, we want that to continue. This strikes that balance. We have problems in our culture and there is great tension on this. We are trying to make the right more responsible. We believe this legislation does that. This is done with good faith and more data and will be helpful to businesses and families. -more-

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BY A ROLL CALL VOTE OF 22-14, THE CONFERENCE COMMITTEE REPORT ACCEPTED.

MUTUAL INSURANCE.....By voice vote, the Senate suspended rules and concurred with a House amendment to H 5101 reorganization of domestic mutual insurance companies.

CUSTODY/VISITATION.....There was support for Sen. Jacques' motion for a roll call on the question of enacting a bill regarding consideration of domestic violence in custody and visitation proceedings.

BY A ROLL CALL VOTE OF 37-0, BILL ENACTED.

THIRD.....By voice vote and without debate, the Senate ordered to third reading H 35 relative to banking laws; H 882 banning the public distribution of free smoking or tobacco products for commercial purposes; H 2492 relative to a certain advisory committee of the Department of Mental Health; H 4774 authorizing the Auburn licensing authority to issue five additional all alcoholic beverage licenses; and H 5464 authorizing North Reading to establish a certain fund.

ENGROSSED.....By voice vote, the Senate engrossed H 4453 Groton Country Club Authority; H 2099 disclosure of information in real estate transactions (Montigny amendment adopted); H 3734 designating the library at the Westborough State Hospital as the John Lowe Library; S 747 relative to the uniform transfer on death security registration act; H 917 use of the title psychologist in employment; H 5396 appointment of members of the town building committee in Shrewsbury; S 2277 Board of State Examiners of Plumbers (Bills in Third Reading substitute); H 5473 authorizing North Reading to convey certain conservation land; S 2267 certification of alcoholic beverages licensees and servers of alcoholic beverages; S 2266 authorizing DCPO to convey a certain parcel of land in Waltham; H 4783 taxation of common trust funds (Tolman amendment adopted and then withdrawn).

NOMINATION PAPERS.....Question came on ordering to third reading H 5074 nomination papers.

Sen. Lees said this removes the exemption that allows candidates from minor parties to gather fewer signatures. This has been something that has been on the books for I think decades and I wonder why the Election Laws Committee would allow something like this to go through

Sen. Nuciforo said we thought it was fair that anyone running for office be required to get a similar number of signatures. We have heard there are some third party candidates who can't get enough signatures. They can get unenrolled voters.

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Sen. Nuciforo continued This is not going to affect the ability of anybody to get on the ballot. Anyone who can't get 150 signatures would have a difficult time winning an election anyway.

Sen. Lees moved that the matter be laid on the table. Under the rules it was placed in the orders of the day for the next session.

VIOLENCE PREVENTION.....Question came on Sen. Antonioni's amendment to H 2077 violence prevention programs in public schools.

Sen. Lees asked for an explanation. This is an issue many of us have faced or heard about.

Sen. Antonioni said the purpose of this bill as amended is to encourage the teaching of violence prevention, particularly the misuse of firearms and other instruments that could cause harm in public schools. This amendment would require the DOE to compile a curriculum and make it available to the schools. The law doesn't require the drafting of such a curriculum but requires the teaching of such a course. That's contrary to what we are doing in education right now. We are creating an additional optional subject in the law.

By voice vote, amendment ADOPTED.

Sen. Lees requested a roll call on the question of engrossment and there was support.

BY A ROLL CALL VOTE OF 37-0, BILL ENGROSSED.

MEDICAL MALPRACTICE.....By voice vote, the Senate adopted amendments to H 1143 further regulating medical malpractice insurance offered by Sen. Melconian, and Sens. Berry and Bernstein.

Question came on engrossing the bill.

Sen. Lees asked the chair of the Insurance Committee to explain. I understand the Mass. Medical Society has some reservations about this bill. I question their reasoning on many occasions, but I would like the chair to address those reservations. Further, will the chair explain whether the Division of Insurance is on board with this and its amendments.

Sen. Melconian said this is a technical corrections bill, updating the definition of medical malpractice insurance. It refines the definition and eliminates some of the definition that is ambiguous. It will allow the medical malpractice reinsurance plan to operate more efficiently. The MMS policy concerns should not be addressed in this technical bill. I hope the bill is engrossed.

By voice vote, bill engrossed.

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FORTIFIED WINES.....Question came on engrossing S 1951 production of fortified wines.

Sen. Lees said can the chair of education explain this bill and what it does? Can someone explain?

Sen. Morrissey said it came out of Government Regs. Sen. Lees may not understand what an aperitif is but Sen. Antonioni will educate him.

Sen. Antonioni said this allows for the production of fortified wine in the commonwealth. We have a growing number of farmer-owned wineries that produce fruit wine. There is a growing market for dessert wines, otherwise known as aperitif. To produce it, it requires some additional alcohol content. It is impossible to produce it through the fermentation of fruit juices. This will allow the addition of alcohol produced through the distillation of fruit wines and adding that to fruit wine. This is serious business. We are competing with New York and other states. I hope this is adopted.

By voice vote, bill engrossed.

SEXUAL HARASSMENT.....Question came on engrossing S 2265 complaints of sexual harassment and other forms of discrimination.

Sen. Keating asked for a roll call and there was support.

Sen. Jacques said the purpose of this is to ensure that employees who have experienced workplace discrimination have adequate time to pursue justice. Rather than the current six-month statute of limitation, it will be 300 days to file a complaint with MCAD. We have seen in the papers recently the SJC denied relief to two victims of sexual harassment because the six months had come and gone. A woman at Purity Supreme was raped and threatened. No surprise it took this woman a great deal of time to come to grips with what occurred. The examples of this are plentiful. The Senate last year on the criminal side extended the statute of limitation on rape from 10 to 15 years. Victims do not the next morning typically decide to go see a lawyer. They worry about their jobs. They worry about emotional trauma to their families. This may not be enough time, but it's a big step beyond the six months.

Sen. Melconian said she supports the bill and the extension to 10 months. For people who have been victim of this kind of harassment, this will allow more time for settlements and there ought to be enough time to file claims. For tort claims we allow three years.

Sen. Keating said last April we heard testimony on this. Sexual harassment revolves around power, coercion and the potential loss of employment.

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Sen. Keating continued One of my constituents was threatened with having their house burned down with her children in it. She believed those threats. This raises the possibility of getting beyond those threats. This is a strong step in the right direction.

BY A ROLL CALL VOTE OF 37-0, BILL ENGROSSED.

HEARING SCREENING.....Question came on engrossing H 5392 hearing screening of newborns.

Sen. Murray asked for a roll call and there was support.

Sen. Murray said Rep. Canavan did much of the work on this. It will ensure coverage for infants in the birthing hospital to have their hearing tested. We have 80,000 babies born each year in Massachusetts. This will lead to better language skills. Most hearing-impaired children wind up in special education. Besides that they don't get to hear their mothers and fathers voices.

BY A ROLL CALL VOTE OF 37-0, BILL ENGROSSED.

ALCOHOL.....Question came on an adverse report from the Government Regulations Committee on S 1892 sale of alcohol in Pittsfield and near the New York border. An amendment offered by Sen. Nuciforo was adopted. The bill was then ordered to a third reading

CIVIL COMMITMENT.....Question came on H 5448 prevention of drug-induced rape.

Sen. Bernstein offered a series of amendments that were adopted. This is the civil commitment bill that has been so debated. This is a major step forward for the citizens of the commonwealth. This would extend this commitment to more offenses, covering people who prey on our children and others, and sets up a careful judicial process for committing people for up to life.

Sen. Tarr said this bill gives our courts and prosecutors the tools they need to take dangerous people off our streets. Hopefully this will stop the flood of stories in the media about cases we do not want to see. And the underlying bill on "date rape" drugs is worthy of passage as well.

Sen. Walsh said it's very important that we acknowledge how many members worked on this bill. It's said that the easiest thing to steal is credit. We welcome the minority party's support of civil commitment after the administration opposed it, and after we corrected an unconstitutional version. The appetite to be fair to the committed is nowhere stronger than here in the Senate, and we are glad the minority party is now joining us.

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Sen. Jajuga said I filed this bill back in 1993 because I saw way back then that there were problems with "Megan's Law." We were still allowing violent sexual predators to be released from our prison facilities. I was very happy when in 1997 the Supreme Court in the Kansas case upheld civil commitment. So with Sen. Walsh and Sen. Bernstein we were able to craft a good and constitutional bill. We still have to analyze and look at these offenders.

BY A ROLL CALL VOTE OF 33-0 THE AMENDMENT WAS ADOPTED.

Question now came on engrossment and a roll call was ordered.

Sen. Montigny said I don't want to lose sight of the main bill. This is crafted to stop the monsters who would use these drugs to kidnap and rape women. The legislation would also stipulate that any drug used in the commission of a rape

can add very severe penalties to a sentence. I'd like to conclude by encouraging all my colleagues to concur in this. The sentence has not always corresponded with the crime in these cases, and this will assure it does.

BY ROLL CALL VOTE OF 33-0, THE BILL WAS PASSED TO BE ENGROSSED.

ENGROSSED.....The Senate took a voice vote to engross H 5132 license for sale of alcohol in Westboro.

ENACTED.....The Senate enacted bills on fishing licenses; Spencer form of government; Marion open space acquisition commission; grant of immunity; Carver town meeting.

EXTENDED.....The Transportation Committee was granted an extension until July 31 to report on several bills.

BIRTHDAY.....Sens. Walsh and Durand offered a motion that the Senate adjourn in honor of the 40th birthday of Sen. Robert Antonioni.

Sen. Walsh rose. For what purpose does the lady rise? asked the president. To say happy birthday, Sen. Walsh replied.

The motion was then adopted by voice vote

ADJOURNS.....The Senate adjourned at 5pm to meet again on Friday at 11 am without a printed calendar.

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