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Chapter 19: State and Municipal Government

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CHAPTER 19

State and Municipal Government

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§19.1. Constitutional amendments. The 1965 SURVEY year witnessed the progress of four proposed constitutional amendments, of which two deal with state government and two with municipal government. To be effective each must obtain approval at the next state election in 1966.

An amendment requiring joint election of the governor and the lieutenant governor as members of the same political party received the second of two required approvals by the General Court on May 5, 1965. This amendment would restrict a voter to a single vote for the two offices.

Another amendment affecting the state government received its second approval on May 5, 1965. This authorizes the "Reorganization Plan Procedure for the Executive Department." Under this proposal, which is modeled on a similar federal procedure, the Governor could submit to the General Court a reorganization plan "transferring, abolishing, or consolidating the whole or any part of any agency, or the functions thereof within the executive department, or authorizing any officer of any agency within the executive department to delegate any of his functions." Unless a majority of the members of either of the two branches disapprove a reorganization plan, it "shall have the force of law upon expiration of . . . sixty calendar days" from the date of its submission by the Governor. No amendment to any reorganization plan could be adopted by the General Court until the sixty-day period had expired. However, the General Court could "from time to time prescribe by statute . . . the civil service status, seniority, retirement and other rights of any employee to be affected by such plan."

The third amendment to receive its second legislative approval (May 19, 1965) is a simple declaration that "the industrial development of cities and towns is a public function and the Commonwealth and the cities and towns therein may provide for the same in such manner as the general court may determine." Presumably, this amendment is intended to settle the uncertainty of existing limitations on the powers of the Commonwealth and its political subdivisions to assist or to subsidize industrial development. A number of interesting questions, how-

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ever, are likely to need judicial interpretation as to the scope of this apparently uncomplicated amendment.

A more intricate proposal to specify the "home rule" prerogatives of cities and towns by constitutional amendment also received its second legislative approval on May 19, 1965. An adequate examination of this far-reaching amendment is not feasible for this 1965 Survey year.

§19.2. Organization of state government. The General Court is still in session as of the writing of this chapter, so that legislation affecting the organization of the state government might still issue. To date, however, only one major enactment has appeared, Acts of 1965, Chapter 572, which has restructured the educational agencies and functions of the state government. This is treated in detail in the new chapter on Education in the 1965 Survey.1

Acts of 1965, Chapter 790, provides for the establishment of a bureau of relocation in the Department of Commerce and Development.2 The director of the bureau is appointed by the commissioner with the approval of the governor. The commissioner determines the division within which the bureau shall function.

The same legislation further amends the General Laws to insert a new Chapter 79A, entitled Relocation Assistance, which commits the Commonwealth to a long overdue policy of consistent relocation assistance among its agencies and political subdivisions on behalf of persons and organizations displaced by eminent domain. A detailed commentary will appear in the 1966 Survey chapter on Land Use Planning Law.

Enactments of lesser importance include (1) Acts of 1965, Chapter 678, which establishes a Division of Fairs within the Department of Agriculture charged with the supervision of agriculture fairs and generally with "the encouragement or extension of agriculture";3 (2) Acts of 1965, Chapter 484, which establishes an Advisory Council on Radiation Protection within the Department of Public Health. This latter amendment to General Laws, Chapter 111, adding a new Section 4F, seems to illustrate the accelerating and far-reaching impact of technology on society by specifying that one member of the Advisory Council "shall have training or experience" in radiation law.

The question of whether a prior statute reorganizing the Department of Public Works4 was discriminatory and a bill of attainder because the petitioner was the only person other than the Commissioners whose position was abolished, was considered in Bessette v. Commissioner of Public Works.5 The Court held, inter alia, that the abolition of the position of Director of the Division of Waterways was within the legislative power, and did not invade a constitutional right of the petitioner.

§19.2. 1 See §20.2 infra.
2 Amending G.L., c. 23A, to add a new §5A.
3 Amending G.L., c. 20, §6, and c. 128, §16, and adding §38A to G.L., c. 128.
§19.3. Powers and functions of state government. The end of an excursion into irrational legislation was signaled by Acts of 1965, Chapter 679, which dropped the controversial local veto of highway projects of the Department of Public Works in the course of authorizing a three hundred and twenty million dollar continuation of the Commonwealth's accelerated highway program.

An important advance in the conservation of coastal wetlands is obtained through Acts of 1965, Chapter 768. The Commissioner of Natural Resources is authorized to adopt, amend, modify, or repeal orders governing the dredging, filling, removing, altering, or polluting coastal wetlands and "such contiguous land as the commissioner deems reasonably necessary" to effect the purposes of this legislation. The Commissioner must hold a public hearing in the municipality in which the affected wetlands are located with notice to the State Reclamation Board, the State Department of Public Works, and each assessed owner of such wetlands. The Superior Court has jurisdiction in equity to restrain violations, and property owners may petition the Superior Court to determine whether an order is invalid as a taking without compensation. However, if the court rules that an order shall not apply to certain lands, the Department of Natural Resources may take the fee or any lesser interest by eminent domain.

Exempted from these provisions is land under the control of the Metropolitan District Commission. Moreover, no action may be taken to impair the statutory powers and duties of the Department of Public Works, the State Reclamation Board, or projects authorized by General Laws, Chapter 252, e.g., mosquito control.

Somewhat parallel authority is conferred on cities and towns acting through their conservation commissions.

Neglected cultural and aesthetic values were accorded a kind of recognition through Acts of 1965, Chapter 23, which prohibits the Commonwealth's Art Commission from placing in or removing from "any space in the State House assigned to the General Court any . . . historic relic or work of art without approval of the committees on rules of the two branches, acting concurrently."

Acts of 1965, Chapter 473, grants broad powers to the Commissioner of Public Health "to take such action and incur such liabilities as he may deem necessary" to maintain public health and prevent disease whenever the Governor declares the existence of an emergency detrimental to the public health, during the period of emergency.

§19.4. Municipal powers and functions. The promulgation of a uniform plumbing code by the Board of State Examiners of Plumbers is authorized by Acts of 1965, Chapter 358, amending General Laws, Chapter 142, Section 8. Such a code will apply to all cities, except Boston, and in each town with two thousand or more inhabitants. Ap-
proval of the code by the Department of Public Health is required. Previously, the Board of Examiners was empowered to prescribe a plumbing code for any city or town which had failed to adopt its own code, upon petition of the local Board of Public Health, provided that the code was approved by both the State Department of Public Health and the local Board. A municipal ordinance or by-law prescribing plumbing regulations adopted and effective prior to the effective date of Chapter 358 continues in effect until superseded by the new state code.

The procedure for revoking the acceptance of Sections 69C through 69F of General Laws, Chapter 41, establishing a department of public works in a town, was amended by Acts of 1965, Chapter 30. The amendment provides for submission of the question of revocation to the voters at the annual town meeting upon petition by 10 per cent of the qualified voters to the Board of Selectmen at least sixty days before the meeting.

A city or town is authorized to take land or waters upon the written request of its conservation commission by Acts of 1965, Chapter 768. A two-thirds vote of the city council or town meeting must approve the taking. The conservation commission shall have jurisdiction and control, and may adopt rules and regulations governing the use of such land or waters. Farming or agricultural land is specifically excluded from the authority conferred by this legislation.

The authority of the State Department of Public Health to compel compliance with regulations intended to prevent pollution of inland and tidal waters is strengthened by Acts of 1965, Chapter 347. Municipalities and individuals are subject to proceedings in equity to enforce an order of the Department made in writing upon determination of a violation. Any finding of fact by the Department is prima facie evidence in proceedings for enforcement. In making its orders, the Department is directed to consult and advise violators as to the most feasible means of abating violations, and is instructed to “consider the industrial, commercial and other interests affected thereby” and “the technical and economic feasibility, necessity and advantage of the order.” Violation of an order is punishable by a fine not less than twenty-five nor more than five hundred dollars, but each day the order is violated is construed as “a separate and succeeding offense.” Aggressive enforcement of the Department’s more effective authority would require indifferent municipal officials to act responsibly toward an abuse of the Commonwealth’s most essential natural resource.

Under the medical assistance program, the liability of an employed married child living apart from his aged parent is modified by Acts of 1965, Chapter 340. The amount of income in excess of which he is liable to pay one third toward the support of the parent is increased from forty-seven hundred and fifty dollars to six thousand dollars, amending paragraph 3 of Section 30 of General Laws, Chapter 118A.

§19.4

1 Amending G.L., c. 40, §8C.
2 Amending G.L., c. 111, §5H.
Another liberalization of public assistance is achieved by Acts of 1965, Chapter 599, providing that the cost of living adjustments in Old Age Assistance budgetary standards shall be based on a minimum monthly change of 3 per cent, instead of the 5 per cent which had been specified in Section 1 of General Laws, Chapter 118A.

The legislature has extended the provisions of veterans’ aid to the needy dependents of members of the armed services who can satisfy generous residence requirements. State reimbursement of municipal expenditures for assistance to military dependents is also specified in Acts of 1965, Chapter 483. The first seventy-five dollars of the monthly payment to an applicant by a municipality is reimbursed, plus one half of all amounts paid out in excess of seventy-five dollars, if these payments are approved by the State Commissioner of Veterans’ Services.

A city or town may now establish, at its own expense, psychiatric facilities within a hospital supported by the municipality for the purpose of providing treatment and care for acute mental illness. However, Acts of 1965, Chapter 200, requires approval of the State Department of Mental Health, and municipally supported psychiatric facilities are subject to continuing regulation by the Department.\(^8\)

The capability of municipalities to cope with the growing problem of abandoned motor vehicles is enhanced by Acts of 1965, Chapter 393, which amends Chapter 90 of the General Laws by adding Section 22C. A superintendent of streets or other officer having charge of public ways is authorized to take possession and dispose of “as refuse” any motor vehicle apparently abandoned for more than seventy-two hours. No liability is thereby incurred either by the municipality or the superintendent, and permission need not be obtained from the owner or lessee. However, the superintendent must determine (“reasonably deems”) that the motor vehicle is worth less than the cost of removal and storage and expenses incident to disposition, pursuant to General Laws, Chapter 135, Sections 7 through 11. If the worth of the vehicle is deemed more than such costs and expenses, the officer or member of the police department designated as custodian of lost property may take possession and dispose of the vehicle without liability in accordance with the procedures specified in Sections 7 through 11.

In addition, towns are authorized to appropriate money for the purpose of towing motor vehicles abandoned on any private way or private property by Acts of 1965, Chapter 327, which adds a new clause (59) to Section 5 of Chapter 40 of the General Laws.

Additional limitations on the issuance and transfer of alcoholic beverages licenses were imposed by Acts of 1965, Chapters 400 and 629. The former amends General Laws, Chapter 138, Section 15A, to require a public hearing on the transfer of licenses or license locations not sooner than ten days after publication of the notice required by the section. The latter amends Section 16C of Chapter 138 to change

\(^8\) Amending G.L., c. 123, §2.
the measure of prohibited distance for a license location from a church or school from "within five hundred feet measured along public ways" to "within a radius of five hundred feet." Acts of 1965, Chapter 401, requires the local licensing authorities to list all violations by licensees which come to their attention, in their annual report to the Alcoholic Beverages Control Commission, made pursuant to Section 10A of Chapter 138.

Acts of 1965, Chapter 699, authorizes the Board of Health of a city or town not participating in a mosquito control district to declare an area within the municipality which is infested with mosquitoes to be a public nuisance. By amendment to General Laws, Chapter 252, Section 5B, the Board (1) "may abate such nuisance in such manner as may be approved by the board," and (2) "may maintain such works as may be necessary to prevent its recurrence."

By amendment to General Laws, Chapter 40, Section 21, the maximum fine for each offense in violating town by-laws which is recoverable in complaints or indictments before a district court is increased from twenty dollars to fifty dollars.4

§19.5. Public officers and employees. Perhaps the most significant legislation affecting local government enacted in this session is Acts of 1965, Chapter 763, which imposes mandatory collective bargaining on behalf of all municipal and county employees and public school teachers, excluding only police officers, board and commission members, executive officers, and elected officials. Uniformed members of fire departments must be treated as a separate unit. It effectively supplants Acts of 1960, Chapter 561, which authorized local governments to engage in collective bargaining with representatives of public employees. The earlier statute was permissive legislation requiring acceptance by the municipality.

Upon petition of either a municipal employer or "an employee or group of employees," the State Labor Commission may investigate and subsequently order an election to select an employee organization as exclusive representative for a municipal unit or units. No unit so organized shall include both professional and nonprofessional employees, unless a majority of the professional employees shall vote for inclusion. Similar procedures are specified for decertification of the bargaining agent.

The employer, whether an entire jurisdiction or a unit—presumably a department or office, must bargain collectively in good faith on questions of wages, hours, and other conditions of employment with the designated bargaining agent of the employees. The chief executive officer of the jurisdiction or his representatives shall act for the employer, except that a school department shall be represented by the school committee or its designated representative.

Agreements shall be executed in the form of written contracts. In

4 Acts of 1965, c. 316.

§19.5. 1 The new act added new §§178G-178N to G.L., c. 149.
the event an agreement conflicts with by-laws or ordinances, these shall prevail. A request for funds to implement an agreement shall be submitted to the legislative body. If an appropriation is denied, the question shall be returned to the parties for further bargaining.

The legislation states that nothing contained therein "shall diminish the authority and power of the civil service commission, or any retirement or personnel board established by law."

If a dispute is not resolved after a "reasonable" period, or if no agreement is reached within sixty days prior to the final date for setting the municipal budget, either party may petition the State Board of Conciliation and Arbitration to cause the parties to choose a "fact finder" who shall hold hearings and issue nonbinding, written findings of fact.

Municipal employers, their representatives, and agents are prohibited from (1) interfering with the rights of employees to choose a bargaining agent or to bargain collectively; (2) dominating or interfering with any employee organization; (3) acting adversely against an employee who gives information or testimony, or who files a complaint, petition, or affidavit pertaining to prohibited practices; (4) refusing to bargain collectively in good faith; and (5) refusing to discuss grievances with designated employee representatives.

Employee organizations or their agents are prohibited from (1) restraining or coercing a municipal employer in the selection of its bargaining representative; and (2) refusing to bargain collectively in good faith. In addition, the act specifies that it is unlawful for any employee "to engage in or to encourage or induce any strike, work stoppage, slowdown or withholding of services by the [municipal] employees."

If the State Labor Commission finds that a prohibited practice has been committed, it shall order the violator to cease and desist from that practice.

In Commissioner of the Metropolitan District Commission v. Director of Civil Service, the Supreme Judicial Court held that the provisions of the civil service statute providing for appointment and employment of disabled veterans in preference to all other persons neither created a mandatory, absolute preference nor deprived an appointing authority of the power to consider facts concerning a disabled veteran's character or past conduct which may render him unfit for appointment. The Court sustained the action of the Commissioner of the Metropolitan District Commission in refusing to appoint as a police officer a disabled veteran who had been convicted of a felony but thereafter obtained a full pardon. Describing the case as one of first impression in most respects in Massachusetts, the Court ruled that the pardon removed the statutory bar to appointment as a police officer, but did not preclude the appointing authority from giving

2 1964 Mass. Adv. Sh. 1345, 203 N.E.2d 95, also noted in §§11.11, 12.9 supra.
3 G.L., c. 31, §24.
4 G.L., c. 41, §96A.
weight to the "obvious inappropriateness of appointing as a police officer one previously convicted of a felony. . . ."

In *Whelan v. Town of Hingham*, the Supreme Judicial Court reaffirmed that municipalities may raise money to indemnify their officers and agents against liability for damages incurred in the bona fide discharge of their duties. The Court held that the town could reimburse a majority of its board of assessors for expenses in defending against an action for libel arising out of published statements on "matters which were within their special knowledge and responsibility." The Court concluded: "To hold that the contemplated expenditure is not permitted would, in effect, impose a rule of silence on public officials in situations like the one before us; a result which, in our view, is contrary to the public interest."6

The Conflict of Interest statute, General Laws, Chapter 268A, Section 1, was amended by Acts of 1965, Chapter 351, to prohibit the classification of mayors, aldermen, city councilors, and selectmen in towns with a population in excess of one thousand persons as "special municipal employees." Acts of 1965, Chapter 395, further amended Section 19 of Chapter 268A, to require an elected municipal official making demand bank deposits of municipal funds to file a full disclosure with the City or Town Clerk of any financial interest in the bank as defined by clause (a) of Section 19 of the statute.

Another block of municipal employees, librarians and part-time or intermittently employed pages, is made subject to civil service by Acts of 1965, Chapter 471.7 The civil service statute was also amended by Acts of 1965, Chapter 53, to prohibit the restricting of promotional tests to persons of either sex.8 Exceptions are allowed where a position requires special physical or medical standards or involves the custody or care of a person of a particular sex.

The first substantial breakthrough in the rigid Massachusetts prohibition against setting up educational requirements as a condition for taking civil service examinations was realized through Acts of 1965, Chapter 580. Amending General Laws, Chapter 31, Sections 6A, 15, and 47C, this enactment authorizes the Director of Civil Service to establish educational requirements needed to satisfy federal merit system standards where such standards are a condition for the receiving of federal program grants. Primarily intended to allow compliance with federal public assistance program standards, this exception applies both to state and municipal civil service appointments, promotions, and transfers. The first limiting amendment to these provisions, however, was enacted by Acts of 1965, Chapter 775, which excludes "a transfer to a position with substantially identical authority, duties and responsibility" from the application of such educational requirements.

Acts of 1965, Chapter 703, amended General Laws, Chapter 31,

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7 Amending G.L., c. 31, §5.
8 Amending id. §2A(e).
§19.6

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Section 46E, by adding a provision that any person holding a permanent office or position in the classified civil service, or who is permanently employed by any public authority supported in whole or in part by public money, is entitled to a leave of absence without pay for any portion of a term to which he is elected as mayor or of state elective office. It is further provided that such an elected official shall not be discharged, suspended, or otherwise suffer any loss of civil service rights as a result of his election. Excluded are persons holding any position subject to federal merit system standards and for which there is federal reimbursement.

Other legislation within the category of public officers and employees includes Acts of 1965, Chapter 31 (exempting certain officers and employees from civil service); Acts of 1965, Chapter 33 (clarifying time limits in the civil service law); Acts of 1965, Chapter 157 (placing regional school districts and regional vocational school districts under civil service); Acts of 1965, Chapter 237 (eligibility in civil service competitive promotional examinations); Acts of 1965, Chapter 261 (regulating appeals from civil service examinations); Acts of 1965, Chapter 272 (authorizing appeals heard by less than a majority of the Civil Service Commission); Acts of 1965, Chapter 361 (defining the law relative to reassigning certain employees under civil service); Acts of 1965, Chapter 341 (posting civil service seniority lists); Acts of 1965, Chapter 445 (preparation and publication of civil service lists); Acts of 1965, Chapter 510 (extending certain provisional civil service appointments and temporary transfers); and Acts of 1965, Chapter 785 (specifying promotional procedures in the division of state police).

§19.6. Public finance. The power of a finance committee to prevent the transfer of funds previously appropriated by voters at a town meeting is curtailed by Acts of 1965, Chapter 204. Prior to this enactment, transfers of any appropriated monies to other authorized uses required the recommendation of the finance committee. By amendment to General Laws, Chapter 44, Section 33B, voters at a town meeting may so act by majority vote, and the failure of the finance committee either to recommend or to recommend affirmatively will not invalidate the vote.

A major revision of the so-called "municipal finance act" was accomplished by Acts of 1965, Chapter 206, which inserts a new Section 7 in General Laws, Chapter 44. This amendment radically changes the "down payment" requirement for debt incurred inside the statutory debt limit which previously required an appropriation equal to twenty-five cents on each one thousand dollars of assessed valuation for the purposes for which the loan was authorized (or, in the case of Boston, ten cents).

This amendment discards the tax rate appropriation formula in favor of varying percentages of the amount of the authorized loan as specified in the separate clauses of Section 7. No general exception is provided for the city of Boston, although special Boston exceptions are enumerated in clauses (13), (14), and (15). For example, clause (1) requires
that 2 per cent of the amount authorized for sanitary and surface drainage purposes and sewage disposal must be appropriated by taxation or transferral from available funds, or a reserve fund, or a stabilization fund, while clause (2B) requires that 4 per cent of the authorized loan must be appropriated for the construction of a municipal outdoor swimming pool. Therefore, it is now necessary to refer to each separate clause (1) for each authorized purpose, (2) for the maximum number of years within which a loan shall be payable, and (3) for the percentage of the authorized loan which must be appropriated or transferred from funds not raised by borrowing.

Three specific modifications to the medical assistance for the aged program were enacted in the 1965 Survey year. Acts of 1965, Chapter 340, amended General Laws, Chapter 118A, Section 30, by increasing the income exemption for an employed married child living apart from an aged parent from forty-seven hundred and fifty dollars to six thousand dollars. The child is liable to contribute one third of his income in excess of the six thousand exemption to the support of the aged parent receiving assistance under this program. Acts of 1965, Chapter 657, prohibits the granting of medical assistance to an applicant who transferred or assigned personal property within one year prior to the filing of an application for assistance so as to render himself eligible, by amending General Laws, Chapter 118A, Section 18. Chapter 657 also amends Section 24 of Chapter 118A to allow an applicant or recipient to own vacant land from which no income is derived.

Acts of 1965, Chapter 66, increased the maximum municipal appropriation for a local council on the aging from three thousand dollars to seventy-five hundred dollars by amending clause (49) of Section 5 of General Laws, Chapter 40.

The power of a municipality to reject the lowest bidder for award of a school construction contract, where the bidder failed to file a copy of the bid with the comptroller of accounts as required by a city ordinance, was upheld in 

Builders Realty Corp. of Massachusetts v. City of Newton.\(^1\) The Court found that the filing requirement is reasonably intended to furnish a safeguard against collusion, and went on to state:

But, wholly apart from the ordinance, which was not referred to in the invitation for bids nor in the “Information for Bidders,” there is no reason in the law of contracts why the city could not include in its offer to contract a requirement that a copy of a bid be filed with the comptroller of accounts. . . .

There is nothing illegal in the requirement. There is nothing in

G.L. c. 149, §§44A—44L, which requires that the procedures of all the governmental units of the Commonwealth be precisely the same, or which limits to the statutory minimum the amount of reasonable protection which a unit may have.\(^2\)

Other legislation affecting public finance included Acts of 1965,
Chapter 114 (municipal and county borrowing for public works purposes); Acts of 1965, Chapter 115 (municipal appropriation for stocking fish and liberating game); Acts of 1965, Chapter 227 (incurring liabilities by counties prior to appropriation); Acts of 1965, Chapter 98 (temporary loans); Acts of 1965, Chapter 68 (borrowing for water treatment buildings); and Acts of 1965, Chapter 50 (municipal appropriation for laundry services).

§19.7. Elections, ballots, and voting. The usual quota of amendments to the election laws was adopted; most are strictly "perfecting" in nature. Acts of 1965, Chapter 477, compels registrars and registration officers orally ("shall verbally") to inform persons registering as voters that they may enroll in a political party at the same time, and further requires that a printed notice to that effect be "prominently displayed at the registration place." Other legislation includes Acts of 1965, Chapter 242 (counting votes); Acts of 1965, Chapter 283 (assistance to disabled voters); Acts of 1965, Chapter 329 (transmission of absentee ballots); Acts of 1965, Chapter 412 (sealing and certifying ballots and voting lists); Acts of 1965, Chapter 424 (decennial division of cities into wards and precincts); and Acts of 1965, Chapter 592 (applications for absentee voting ballots).

§19.8. Other developments in state and local law. Formation of regional refuse disposal districts is authorized by Acts of 1965, Chapter 748, which inserts new Sections 44A to 44K in General Laws, Chapter 40, replacing earlier provisions permitting the establishment of regional incinerator districts. Essentially similar in procedure to the statute it replaces, the new enactment permits a much broader and more flexible solution to the problem of refuse disposal. As defined, "refuse disposal facility" encompasses "incinerator, sanitary land fill, transfer station, composting plant, other sanitary means of refuse disposal approved by the department of public health, or any combination of two or more of such facilities."

Editor's Note. Those interested in state and municipal government may know that the Legislative Research Bureau and the Massachusetts State Library have prepared an Index of Special Reports Authorized by the General Court, with supplements. The Legislative Research Council has authorized a regular publication of this Index, to cover the period 1900 to 1965, and it should be available to those interested by the time this Survey is published. It will constitute in permanent form an invaluable reference work for those interested in the legislative history of various statutes affecting state and local government.

§19.7. 1 Amending G.L., c. 51, §42.