

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

UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



Thursday, September 20, 2001.

Met at twenty-one minutes before two o'clock P.M.

Orders of the Day.

The Orders of the Day were considered, as follows:

Bills

Relative to the Boston Police Relief Association (Senate, No. 68);

Regulating advertising on dispensing devices (Senate, No. 92);

To clarify employer sanctions for improper expenditure of withholdings or deductions from wages (Senate, No. 109);

Relative to the punishment for the crime of domestic violence (Senate, No. 164);

Relative to assault and battery on a child (Senate, No. 165);

Further prohibiting dissemination of child pornography (Senate, No. 192);

Relative to assault and battery on emergency medical personnel, firefighters and police officers (Senate, No. 193);

Relative to the practice of public accountancy (Senate, No. 402);

Relative to the Board of Registration in Nursing (Senate, No. 483);

Amending duty to report deaths, overdoses, and suspected abuse (Senate, No. 499);

Regulating the use of anabolic steroids (Senate, No. 508);

Further regulating automobile insurance surcharges (Senate, No. 751);

Relative to natural heritage (Senate, No. 1112);

Relative to reports filed by special state police officers (Senate, No. 1272);

To limit indemnity and insurance responsibility for general contractors and subcontractors in construction work to the extent the contractor or subcontractor is negligent and the negligence is the proximate cause of the injury or damages (Senate, No. 1561);

Designating the Woburn Regional Transportation Center as the Anderson Regional Transportation Center (Senate, No. 1919);

To establish Nantucket affordable housing covenants (Senate, No. 2006);
Relative to defining principal's contracts (Senate, No. 2079);
Relative to fraudulent insurance claims (Senate, No. 2096);
Pertaining to the rights of fire fighters and police officers (printed as House, No. 716);
Relative to small group insurance (House, No. 2361);
Relative to the sale of gas heating equipment (House, No. 2575);
Relative to the right of incarcerated felons to vote (House, No. 2883);
Authorizing the town of Hull to lease certain property (House, No. 4224); and
Authorizing the town of North Andover to settle certain law suits (House, No. 4272);
Were severally read a second time and ordered to a third reading.

The Senate bills

Allowing certain military personnel to receive group insurance discounts (Senate, No. 773, changed);
Relative to limitations on total obligations of one borrower to a stock corporation or thrift institution (Senate, No. 1874);
Relative to obscene materials (Senate, No. 2111); and
Authorizing the transfer and change in use of certain conservation land and recreation land in the towns of Stow and Sudbury (Senate, No. 2117) (its title having been changed by the committee on Bills in the Third Reading);
Were severally read a third time and passed to be engrossed.

Sent to the House for concurrence.

The Senate reports

Of the committee on Commerce and Labor, ought NOT to pass, on the petition (accompanied by bill, Senate, No. 125) of Richard R. Tisei and Anthony J. Verga for legislation to establish job security and leaves of absence for individuals seeking election to public office;

Of the committee on Health Care, ought NOT to pass, on the petitions (accompanied by bills, Senate, Nos. 570 and 598) [relative to nuclear pharmacies];

Of the committee on Insurance, ought NOT to pass, on the petition (accompanied by bill, Senate, No. 745) of Guy W. Glodis, Bruce E. Tarr and Emile J. Goguen for legislation to require health maintenance organizations to provide a written explanation to policyholders stating the reason a claim has been rejected;

Of the same committee, ought NOT to pass, on the petition (accompanied by bill, Senate, No. 785) of Robert E. Travaglini, Nancy Flavin, Bradford Hill and other members of the General Court for legislation to provide that certain health care plans and policies shall cover payment for costs arising from speech, hearing and language disorders;

Of the committee on Natural Resources and Agriculture, ought NOT to pass, on the petition (accompanied by bill, Senate, No. 1094) of Michael W. Morrissey for legislation relative to the authority of the Massachusetts Water Resources Authority Advisory Board;

Of the same committee, ought NOT to pass, on the petition (accompanied by bill, Senate, No. 1116) of Stanley C. Rosenberg for legislation to authorize Joseph W. Dayall to take the examination for hazardous waste site cleanup professional notwithstanding certain provisions of law;

Of the same committee, ought NOT to pass, on the petition (accompanied by bill, Senate, No. 1128) of Charles E. Shannon and Michael W. Morrissey for legislation relative to the Massachusetts Water Resources Authority;

Of the committee on Public Service, ought NOT to pass, on the petition (accompanied by bill, Senate, No. 1439) of Michael W. Morrissey for legislation relative to the public employee deferred compensation program;

Of the same committee, ought NOT to pass, on the petition (accompanied by bill, Senate, No. 1440) of Michael W. Morrissey for legislation to authorize and direct the State Auditor to conduct an audit of the Massachusetts deferred compensation program;

Of the committee on Taxation, ought NOT to pass, on the petition (accompanied by bill, Senate, No. 1624) of Frederick E. Berry for legislation to increase the level of private investment in housing by establishing a low-income housing tax credit;

Of the same committee, ought NOT to pass, on the petition (accompanied by bill, Senate, No. 1651) of Robert A. Havern for legislation to exempt photocopies provided by libraries from sales tax;

Of the same committee, ought NOT to pass, on the petition (accompanied by bill, Senate, No. 1653) of Ralph LeBlanc for legislation to provide a tax exemption to any person who has reached one hundred years of age;

Of the same committee, ought NOT to pass, on the petition (accompanied by bill, Senate, No. 1658) of James P. Jajuga, Arthur J. Broadhurst, Brian S. Dempsey and Emile J. Goguen for legislation relative to the tax on retail sales within ten miles of the New Hampshire border; and

Of the same committee, ought NOT to pass, on the petition (accompanied by bill, Senate, No. 1746) of Walter J. Ziobro, Jr. for legislation to repeal the tax on the storage, use or other consumption of certain tangible personal property;

Were severally considered; and they were accepted.

The House reports

Of the committee on Criminal Justice, ought NOT to pass, on so much of the recommendations of the Executive Office of Public Safety (House, No. 136) as relates to the possession, transport, use or placement of a hoax device (accompanied by bill, House, No. 156);

Of the committee on Insurance, ought NOT to pass, on so much of the recommendations of the Office of Consumer Affairs and Business Regulation (House, No. 8) as relates to the practice of dentistry and dental hygiene (accompanied by bill, House, No. 40);

Of the committee on Public Safety, ought NOT to pass, on the message from His Excellency the Governor (accompanied by bill, House, No. 4063) recommending legislation relative to establishing certain attendance requirements for minors to obtain a driver's license; and

Of the committee on Taxation, ought NOT to pass, on so much of the recommendations of the Department of Revenue (House, No. 189) as relates to clarifying the confidentiality of tax returns (accompanied by bill, House, No. 191);

Were severally considered; and they were accepted, in concurrence.

Bills

Relative to the Massachusetts Business Development Corporation (Senate, No. 80);

Relative to reporting violations of the prevailing wage law to the division of apprentice training (Senate, No. 84);

Relative to condominium septic systems (Senate, No. 1099);

Relative to speed limits in cities and towns (Senate, No. 1206);

Relative to the Uniform Procurement Act (Senate, No. 1541); and

Relative to certain fines governing truck traffic (Senate, No. 1767);

Were severally read a second time and ordered to a third reading.

Bills

Relative to apprentice training under the Department of Labor and Workforce Development (Senate, No. 43);

Relative to certain farming operations (Senate, No. 472); and

Authorizing municipalities to petition for public involvement plans in cases of hazardous material sites (Senate, No. 1067);

Were severally read a second time and, after remarks, were ordered to a third reading.

The Senate Bill relative to protecting the rights of custodial, maintenance and other non-teaching employees of school districts (Senate, No. 1499, changed),— was read a second time.

Pending the main question on ordering it to a third reading, on motion of Mr. Montigny, the bill was recommitted to the Senate committee on Ways and Means.

Ms. Melconian in the Chair, bills

Regulating the minimum size of American lobsters in Massachusetts (Senate, No. 1847); and

Establishing a building reserve fund in the city of Revere (Senate, No. 2068);

Were severally read a second time and, after remarks, were ordered to a third reading.

The Senate Bill relative to repeat offenders of the crime of operating a motor vehicle under the influence of alcohol (Senate, No. 2116),— was read a third time.

After remarks, the question on passing it to be engrossed, was determined by a call of the yeas and nays at twenty-one minutes past two o'clock P.M., on motion of Ms. Creem, as follows, to wit (yeas 37 — nays 0):

YEAS.

Antonioni, Robert A. Moore, Richard T.

Berry, Frederick E. Morrissey, Michael W.

Brewer, Stephen M. Murray, Therese

Chandler, Harriette L. Nuciforo, Andrea F., Jr.

Clancy, Edward J., Jr. O'Leary, Robert A.

Creedon, Robert S., Jr. Pacheco, Marc R.

Creem, Cynthia Stone Panagiotakos, Steven C.

Fargo, Susan C. Resor, Pamela

Glodis, Guy W. Rosenberg, Stanley C.

Hedlund, Robert L. Shannon, Charles E.

Jacques, Cheryl A. Sprague, Jo Ann

Joyce, Brian A. Tarr, Bruce E.

Knapik, Michael R. Tisei, Richard R.

Lees, Brian P. Tolman, Steven A.

Lynch, Stephen F. Travaglini, Robert E.

Magnani, David P. Tucker, Susan C.

Melconian, Linda J. Walsh, Marian

Menard, Joan M. Wilkerson, Dianne — 37.

Montigny, Mark C.

NAYS — 0.

ABSENT OR NOT VOTING.

Havern, Robert A. — 1.

The yeas and nays having been completed at twenty-four minutes past two o'clock P.M., the bill was passed to be engrossed.

Sent to the House for concurrence.

The Senate Bill authorizing the Department of Environmental Protection to grant a Chapter 91 license to the Boston Tea Party Ship, Inc. (Senate, No. 1830, changed),— **was read a third time and, after debate, was passed to be engrossed.**

Sent to the House for concurrence.

The Senate Bill relative to the Massachusetts Technology Development Corporation (Senate, No. 2118),— was read a third time.

Pending the question on passing the bill to be engrossed, Mr. Magnani moved that the bill be amended by striking out sections 15 and 16 (as printed) and inserting in place thereof the following section:—

“SECTION 16. Section 10 of said chapter 40G, as so appearing, is hereby amended by striking out, in lines 13 to 17, inclusive, the words ‘expiration of three years from the date of purchase of such qualified security, or, in the case of such information made or received by any member or employee of the corporation after the purchase of such qualified security, three years from the date such information was made or received’ and inserting in place thereof the following words:— sale of the corporation’s qualified security.”.

This amendment was adopted.

The bill (Senate, No. 2118, amended) was then passed to be engrossed.

Sent to the House for concurrence.

The Senate report of the committee on Commerce and Labor, ought NOT to pass, on the petition (accompanied by bill, Senate, No. 71) of Stephen F. Lynch for legislation to create a high skill training program designed to combat “spot” labor skill shortages in the Commonwealth,— was considered, the question being on accepting it.

On motion of Mr. Lynch, the report was amended by substituting a “Bill relative to the creation of a high skill training program to combat spot labor shortage problems in the Massachusetts economy” (Senate, No. 71); and the bill was read and, under Senate Rule 27, referred to the committee on Ways and Means.

The Senate report of the committee on Taxation, ought NOT to pass, on the petition (accompanied by bill, Senate, No. 1673) of Brian P. Lees, Bruce E. Tarr, Richard R. Tisei and other members of the General Court for legislation to make the investment tax credit permanent,— was considered; the question being on accepting the adverse report.

Mr. Lees moved that the report of the committee be amended by substituting a “Bill relative to making the investment tax credit permanent” (Senate, No. 1673); and, after debate, the motion was *rejected*.

Pending the main question on accepting the report of the committee, on further motion of Mr. Lees, the further consideration thereof was postponed until the next session.

The Senate report of the committee on Taxation, ought NOT to pass, on the petition (accompanied by bill, Senate, No. 1734) of Citizens for Limited Taxation, by Francis J. Faulkner, associate director, Jo Ann Sprague, Bruce E. Tarr and Robert L. Hedlund for legislation to establish a separate fund known as the voluntary optional tax endowment fund,— was considered; the question being on accepting the adverse report.

Mr. Hedlund moved that the report of the committee be amended by substituting a “Bill relative to the voluntary optional tax endowment (VOTE)” (Senate, No. 1734).

After debate, the question on adoption of the amendment was determined by a call of the yeas and nays, at twenty-one minutes before three o'clock P.M., on motion of Mr. Hedlund, as follows, to wit (yeas 3 — nays 39):

YEAS.

Hedlund, Robert L. Tarr, Bruce E. — 3.

Sprague, Jo Ann

NAYS.

Antonioni, Robert A. Montigny, Mark C.

Berry, Frederick E. Moore, Richard T.

Brewer, Stephen M. Morrissey, Michael W.

Chandler, Harriette L. Murray, Therese

Clancy, Edward J., Jr. Nuciforo, Andrea F., Jr.

Creedon, Robert S., Jr. O'Leary, Robert A.

Creem, Cynthia Stone Pacheco, Marc R.

Fargo, Susan C. Panagiotakos, Steven C.

Glodis, Guy W. Resor, Pamela

Jacques, Cheryl A. Rosenberg, Stanley C.

Joyce, Brian A. Shannon, Charles E.

Knapik, Michael R. Tisei, Richard R.

Lees, Brian P. Tolman, Steven A.

Lynch, Stephen F. Travaglini, Robert E.

Magnani, David P. Tucker, Susan C.

Melconian, Linda J. Walsh, Marian

Menard, Joan M. Wilkerson, Dianne — 34.

ABSENT OR NOT VOTING.

Havern, Robert A. — 1.

The yeas and nays having been completed at seventeen minutes before three o'clock P.M., the amendment was *rejected*. The main question on accepting the report of the committee was then considered; and it was accepted.

The Senate Bill providing for the annual inspection of schools, churches, hospitals, theatres, arenas and other public buildings by gas corporations in the Commonwealth (Senate, No. 419),— was considered; the main question being on ordering it to a third reading. **The pending motion, previously moved by Mr. Lees, to lay the bill on the table, was considered; and it was *negatived*.**

On motion of Mr. Lees, the further consideration thereof was postponed until the next session.

The Senate report of the committee on Election Laws, ought NOT to pass, on the petition (accompanied by bill, Senate, No. 347) of Brian P. Lees, Bruce E. Tarr, Richard R. Tisei and other members of the General Court for legislation relative to voting list access and distribution,— was considered; the main question being on accepting the adverse report.

On motion of Mr. Lees, the petition was recommitted to the Joint Committee on Election Laws.

Mr. Rosenberg in the Chair, the House Bill relative to the production and preservation of affordable housing in the Commonwealth (House, No. 4284, printed as amended),— was read a third time.

Pending the main question on passing the bill to be engrossed, in concurrence, Ms. Murray and Messrs. Tarr and Pacheco moved to amend the bill in section 10, by inserting after the word “stock”, in line 21, the following words:— “, which low or moderate income housing shall also include manufactured housing units located in a manufactured housing community. For purposes of this section ‘manufactured housing community’ shall mean a lot or tract of land defined under section 32F of chapter 140, with manufactured housing units, and whose park owners have complied with statutory and regulatory requirements regarding rules, regulations and operations; and ‘manufactured housing unit’ shall mean a manufactured home as defined in section 32Q of said chapter 140, which is located in a manufactured housing community, which is occupied on more than a seasonal basis and that is assessed at or below a price deemed affordable to a person at or below a price of the area median income as determined by the most recent census.”

Pending the question on adoption of the amendment, Ms. Melconian, Ms. Murray and Mr. Pacheco moved to amend the pending amendment (Murray, et al) by substituting the following amendment:—

In section 10, by adding the following paragraph:—

“Low and moderate income housing shall include any unit of manufactured housing, as defined by section 32Q of chapter 140, located in a manufactured housing community, defined under and operated in compliance with section 32F of said chapter 140, that are inspected annually and found to comply with the state sanitary code and occupied as a permanent residence by a person whose income does not exceed 80 per cent of the area median income, as defined by the federal Department of Housing and Urban Development and who does not pay more than 40 per cent of his annual income for housing expenses. Each city or town shall certify annually to the department of housing and community development the number of manufactured housing units within its borders that meet these criteria in order for these units to be counted toward the city or town’s low and moderate income housing stock, but the units of manufactured housing shall not be used to count for more than 5 per cent of a city or town’s low or moderate income housing stock.”; and by inserting after section 27 the following section:—

“SECTION 27A. Section 32C of chapter 140 of the General Laws, as so appearing, is hereby amended by striking out, in line 1, the words ‘from time to time’ and inserting the following word:— annually.”

After remarks, the further amendment (Melconian, et al), was considered; and it was adopted.

The pending amendment (Murray, et al), as amended (Melconian, et al), was then considered; and it as adopted.

Mr. Moore moved to amend the bill by inserting after section 10 the following sections:—

“SECTION 10A. The definition of ‘Uneconomic’ in said section 20 of said chapter 40B, as so appearing, is hereby amended by adding the following paragraph:—

Notwithstanding the foregoing, no condition or regulation imposed by a board of zoning appeals shall be deemed to render a low or moderate income housing project uneconomic if such condition or regulation: (1) imposes reasonable limitations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage; or (2) operates to prevent the development of a parcel that is physically or environmentally unsuitable for development.

SECTION 10B. The definition of ‘Consistent with local needs’ of said section 20 of said chapter 40B, as so appearing, is hereby amended by inserting after the word ‘needs’, in line 43, the following words:— (3) the imposition of such rules or regulations, as may be varied in whole or in part, reasonably balances the regional need for low or moderate income housing with a municipality’s reasonable limitations concerning the bulk and height of structures and determining yard sizes, lot areas, setbacks, open space, parking and building coverage; or (4) operate to prevent the development of a parcel that is physically or environmentally unsuitable for development.”

After debate, the amendment was *rejected*.

Ms. Resor moved to amend the bill in section 10, in the third paragraph, by inserting after the word “stock”, in line 21, the following words:— “; which low or moderate income housing shall also include manufactured housing units located in a manufactured housing community. For purposes of this action ‘manufactured housing community’ shall mean a lot or tract of land defined under section 32F of chapter 140, with manufactured housing units, and whose park owners have complied with statutory and regulatory requirements regarding rules, regulations and operations; and ‘Manufactured housing unit, shall mean a manufactured home as defined in section 32Q of said chapter 140, which is located in a manufactured housing community, which is occupied on more than a seasonal basis and that is assessed at or below a price deemed affordable to a person at or below a price of the area median income as determined by the most recent census.”

The amendment was *rejected*.

Ms. Menard moved to amend the bill in section 38, by inserting after the word “Corporations”, in line 24, the following words:—
“the Massachusetts Non-Profit Housing Association”.

After remarks, the amendment was adopted.

Messrs. Moore, Glodis and Tisei moved to amend the bill by striking out section 34 and inserting the following:—

“SECTION 34. Section 8A of said chapter 39, as so appearing, is hereby amended by striking out the second, third and four paragraphs and inserting in place thereof the following 6 paragraphs:—

At any time when a person is entitled to serve a notice to quit upon a tenant or occupant or is otherwise entitled to commence a summary process action pursuant to this chapter, such person may demand, in the notice to quit or by later demand, that the tenant or occupant pay into court all unpaid rent or use and occupancy that is accruing or has accrued since the first day of the sixth full calendar month prior to the date of service of the notice or later demand. Such amount shall be paid within 5 business days following the date of service of the notice or later demand, whichever is later; provided, however, that in the event that the tenant’s or occupant’s rent is subsidized by any governmental agency or governmentally subsidized agency, the amount to be paid shall be limited to only that portion of the rent paid by the tenant or occupant. Any notice to quit or later demand submitted in accordance with this paragraph shall include a statement indicating into which court the deposit shall be made. Such court may be any court which would have jurisdiction over a summary process action against the tenant or occupant. The person making such demand shall file with such court a copy of the notice to quit or later demand, together with a statement under oath by the person who served such notice to quit or later demand indicating how such service was made. Service of such notice to quit or later demand shall be by any means permitted for service of a summary process complaint. Such court shall have jurisdiction over all issues arising out of the demand for such deposit, which shall be considered a separate action from any summary process action against such tenant or occupant and shall be commenced by the filing of the copy of the notice to quit. The person making such demand shall be the plaintiff. The tenant or occupant receiving such demand shall be the defendant. Any notice to quit or later demand submitted in accordance with this paragraph shall contain a statement of the agreed-upon rent rate heretofore payable, the subsidized tenant’s or occupant’s portion of the agreed-upon rent rate, if applicable, and the amount of any and all unpaid rent as defined and limited by this paragraph.

The defendant shall pay into court within 5 business days of service of the notice or later demand the amounts so demanded under the previous paragraph and shall continue to pay into court within 3 business days after its due date the agreed-upon rent rate or the unsubsidized portion thereof that accrues during the pendency of the action demanding deposit in accordance with the preceding paragraph or during the pendency of a companion summary process action; provided, however, that the tenant or occupant may deduct any amounts, documented with copies of receipts, that were reasonably spent by the tenant or occupant pursuant to section 127L of chapter 111. Such copies of receipts shall be deposited in the same manner with the court in lieu of payment. The defendant shall provide the court with the name of the plaintiff in the action demanding deposit or in the companion summary process action. The defendant shall notify the plaintiff in writing of the amounts so deposited and shall provide therewith copies, if any, of all receipts deposited with the court according to this section.

If the plaintiff or the defendant believes the amounts demanded or deposited are in error and not according to the requirements of the previous 2 paragraphs, either the plaintiff or the defendant may request a hearing. The defendant shall request such hearing not later than the date on which the demanded deposit is due in court. The plaintiff shall request such hearing within 3 business days after receipt of the notice from the defendant of the amount deposited. The hearing shall be requested in writing to the clerk of the court and may be mailed. The hearing shall be scheduled by the court for a date not later than 10 calendar days after the court’s receipt of the hearing request. At the hearing, the court shall consider only arguments pertaining to the agreed-upon rent rate, a subsidized tenant’s or occupant’s portion of the agreed-upon rent rate, the amounts not paid since the first day of the sixth full calendar month prior to the date of service of the notice or later demand and any documented deductions pursuant to said section 127L of said chapter 111, as required by the previous 2 paragraphs. After hearing arguments only relative to the amounts required by the previous 2 paragraphs, the court shall determine the escrow amount and order its payment or refund by the close of the next business day after the hearing. The court shall order the determined amount to be paid into court or any excess previously deposited to be refunded by the court not later than the close of 5 business days after the hearing. In the event that a hearing on the amount demanded or deposited has been requested, the eviction trial date and any companion summary process action shall be scheduled not later than the next regular trial date that occurs after 5 business days following the hearing.

If the defendant fails to comply with any portion of this section, any claims, counterclaims or defenses asserted under this section shall be dismissed and shall not be considered in the hearing on the plaintiff’s companion summary process action, which shall commence on the original trial date or as provided in the previous paragraph. Nothing in this section shall prevent the tenant or occupant from maintaining a separate action for damages regarding the habitability or condition of the premises.

Amounts deposited with the court under this section shall be paid over by the clerk of the court in accordance with a written out-of-court agreement between the plaintiff and the defendant provided that their signatures are duly notarized, or if the parties cannot agree, then the amounts deposited shall be paid to the plaintiff or the defendant as the court directs upon final disposition of the action. Before final disposition of the action, if the court so orders, any amounts so deposited shall be paid to the plaintiff to make repairs to the premises that are required by law or to mitigate financial hardship to the plaintiff. If, within 1 year of the

commencement of an action demanding deposit in accordance with this section, no summary process action is initiated against the tenant or occupant arising out of the notice to quit, or at any time when the tenant fails to make ongoing monthly deposits in accordance with this section, the court may, upon motion of either party, order any such deposit to be distributed in such manner as it would have been distributed in a summary process action concerning rent due for such land or tenements.

Whenever any counterclaim or claim of defense under this section is based on any allegation concerning conditions affecting the premises or services or equipment provided therein, the tenant or occupant shall not be entitled to assert such counterclaim or claim of defense unless:

(1) (a) the board of health or other local enforcement agency has certified that such conditions constitute a serious violation of the standards of fitness for human habitation as established in the state sanitary code, the state building code or any other law, ordinance, by-law, rule or regulation establishing such conditions; (b) the plaintiff received such certification prior to the date that the tenant or occupant received the notice to quit or the notice terminating the tenancy;

(2) the plaintiff does not show that such conditions were caused by the tenant or occupant or any other person acting under the tenant's or occupant's control, except that the defendant shall have the burden of proving that any violation appearing solely within that portion of the premises under his control and not by its nature reasonably attributable to any action or failure to act of the plaintiff was not so caused;

(3) the premises are not situated in a hotel or motel, or in a lodging house or rooming house wherein the occupant has maintained such occupancy for less than 3 consecutive months;

(4) the plaintiff does not show that the conditions complained of cannot be remedied without the premises being vacated; provided, however, that nothing in this clause shall be construed to deprive the tenant or occupant of relief under this section when the premises are temporarily vacated for purposes of removing or covering paint, plaster, soil or other accessible materials containing dangerous levels of lead pursuant to said chapter 111; and

(5) the tenant or occupant has complied with all provisions of this section regarding deposit of past and accruing rent as defined herein."

After debate, the question on adoption of the amendment was determined by a call of the yeas and nays, at seven minutes past four o'clock P.M., on motion of Mr. Moore, as follows, to wit (yeas 17 — nays 21):

YEAS.

Antonioni, Robert A. Morrissey, Michael W.

Brewer, Stephen M. Nuciforo, Andrea F., Jr.

Clancy, Edward J., Jr. O'Leary, Robert A.

Creedon, Robert S., Jr. Rosenberg, Stanley C.

Glodis, Guy W. Shannon, Charles E.

Hedlund, Robert L. Sprague, Jo Ann

Knapik, Michael R. Tarr, Bruce E.

Lees, Brian P. Tisei, Richard R. — 17.

Moore, Richard T.

NAYS.

Berry, Frederick E. Montigny, Mark C.

Chandler, Harriette L. Murray, Therese

Creem, Cynthia Stone Pacheco, Marc R.

Fargo, Susan C. Panagiotakos, Steven C.
Havern, Robert A. Resor, Pamela
Jacques, Cheryl A. Tolman, Steven A.
Joyce, Brian A. Travaglini, Robert E.
Lynch, Stephen F. Tucker, Susan C.
Magnani, David P. Walsh, Marian
Melconian, Linda J. Wilkerson, Dianne — 21.
Menard, Joan M.

The President in the Chair, the yeas and nays having been completed at eleven minutes past four o'clock P.M., the amendment was *rejected*.

Mr. Creedon moved to amend the bill by striking out section 32.
After remarks, the question on adoption of the amendment was determined by a call of the yeas and nays, at sixteen minutes past four o'clock P.M., on motion of Mr. Creedon, as follows, to wit (yeas 9 — nays 28):

YEAS.

Clancy, Edward J., Jr. Lees, Brian P.
Creedon, Robert S., Jr. Moore, Richard T.
Creem, Cynthia Stone Morrissey, Michael W.
Fargo, Susan C. Tisei, Richard R. — 9.
Knapik, Michael R.

NAYS.

Antonioni, Robert A. Murray, Therese
Berry, Frederick E. Nuciforo, Andrea F., Jr.
Brewer, Stephen M. O'Leary, Robert A.
Chandler, Harriette L. Pacheco, Marc R.
Glodis, Guy W. Panagiotakos, Steven C.
Havern, Robert A. Resor, Pamela
Hedlund, Robert L. Rosenberg, Stanley C.
Jacques, Cheryl A. Shannon, Charles E.
Joyce, Brian A. Sprague, Jo Ann
Lynch, Stephen F. Tarr, Bruce E.
Magnani, David P. Tolman, Steven A.
Melconian, Linda J. Travaglini, Robert E.

Menard, Joan M. Tucker, Susan C.

Montigny, Mark C. Walsh, Marian — 28.

ABSENT OR NOT VOTING.

Wilkerson, Dianne — 1.

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

Mr. Creedon moved to amend the bill by striking out section 7.

After debate, the amendment was *rejected*.

Messrs. Moore, Tisei and Tarr moved to amend the bill in section 10 by inserting after the word “retarded”, in line 7, the following words:— “or any housing units subsidized by the federal or state government under a rental agreement subject to the provisions of the section 8 voucher subsidy programs, so-called.”

Pending the question on adoption of the amendment, Messrs. Montigny, Panagiotakos, O’Leary and Moore moved to amend the pending amendment (Moore) by substituting the following amendment:—

In section 12 by inserting after the word “year”, in line 19, the following words:— “, or (5) the city or town has created a plan pursuant to section 21A, has had the plan approved by the department of housing and community development and is in compliance with the plan pursuant to section 21A”.; and by inserting after section 14 the following section:—

“SECTION 14A. Said chapter 40B is hereby further amended by inserting after section 21, the following section:—

Section 21A. A city or town whose low or moderate income housing is less than 10 per cent of the city or town’s housing units, as reported in the latest available federal decennial census, may develop and implement a plan to be approved by the department of housing and community development to increase its low and moderate income housing stock by at least 1 per cent annually. The plan shall include, but not be limited to, a mix of housing, such as rental and homeownership opportunities for families, individuals and the elderly that are consistent with regional needs and feasible within the housing market in which they will be situated; identification of specific sites appropriately zoned and available for low and moderate income housing development or identification of specific sites that the community is willing to rezone for the purposes of low and moderate income housing developments or identification of specific sites for which the community will encourage the filing of comprehensive permit applications pursuant to section 221; and a description of the use restrictions to ensure that each development shall be affordable to and occupied by low or moderate income families and individuals. Said department shall certify annually whether a community is in compliance with the plan.”

After remarks, the further amendment (Montigny, et al), was considered; and it was adopted.

The pending amendment (Moore, et al), as amended (Montigny, et al), was then considered; and it was adopted.

Mr. Tisei moved to amend the bill by inserting after section 10 the following section:—

“SECTION 10A. Said section 20 of said chapter 40B, as so appearing, is hereby further amended by inserting after the word ‘organization’, in line 9, the following words:— or any housing units subsidized by the federal or state government under a rental agreement subject to the provisions of the section 8 voucher subsidy programs, so called.”

After debate, the question on adoption of the amendment was determined by a call of the yeas and nays, at fourteen minutes before five o'clock P.M., on motion of Mr. Tisei, as follows, to wit (yeas 8 — nays 30):

YEAS.

Brewer, Stephen M. Pacheco, Marc R.

Creedon, Robert S., Jr. Sprague, Jo Ann

Hedlund, Robert L. Tarr, Bruce E.

Moore, Richard T. Tisei, Richard R. — 8.

NAYS.

Antonioni, Robert A. Menard, Joan M.
Berry, Frederick E. Montigny, Mark C.
Chandler, Harriette L. Morrissey, Michael W.
Clancy, Edward J., Jr. Murray, Therese
Creem, Cynthia Stone Nuciforo, Andrea F., Jr.
Fargo, Susan C. O’Leary, Robert A.
Glodis, Guy W. Panagiotakos, Steven C.
Havern, Robert A. Resor, Pamela
Jacques, Cheryl A. Rosenberg, Stanley C.
Joyce, Brian A. Shannon, Charles E.
Knapik, Michael R. Tolman, Steven A.
Lees, Brian P. Travaglini, Robert E.
Lynch, Stephen F. Tucker, Susan C.
Magnani, David P. Walsh, Marian
Melconian, Linda J. Wilkerson, Dianne — 30.

The yeas and nays having been completed at eleven minutes before five o’clock P.M., the amendment was *rejected*.

Mr. Tisei moved to amend the bill by striking out section 17.
After debate, the amendment was *rejected*.

Mr. Tisei moved to amend the bill by inserting after section 27 the following 2 sections:—

“SECTION 27A. Section 6 of chapter 62 of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by striking out, in line 66, the words ‘one thousand five hundred’ and inserting in place thereof the following:— 2,500.

SECTION 27B. Said section 6 of said chapter 62, as so appearing, is hereby further amended by striking out, in line 76, the words ‘five hundred’ and inserting in place thereof the following:— 1,500.”

Mr. Travaglini in the Chair, after debate, the question on adoption of the amendment was determined by a call of the yeas and nays, at twenty-seven minutes past five o’clock P.M., on motion of Mr. Tisei, as follows, to wit (yeas 13 — nays 25):

YEAS.

Glodis, Guy W. Joyce, Brian A.
Hedlund, Robert L. Knapik, Michael R.
Lees, Brian P. Tisei, Richard R.
Lynch, Stephen F. Tolman, Steven A.
Moore, Richard T. Tucker, Susan C.
Sprague, Jo Ann Walsh, Marian — 13.

Tarr, Bruce E.

NAYS.

Antonioni, Robert A. Montigny, Mark C.

Berry, Frederick E. Morrissey, Michael W.

Brewer, Stephen M. Murray, Therese

Chandler, Harriette L. Nuciforo, Andrea F., Jr.

Clancy, Edward J., Jr. O'Leary, Robert A.

Creedon, Robert S., Jr. Pacheco, Marc R.

Creem, Cynthia Stone Panagiotakos, Steven C.

Fargo, Susan C. Resor, Pamela

Havern, Robert A. Rosenberg, Stanley C.

Jacques, Cheryl A. Shannon, Charles E.

Magnani, David P. Travaglini, Robert E.

Melconian, Linda J. Wilkerson, Dianne — 25.

Menard, Joan M.

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

Mr. Tisei moved to amend the bill by striking out section 34.

The amendment was *rejected*.

Ms. Murray and Mr. Travaglini moved to amend the bill by adding the following section:—

“SECTION 39. There is hereby established a special commission to study the future of the state developmental centers for individuals with mental retardation. The commission shall consist of the governor or her designee; the secretary of health and human services or his designee; the commissioner of mental retardation or his designee; the commissioner of capital asset management and maintenance or his designee; 4 members of the house of representatives; 4 members of the senate; 1 representative from Arc Massachusetts to be appointed by Arc Massachusetts; and 1 representative from the Massachusetts Coalition of Families and Advocates for the Retarded to be appointed by the Massachusetts Coalition of Families and Advocates for the Retarded.

The study shall address, but shall not be limited to, the following topics: (i) determining projected future need for fixed bed capacity at the developmental centers; (ii) the projected number of campuses needed to maintain that capacity; (iii) re-opening of admissions; (iv) identifying to whom those admissions would be made available; and (v) the operating costs of facility-based care, including projected staffing and capital needs.

The commission shall submit a report of their findings to the house and senate committees on ways and means, the joint committee on human services and elderly affairs and the house and senate clerks not later than July 1, 2002.”

After remarks, the amendment was adopted.

Messrs. Tolman and Lynch moved to amend the bill by adding the following section:—

“SECTION 40. (a) The department of housing and community development, in consultation with the department of revenue, shall establish a pilot mixed-use building rehabilitation abatement program for the purpose of stimulating the development of affordable housing in mixed-use structures. The department of housing and community development may approve applications from cities and towns for the creation of not more than 300 units of housing in each of the 3 fiscal years beginning July 1, 2002.

(b) No application shall be accepted unless it is accompanied by a signed agreement, approved by the department, between the owner and the municipality and binding on subsequent owners of the property, stating that 50 per cent of the housing units assisted by the abatement program shall be affordable to occupants whose income is less than 80 per cent of the median income for the area in which the city or town is located as defined by the United States Department of Housing and Urban Development. A unit that meets the affordability requirements of the previous sentence shall continue to meet those requirements for 20 years or for the useful life of the property, whichever is longer. If the owner of property benefited by the pilot program fails to certify to the city or town and to the department of housing and community development compliance with these affordability restrictions, the city or town may place a lien on the property in the amount of the real estate abatements granted pursuant to the pilot program.

(c) Abatements granted shall be for the commercial portion of the property and shall not exceed 7 years duration. The amount of abatement granted shall be equivalent to the difference between the commercial and residential rate established by the city or town, unless the department of housing and community development finds that an additional amount is necessary to make the rehabilitation project economically feasible. In no case shall the amount of the abatement exceed 50 per cent of the established residential tax rate for the property.

(d) The department of housing and community development shall promulgate rules and regulations to implement the pilot mixed-use building rehabilitation abatement program.”
After remarks, the amendment was adopted.

Mr. Berry moved to amend the bill by striking out section 12 and inserting in place thereof the following section:—

“SECTION 12. Said section 20 of said chapter 40B, as so appearing, is hereby further amended by inserting after the word “needs”, in line 43, the following words:— (3) within the year prior to the date of application for a comprehensive permit, housing units in a number equal to or more than 2 per cent of the total housing units in the municipality have been created through the comprehensive permit process which are low and moderate income housing, or (4) for the 6-month period after filing in a city or town that, as numerated in the latest available United States Census, either: has a total 7500 or more units of housing and the pending application involves construction of 300 or more housing units in any 1 year or an amount equal to 2% of all housing units in the municipality, whichever is greater; or has between 5000 and 7500 total units of housing and the pending application involves the construction of 250 or more housing units in any 1 year; or has between 2500 and 5000 total units of housing in the pending application involves the construction of 200 or more housing units in any year; or has 2500 or fewer total units of housing in the pending application involves the construction of 150 or more units in any 1 year or, in any city or town.”
After remarks, the amendment was adopted.

Ms. Wilkerson, Mr. Tolman, Ms. Creem, Ms. Melconian, Messrs. Moore and O’Leary and Ms. Chandler moved to amend the bill in section 34, by inserting, after the word “requesting”, the following sentence:— “The rent or use and occupancy shall be the previously agreed upon rent rate theretofore payable by the tenant or occupant, but in the event that the tenant’s or occupant’s rent is subsidized by any governmental agency or governmentally subsidized program, the tenant’s or occupant’s rent escrowing requirement shall be limited to that portion of the rent paid by the tenant or occupant.”
After remarks, the amendment was adopted.

Ms. Wilkerson and Mr. Montigny moved to amend the bill in section 2 by adding the following sentence:— “All materials shall be distributed in english and other languages commonly spoken by low-income tenants in the commonwealth.”; and in section 5, by inserting after the word “materials”, in line 17, the following words:— “in english and other languages commonly spoken by low-income tenants in the commonwealth”.
After remarks, the amendment was adopted.

Ms. Wilkerson, Messrs. Moore, Lynch and Creedon, Ms. Menard, Messrs. Glodis and Joyce and Ms. Chandler moved to amend the bill by inserting after section 27 the following section:—

“SECTION 27B. Chapter 121B of the General Laws is hereby amended by adding the following section:—

Section 60. A developer of a project containing in total 50 or more housing units and a contractor or subcontractor working on such a developer’s behalf shall: (a) participate in a bona fide apprentice training program that is approved by the division of apprentice training, and (b) properly classify and treat their employees as employees for tax, insurance and wage and hour purposes, as required by law. A state or municipal officer or agency that has issued a permit for such a project shall revoke that permit if, after a hearing, the officer or agency finds a substantial violation of this section.”

Pending the question of adoption of the amendment, at one minute before six o’clock P.M., at the request of Mr. Lees, for the purpose of a minority party caucus, the Chair (Mr. Travaglini) declared a recess; and, at twenty-two minutes past six o’clock P.M., the Senate reassembled, the President in the Chair.
The amendment was further considered; and it was adopted.

Mr. Magnani moved to amend the bill by adding the following section:—

“SECTION . There is hereby established a special commission to consist of 5 members of the house of representatives, one of whom shall be a member of the minority party and one of whom shall be designated the co-chair, 5 members of the senate, one of whom shall be a member of the minority party, and one of whom shall be designated co-chair, the director of the department of housing and community development or her designee, the Executive Director of the Massachusetts Housing Partnership or his designee, one official appointed by the Massachusetts Municipal Association, and three housing advocates to be appointed by the Governor, is hereby established to make a comprehensive study of chapter 40B in the commonwealth, including, but not limited to, a recommendation relative to the effectiveness of creating viable incentives, if any, for those communities not meeting the current affordable housing requirements under said chapter and its relevant regulations as promulgated by the department.

The Commission shall file its report, along with any recommendations, with the clerk of the house of representatives and the clerk of the senate no later than July 1, 2002. Said commission shall also file a copy of its report with the joint committee on housing and urban development and the house and senate committees on ways and means no later than July 1, 2002.”

The amendment was *rejected*.

Mr. Magnani moved to amend the bill (House, No. 4284) by inserting after section 20 the following section:—

“SECTION 20A. Said section 5 of said chapter 59, as so appearing, is hereby further amended by adding the following clause:—

Fifty-fifth, the increased value of residential real property as a result of alterations or improvements thereto, not to exceed a percentage of the taxes due as shall be determined by the city or town, resulting from alterations or improvements that are made to create an accessory apartment which qualifies as low or moderate income housing pursuant to section 20 of chapter 40B. Any exemption granted pursuant to this clause shall terminate when the premises no longer meets the requirements of said section 20 of chapter 40B. This clause shall take effect upon its acceptance by any city or town and shall apply only to alterations or improvements made on or after the date of such acceptance by such city or town.

Notwithstanding any provisions of this clause to the contrary, a city or town by vote of its town meeting, town council or city council, with the approval of the mayor where required by law, may adopt and authorize exemptions from property taxes, in accordance with this clause, for a specified term not to exceed 15 years, for that portion of any parcel of real estate which is certified as an affordable accessory apartment pursuant to section 20 of chapter 40B.”

The amendment was adopted.

Mr. Magnani moved to amend the bill by inserting after section 20 the following section:—

“SECTION 20A. Said section 5 of said chapter 59, as so appearing, is hereby further amended by adding the following clause:

Fifty-sixth. The value of that portion of residential real property which is a separate dwelling unit and is occupied by a tenant whose obligation to pay rent is met using a section 8 voucher, so called. This exemption shall terminate when the housing unit is no longer occupied by a tenant whose obligation to pay rent is met using a section 8 voucher so called. This clause shall take effect upon its acceptance by any city or town and shall apply only to property where the occupancy by a tenant whose obligation to pay rent is met using a section 8 voucher, so called commences on or after the date of such acceptance by such city or town.; in section 10 by inserting after the word stock, in line 21, the following two paragraphs:—

Low or moderate income housing units shall include vouchers issued to low income persons pursuant to section 8 of the United States Housing Act of 1937, 42 U.S.C. section 1437f.

Only vouchers which are used for payment of rent for a dwelling unit located in the city or town may be counted towards a city or town’s low or moderate income housing requirements. A city or town which chooses to count section 8 vouchers must (a) determine the number of section 8 vouchers used in the 30 days preceding the effective date of this act; (b) must put in place a system for keeping track of section 8 vouchers used in the city or town. The incremental increase in the number of section 8 vouchers used in the city or town after the effective date of this act is the number of units which may be counted towards the city or town’s low or moderate income housing requirement.”; and by adding the following section:

“SECTION . Notwithstanding any general or special law to the contrary, a city or town by vote of its town meeting, town council, or city council with the approval of the mayor where required by law, may adopt and authorize exemptions from property taxes, in accordance with the provisions of clause Fifty-sixth of section 5 of chapter 59 of the General Laws, for that portion of any parcel of real estate which is occupied by a tenant whose obligation to pay rent is met by using a section 8 voucher, pursuant to section 10 of this act.”

The amendment was *rejected*.

Mr. Creedon moved to amend the bill in section 38 by striking out the words “the Massachusetts Municipal Association”; and by inserting after the words “or his designee”, in line 13, the following words:— “2 municipal officers appointed by the Massachusetts Municipal Association, one whom shall be from a city and one whom shall be from a town,”.

The amendment was adopted.

Messrs. Tarr, Lees, Knapik, Tisei and Hedlund, Mrs. Sprague, Ms. Chandler and Mr. Panagiotakos moved to amend the bill by inserting after section 20A (inserted by amendment) the following 2 sections:—

“SECTION 20B. Clause Forty-first B of said section 5 of said chapter 59, as so appearing, is hereby amended by adding the following paragraph:—

A city, by vote of its council and approval of its mayor, or a town, by vote of the town meeting, must adjust the following factors contained in this clause by:

- (a) reducing the requisite age of eligibility to any person age 65 years or older;
- (b) increasing either or both of the amounts contained in the first sentence of the first paragraph by not more than 100 per cent;
- (c) increasing the amount contained in subclause (B) of the first paragraph from \$10,000 to not more than \$20,000 and from \$12,000 to not more than \$30,000; and
- (d) increasing the amounts contained in subclause (C) of said first paragraph from \$20,000 to not more than \$40,000, from \$23,000 to not more than \$55,000 and by increasing the amount of \$500 and \$4,000 contained in said subclause (C) of said first paragraph by not more than 100 per cent.

SECTION 20C. Clause forty-first C of said section 5 of said chapter 59, as so appearing, is hereby amended by adding the following paragraph:—

A city, by vote of its council and approval of its mayor, or a town, by vote of the town meeting, may adjust the following factors contained in this clause by:

- (a) reducing the requisite age of eligibility to any person 65 years or older;
- (b) increasing either or both of the amounts contained in the first sentence of the first paragraph by not more than 100 per cent;
- (c) increasing the amounts contained in subclause (B) of said first paragraph from \$13,000 to not more than \$26,000 and from \$15,000 to not more than \$30,000; and
- (d) increasing the amounts contained in subclause (C) of said first paragraph from \$28,000 to not more than \$56,000, from \$30,000 to not more than \$60,000 and by increasing the amounts of \$500 and \$4,000 contained in said subclause (C) of said first paragraph by not more than 100 per cent.”

After remarks, the amendment was adopted.

Mr. Tisei moved to amend the bill in section 17 by striking out the definition of “Formerly governmentally involved housing”; by striking out in lines 85 to 86 the words “or formally governmentally involved”; by striking out in lines 91 to 92 the words, “and formally governmentally involved.”; by striking out in lines 92 to 93 the words, “or 6 months before the basis for federal or Massachusetts Housing Finance Agency rent preemption lapsed, whichever is later.”; by striking out in line 99 the words “or formally governmentally involved.”; by striking out in lines 139 to 140 the words, “or formally governmentally involved.”; by striking out in line 159 the words, “or formally governmentally involved housing.”; by striking out in line 173 the words, “or formally governmentally involved housing.”; and by striking out in lines 192 to 193 the words “or formally governmentally involved housing.”

The amendment was *rejected*.

Mr. Tarr moved to amend the bill in section 38, by inserting after the words “Massachusetts Housing and Shelter Alliance”, in lines 24 and 25, inclusive, the following words:— “, Homes for Families”.

The amendment was adopted.

Mr. Tarr moved to amend the bill by inserting after section 15 the following section:—

“SECTION 15A. Said section 23 of said chapter 40B, as so appearing, is hereby further amended by inserting after the word ‘applicant.’, in lines 11 and 12, the following sentence:— In any such proceedings, it shall be a defense available to the board of appeals that the municipality has in place a comprehensive plan to develop affordable housing consistent with the needs of the community and that reasonable progress is being made in the implementation of that plan, which shall have a slope of not fewer than 5 nor more than 10 years.”

The amendment was adopted.

Mr. Tarr moved to amend the bill by inserting after section 14 the following 2 sections:—

“SECTION 14A. Section 22 of said chapter 40B, as so appearing, is hereby amended by inserting after the first sentence the following sentence:— The appeal may be taken only after the applicant, in writing and in a form approved by the housing appeals committee, has sought to enter mediation with the local board of appeals either through the office of dispute resolution or a similar entity within 20 days after the date of notice of the decision by the board of appeals.

SECTION 14B. Said section 22 of said chapter 40B, as so appearing, is hereby further amended by striking out the second sentence and inserting in place thereof the following sentence:— The appeal shall be taken within 20 days following either the conclusion of mediation or the receipt of written notice rejecting such offer of mediation by filing with the committee a statement of the prior proceeding and the reasons upon which the appeal is based.”
The amendment was *rejected*.

Mr. Tarr moved to amend the bill by adding the following section:—

“SECTION 39. It is the policy of the commonwealth to encourage the development of housing for its citizens. Consistent with that policy, it is the commonwealth’s intent, when feasible, to expedite making available underutilized property, which is owned by the commonwealth and determined to be not needed for foreseeable state or direct public use pursuant to section 40F of chapter 7 of the General Laws, for the primary purpose of creating or redeveloping housing on such property.”; and by inserting after section 1 the following section:—

“SECTION 1A. Chapter 7 of the General Laws is hereby amended by inserting, after section 40F¹/₂, the following section:—

Section 40F³/₄. (a) For purposes of this section, the following terms shall have the following meanings, unless context clearly requires otherwise:

‘Affordable,’ with respect to housing, affordable to low or to moderate income households where the household pays no more than 30 per cent of household income as rent or no more than 40 per cent of household income for homeownership expenses of principal, interest, insurance and taxes.

‘Agency,’ the Massachusetts development finance agency established pursuant to chapter 23G.

‘Agency reuse plan,’ in the case of any potential housing property to be transferred under subsection (b), any redevelopment plan or plans relating to the development of such potential housing under the terms of section 16 of chapter 23G.

‘Agency transfer request,’ a request provided by the agency to the commissioner in response to the agency’s receipt of notification from the commissioner pursuant to paragraph 2 of subsection (a) of section 40F¹/₂ that all or part of the surplus property which is the subject of said notification be transferred to the agency for disposition by the agency for housing development. Such request shall contain the terms and conditions upon which the agency would accept transfer of such land.

‘Commissioner,’ the commissioner of the division.

‘Department,’ the department of housing and community development.

‘Director,’ the director of the department.

‘Division,’ the division of capital asset management and maintenance.

‘Division reuse plan,’ with respect to any potential housing property to be transferred pursuant to subsection (c), any plan relating to the development of such potential housing property which the commissioner has approved in writing.

‘Housing,’ single and multi-family housing.

‘Housing development,’ the development or rehabilitation of potential housing property with a significant number of units of housing, as determined by the agency, the director and the commissioner; provided, however, that the development of such housing units may be accompanied by commercial, recreational, industrial, municipal, or other non-residential use of the property is not inconsistent with the development of said units of housing. In determining whether the number of units is significant, the director and the commissioner and also, in the case of an agency transfer request, the agency, shall consider, without limitation, the need for housing and for affordable housing in the surrounding community, the size of the potential housing property and the potential housing property’s physical characteristics. All development on potential housing property undertaken pursuant to this section must be consistent with any agency reuse plan or division reuse plan and shall take into consideration any other local plan approved by the community in which the property is located.

‘Low-or-moderate-income,’ with respect to households, low income is household income which is 50 per cent of area median income or less and moderate-income is household income which is between 50 per cent and 80 per cent of area median income, as determined by the United States Department of Housing and Urban Development.

'Potential housing property,' state-owned land that (i) has been determined by the commissioner, acting pursuant to section 40F, to be surplus as to both the current and foreseeable needs of state agencies and to public agencies for direct public use, (ii) is not subject to article XCVII of the Articles of Amendment of the Constitution of the Commonwealth, and (iii) is determined by the commissioner and the director to be suitable for use for housing or housing development. In determining whether the land is suitable for use for housing or housing development, the commissioner and director shall consider any existing reuse plan approved by the commissioner and any other existing reuse plans adopted by the community or communities where the land is located or prepared by the elected officials of the municipality in which the land is located.

(b)(1) Notwithstanding the provisions of sections 40E to 40F½, inclusive, and 40H but in accordance with the provisions of this section, the commissioner may, if an agency transfer request for a potential housing property has been submitted by the agency to the commissioner in compliance with the provisions of this section, to transfer for the purpose of housing development said property to the agency pursuant to the terms contained in the agency transfer request, but the agency may acquire, take possession, care and control of the potential housing property only after an agency reuse plan for the lands has been approved by the agency's board of directors; the city council, board of aldermen, town council or board of selectmen of the municipality or municipalities in which the potential housing property is located; the division; and the department, which approvals shall not occur until a public hearing is held on said agency reuse plan in accordance with the provisions of section 16 of chapter 23G. The agency reuse plan shall be developed, reviewed, and voted upon by such persons or entities in an expeditious manner. The potential housing property shall be developed in accordance with such approved plan. No agency reuse plan shall be approved unless the agency and the department find that the plan provides for housing development of the potential housing property, and furthermore, that at least 25 per cent of the housing units of the housing development shall be affordable to low or to moderate-income households. The affordable low to moderate-income housing shall be subject to affordable housing restrictions and shall remain affordable housing for a period of not less than 30 years. The agency shall place covenants and provisions, including affordable housing restrictions, in any document evidencing the sale, lease, conveyance or disposition of potential housing property for affordable housing development pursuant to subsection (b) providing for the restrictions on and maintenance of affordability for not less than 30 years. Without limiting the foregoing, and where feasible, the remaining housing units shall provide housing options for households having a broad range of household incomes.

(2) In the event that the city council, board of aldermen, town council, or board of selectmen of the municipality or municipalities in which the potential housing property is located do not approve any agency reuse plan within a 12 month period of the date of such agency reuse plan's approval by the agency's board of directors, and such period is not extended by the mutual agreement of the agency, department and divisions, then such potential housing property shall not be transferred to the agency under this subsection pursuant to the agency transfer request relating to such agency reuse plan. At and after such time, the commissioner may transfer such potential housing property in accordance with the terms of subsection (c).

(3) The agency may dispose of any potential housing property acquired pursuant to subsection (b) in accordance with chapter 23G and this section. Net proceeds received by the agency from the final disposition by the agency to a third party of any potential housing property transferred to the agency pursuant to subsection (b) shall, after reimbursement to the agency of land preparation, remediation and other related costs directly incurred by the agency, and payment of other reasonable administrative fees as outlined in the agency transfer request, be deposited into a fund established and maintained by the agency to be known as the MassDevelopment Housing Fund for the purpose of housing development, including, but not limited to, environmental remediation, land preparation and other costs related to land transferred to the agency pursuant to this subsection (b).

(c)(1) If the agency elects not to submit an agency transfer request for a potential housing property; or a potential housing property is not transferred to the agency because an agency reuse plan was not approved within the time frame set forth in section (b)(2) above, then, notwithstanding the provisions of sections 40E to 40F½, but in accordance with the provisions of this subsection (c), the commissioner is hereby authorized to sell, lease for a term or terms which in the aggregate do not exceed ninety-nine years, transfer or otherwise dispose of such potential housing property for the purpose of housing development subject to the provisions of this section and the requirements contained in any approved division reuse plan and any reuse restrictions required by this subsection (c).

(2) Any disposition of potential housing property by the division pursuant to this subsection (c) shall be subject to such reuse restrictions, if any, as the commissioner and the department shall deem necessary; provided, that in determining such reuse restrictions, the commissioner and the department shall consult with elected officials of the municipality or municipalities in which such potential housing property is located, and if the commissioner has approved a division reuse plan for the potential housing property, the reuse restrictions determined by the commissioner and the director shall be consistent with such division reuse plan. Without limiting the foregoing, the commissioner and the director, in connection with any disposition of potential housing property by the division pursuant to this subsection (c), shall require housing development of the potential housing property, and furthermore, that at least 25 per cent of the housing units of such housing development shall be affordable to low and to moderate-income households. Such affordable low or moderate-income housing shall be subject to affordable housing restrictions and shall remain affordable housing for a period of not less than 30 years. The division shall be authorized and directed to place covenants and provisions, including affordable housing restrictions, in any document evidencing the sale, lease, conveyance or disposition of potential housing property for affordable housing development pursuant to this subsection (c) providing for the restrictions on and maintenance of affordability for not less than 30 years. Without limited the foregoing and

where feasible, the remaining housing units shall provide housing options for households having a broad range of household incomes.

(3) With respect to any potential housing property conveyed by the division pursuant to subsection (c).

(A) The price for any sale, lease, conveyance or disposition of such potential housing property shall be the fair market value of said property as determined by the commissioner in consultation with the director, taking into consideration its use for housing development purposes pursuant to this subsection (c); the projected costs of such housing development, including site preparation, demolition, environmental remediation and related expenses; and any restrictions imposed by the commissioner and director, including the required development of affordable housing, pursuant to this subsection (c) and any other public purposes, provided that, in any event, notwithstanding the foregoing, 'fair market value' of any potential housing property shall be determined by the commissioner in his discretion so as to ensure the proposed housing development's financial feasibility.

(B) The recipients of any transfer of such potential housing property from the commissioner shall be responsible for the costs of any appraisals; surveys, including, but not limited to, the costs in full of preparing a recordable survey and the costs of recording said plan with the appropriate registry of deeds or filing said plan with the appropriate registry district of the land court; and other expenses relating to the transfer of said property deemed necessary by the commissioner for the conveyance of said property.

(C) Twenty-five per cent of the proceeds of the purchase price for any potential housing property transferred pursuant to subsection (c) shall be deposited into the affordable housing trust fund created pursuant to chapter 121D. The remainder of the proceeds shall be deposited in the General Fund."

The amendment was *rejected*.

Mr. Tisei moved to amend the bill by striking out section 34 and inserting in place thereof the following 4 sections:—

"SECTION 34. Section 11 of chapter 186, as appearing in the 2000 Official Edition, is hereby amended by adding the following paragraph:—

All notices to quit under this section shall include the following statements: (1) 'If you wish to pursue a counterclaim or defense against eviction based on the condition of the premises certified in a notice to your landlord by the local board of health or other local enforcement agency dated prior to the date that you received this notice, you must pay to the court within 10 days after your receipt of this notice all unpaid rent or use and occupancy that is or has become due within the last 6 months prior to this notice,' and (2) 'A landlord/tenant rights fact sheet can be obtained at any Massachusetts court.' The fact sheet shall be developed by the department of housing and community development and shall be held and distributed at all courts that currently have jurisdiction over eviction proceedings.

SECTION 34. (A) Section 12 of said chapter 186, as so appearing, is hereby amended by adding the following paragraph:—

Every notice to determine an estate at will must include the following statements: (1) 'If you wish to pursue a counterclaim or defense against eviction based on the condition of the premises certified in a notice to your landlord by the local board of health or other local enforcement agency dated prior to the date that you received this notice, you must pay to the court within 10 days after your receipt of this notice all unpaid rent or use and occupancy that is or has become due within the last 6 months prior to this notice,' and (2) 'A landlord/tenant rights fact sheet can be obtained at any Massachusetts court.' The fact sheet shall be developed by the department of housing and community development and shall be held and distributed at all courts that currently have jurisdiction over eviction proceedings.

SECTION 34. (B) Section 2 of chapter 239 of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by inserting after the word 'court,' in line 11, the following sentence:— Notwithstanding the foregoing, all writs must include the following statements: (1) 'If you wish to pursue a counterclaim or defense against eviction based on the condition of the premises certified in a notice to your landlord by the local board of health or other local enforcement agency dated prior to the date that you received this notice, you must pay to the court within 10 days after your receipt of this notice all unpaid rent or use and occupancy that is or has become due within the last 6 months prior to this notice,' and (2) 'A landlord/tenant rights fact sheet can be obtained at any Massachusetts court.' The fact sheet shall be developed by the department of housing and community development and shall be held and distributed at all courts that currently have jurisdiction over eviction proceedings.

SECTION 34. (C) Section 8A of said chapter 239, as so appearing, is hereby amended by striking out the second, third and fourth paragraphs and inserting in place thereof the following 3 paragraphs:—

Whenever any counterclaim or claim of defense under this section is based on any allegation concerning conditions affecting the premises or services or equipment provided therein, the tenant or occupant shall not be entitled to relief under this section unless:

(1)(a) the board of health or other local enforcement agency has certified that such conditions constitute a serious violation of the standards of fitness for human habitation as established in the state sanitary code, the state building code, or any other law, ordinance, by-law, rule or regulation establishing such conditions;

(b) the landlord received such certification prior to the date that the tenant or occupant received the notice to quit for nonpayment of rent or the notice terminating the tenancy without fault of the tenant or occupant;

(2) the landlord does not show that such conditions were caused by the tenant or occupant or any other person acting under the tenant's or occupant's control, except that the defendant shall have the burden of proving that any violation appearing solely within that portion of the premises under his or her control and not by its nature reasonably attributable to any action or failure to act of the landlord was not so caused;

(3) the premises are not located in a hotel or motel, or in a lodging house or rooming house wherein the occupant has maintained such occupancy for less than 3 consecutive months;

(4) the landlord does not show that the conditions complained of cannot be remedied without the premises being vacated, but nothing in this clause shall be construed to deprive the tenant of relief under this section when the premises are temporarily vacated for purposes of removing or covering of paint, plaster, soil or other accessible materials containing dangerous levels of lead pursuant to chapter 111; and

(5) the tenant or occupant shows proof that all rent or use and occupancy that is or was due within the last 6 months prior to the date of the notice to quit or notice to terminate the tenancy has been deposited into an account with the court within 10 days after receipt of the notice to quit or the notice to terminate the tenancy, and the tenant or occupant shows proof that all rent or use and occupancy that becomes due after the date of the notice to quit or notice to terminate the tenancy has been similarly deposited within 10 days after it becomes due until the dispute is resolved. The rent or use and occupancy that is due or that becomes due shall be the previously agreed upon rent rate theretofore payable by the tenant or occupant; provided, however, that in the event that the tenant's or occupant's rent is subsidized by any governmental agency or governmentally subsidized program, the tenant's or occupant's rent escrowing requirement shall be limited to only that portion of the rent paid by the tenant or occupant; and further provided that the tenant or occupant may deduct any amounts, documented by copies of receipts deposited with the court, that were reasonably spent by the tenant or occupant pursuant to section 127L of chapter 111.

Any amounts so deposited shall be paid over by the clerk of the court in accordance with a written out-of-court agreement between the landlord and the tenant or occupant, provided that their signatures are duly notarized, or if the parties cannot agree, in accordance with the direction of the court. Pending final resolution of the dispute, if the court so orders, any amounts so deposited and otherwise payable to the landlord shall be paid to the landlord to make repairs to the premises that are required by law or to mitigate financial hardship of the landlord. Any interest generated by the funds deposited shall be retained by the court.

In the event that a tenant or occupant has not substantially complied with the provisions of this section, he shall have no defense, on account of material defects of violations affecting the habitability or safety of rental housing, to summary process proceedings for nonpayment of rent, but this lack of a defense to summary process proceedings for nonpayment of rent shall not affect the merits of any claim or action for damages or other relief which the tenant or occupant may in a separate action assert regarding the habitability or safety of rental housing.”; and by adding the following section:—

“SECTION . Sections 34 to 34C shall take effective upon passage.”

The amendment was *rejected*.

Mr. Panagiotakos moved to amend the bill in section 37, by striking out, in lines 1 and 2, the words “to study the feasibility of” and inserting in place thereof the following words:— charged with; by striking out, in lines 13 and 14, the words “4 housing or homeless advocates” and inserting in place thereof the following words:— 2 housing advocates and 2 homeless advocates; and by inserting after the word “assistance”, in line 39, the following words:— group adult foster care and other elder home care services.

The amendment was adopted.

Messrs. Tarr, Lees and Tisei moved to amend the bill by inserting after section 27 the following section:—

“SECTION . Section 31 of chapter 111 of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by inserting after the fourth sentence the following sentence:— Any such regulation or amendment promulgated after January 1, 1998 that exceeds state regulations relative to septic and cesspool systems shall not apply in a city or town unless approved by a vote of the town meeting or the city council.”

After debate, the amendment was *rejected*.

Mr. Magnani moved to amend the bill in section 36, and by adding the following sentence:— “Notwithstanding this section, section 36A shall apply to an application for a comprehensive permit filed pursuant to section 21 of chapter 40B of the General Laws which is still pending or subject to review on appeal pursuant to section 22 of said chapter 40B.”; and after section 15A (inserted by amendment) the following section:—

“SECTION 15B. The first paragraph of said section 23 of said chapter 40B, as so appearing, is hereby amended by inserting after the first sentence the following sentence:— There shall be a presumption that the latest department of housing and community

development subsidized housing inventory contains an accurate count of low and moderate income housing; provided, however, that such inventory shall include housing units identified by the city or town and provided to the department after the publication of the inventory if the units are determined by the department to meet the definition of low and moderate income housing.” The amendment was adopted.

Messrs. Tarr, Lees, Knapik, Tisei and Hedlund and Mrs. Sprague moved to amend the bill by inserting after section 20 the following section:—

“SECTION 20A. Said chapter 59 of the General Laws, as so appearing, is hereby amended by inserting after section 25 the following section:—

Section 25A. (a) Any city or town which adopts this section may, subject to the limitations contained in sections 21C and 21D and the approval of the commissioner, in any year, add a specified amount to its rate of taxation for the purpose of providing senior citizen tax relief through abatements to relieve qualified senior citizens of a portion of their real estate tax obligation.

(b) Any amounts derived from such a rate increase shall be deposited into a special account in the general treasury and shall be in the custody of the treasurer of such city or town. The treasurer shall invest such funds at the direction of the officer, board, commission, committee or other agency of the city or town who or which is otherwise authorized and required to invest trust funds of the city or town, and subject to the same limitations applicable to trust fund investments except as otherwise specified in this section. Interest earned upon the fund shall remain therewith and shall be used for the purpose of the fund without further appropriation.

(c) In any year in which this section is adopted by a city or town, the city council or board of selectmen shall conduct at least 1 public hearing, and after receiving public comment, shall determine eligibility criteria for assistance from the fund and the amounts of assistance which shall be provided in the form of abatements. All such determinations shall be made by a vote of the city council with the approval of the mayor, which may be overridden by a $\frac{2}{3}$ vote, or by the board of selectmen. The eligibility criteria may include, but shall not be limited to, criterion on a minimum age of not less than 65 years, annual income, and the amount of a whole estate.

(d) This section shall apply only in the year in which it is adopted, and may be renewed by separate vote for any successive year.” The amendment was *rejected*.

Mr. Clancy moved to amend the bill in section 5, by striking out clause (x) and by adding the following section:—

“SECTION 40. The department of housing and community development, in coordination with local and regional housing authorities, shall study the feasibility of developing a statewide application system and waiting list for all state public housing resources and the Massachusetts rental voucher program that would permit application to multiple housing authorities through the submission of a single application form, while allowing each authority to continue to make its own eligibility and preference determinations to the extent permitted by law. The department shall file a report of its findings and recommendations with the house and senate committees on ways and means and the joint committee on housing and urban development not later than April 1, 2002.”

After remarks, the amendment was adopted.

Mr. Magnani, Ms. Chandler, Ms. Walsh and Mr. Glodis moved to amend (House Bill 4284) by adding at the end thereof by adding the following new section:—

“SECTION 17A. Chapter 40 of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by inserting after chapter 40Q the following new chapter:—

Chapter 40R. DISTRICT IMPROVEMENT FINANCING.

Section 1. Definitions.

As used in this chapter unless the context clearly requires otherwise, the following terms shall have the following meanings:

‘Base Date’, the last assessment date of the real property tax immediately preceding the creation of the district.

‘Captured assessed value’, the valuation amount by which the current assessed value of an invested revenue district exceeds the original assessed value of the district. If the current assessed value is equal to or less than the original there is no captured assessed value.

‘Development district’, a specified area within the corporate limits of a city or town which has been designated as provided under section two of this chapter, and which is to be developed by the city or town under a development program.

‘Development program’, a statement of means and objectives designed to improve the quality of life, the physical facilities and structures and the quality of pedestrian and vehicular traffic control and transportation, within a development district. Means and objectives designed to increase and or improve residential housing, both affordable and market rate, may also be addressed within a district and will be considered part of a development program. The statement must include:

- (1) a financial plan;
- (2) a complete list of public facilities to be constructed;
- (3) the use of private property within the district;
- (4) plans for the relocation of persons displaced by the development activities;
- (5) plans, if any, for the development of housing, both affordable and market rate;
- (6) the proposed regulations and facilities to improve transportation;
- (7) the proposed operation of the district after the planned capital improvements are completed; and
- (8) the duration of the program which cannot exceed 30 years from the date of designation of the district.

‘Financial plan’, a statement of the costs and sources of revenue required to accomplish the development programs which must include: (1) cost estimates for the development program, (2) the amount of indebtedness to be incurred and (3) sources of anticipated capital.

‘Inflation factor’, a ratio:

- (1) the numerator of which shall be the total assessed value of all parcels of all residential and commercial real estate that are assessed at full and fair cash value for the current fiscal year minus the new growth adjustment factor for the current fiscal year attributable to the residential and commercial real estate as (f) of determined by the commissioner of revenue pursuant to subsection 59; and 21C of chapter section;
- (2) the denominator of which shall be the total assessed value for the preceding fiscal year of all the parcels included in the numerator; provided such ratio should not be less than 1.

‘Original assessed value’, the aggregate assessed value of the district as of the base date, increased each year by a percentage equal to the inflation factor. The original assessed value shall be increased or decreased annually as a result of a change in the tax exempt status of property within the district.

‘Project’, a project to be undertaken in accordance with the development program.

‘Project costs’, any expenditure made or estimated to be made or monetary obligations incurred or estimated to be incurred by the city or town which are listed in a project plan as costs of improvements including, but not limited to, public works, acquisition, construction or rehabilitation of land or improvements for sale or lease to residential, commercial or industrial users within a development district plus any costs incidental to those improvements, reduced by any income, special assessments or other revenues, other than tax increments, received or reasonably expected to be received by the city or town in connection with the implementation of this plan.

Project costs shall not include the cost of buildings or portions of buildings used predominantly for the general conduct of government such as city halls, courthouses, jails, police and fire stations and other such state and local government office buildings.

Project costs shall include, but are not limited to:

- (1) ‘capital costs’, which shall mean the actual costs of the construction of public works or improvements, new buildings, structures and fixtures; the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures and fixtures; the acquisition of equipment; and the grading and clearing of land;
- (2) ‘financing costs’, which shall include but not be limited to all interest paid to holders of evidences of indebtedness issued to pay for project costs and any premium paid over the principal amount of that indebtedness because of the redemption of the obligations before maturity;
- (3) ‘real property assembly costs’, which shall mean any deficit incurred resulting from the sale or lease by the city or town, as lessor, of real or personal property within a development district for consideration which is less than its cost to the city or town;

- (4) 'professional service costs', which shall include but not be limited to those costs incurred for architectural, planning, engineering and legal advice and/or services;
- (5) 'administrative costs', any reasonable charges for the time spent by city or town employees in connection with the implementation of a project plan;
- (6) 'relocation costs', all such reasonable relocation payments made pursuant to a condemnation;
- (7) 'organizational costs', any and all reasonable costs relating to the conduct of environmental impact and other such studies and informing the public about the creation of development districts and the implementation of project plans;
- (8) 'training costs', which shall include those costs associated with providing skills, development and training for employees of businesses within the development district. These costs shall not exceed 20% of the total project costs and must be designated as training funds within five years of the issuance of any bonds pursuant to this chapter for such project or the designation of the district, whichever occurs later.
- (9) 'water and sewer line costs', which shall include the costs related to the construction or alteration of sewerage treatment plants, water treatment plants or other environmental protection devices, storm or sanitary sewer lines, water lines or amenities on streets or the rebuilding or expansion thereto so long as required by the project plan for a development district, whether or not the construction, alteration, rebuilding or expansion is within the development district;
- (10) 'improvement costs', those costs associated with developing new employment opportunities, promoting public events, advertising cultural, educational and commercial activities, providing public safety, establishing and maintaining administrative and managerial support and such other services as are necessary or appropriate to carry out the development program.
- (11) 'discretionary costs', those payments made by the appropriate body of a city or town which in its discretion are found to be necessary or convenient to the creation of development districts or the implementation of project plans.

'Project revenues', any receipts of a city or town with respect to a project, including, without limitation, tax increments, investment earnings and proceeds of insurance or disposition of property.

'Tax increment', that portion of all real and personal property taxes assessed by a city or town, upon the captured assessed value of property in the development district. The portion of the tax levy attributable to the increased valuation after the base date shall be calculated using the same classification factors as were used as of the base date, or without classification factors, if property was not classified for tax purposes as of the base date. If the base date is earlier than the date as of which the commissioner of revenue makes the certification required by subsection (c) of section two A of chapter fifty-nine, the project plan may provide for such further adjustment in calculating the tax increment as may be deemed appropriate to reflect changes of practice after the base date with respect to the valuation of property in order to achieve assessment at full and fair cash valuation.

'Invested revenue district', a type of development district or portion of a district, which uses tax increment financing under section three of this chapter. An invested revenue district or a portion of a district may include projects within urban housing center zones or mixed residential and commercial use properties that, in accordance with general or special laws, are granted tax increment exemptions from property taxes.

'Invested revenue district development program', a statement which, in addition to the information required for a development program, as defined above, must also include: (1) estimates of the captured assessed value of the district; (2) a projection of the tax revenues to be derived from the invested revenue district in the absence of a development program; (3) the method of calculating the tax increment together with any provisions for adjustment of the method of calculation; (4) the board or officer of the city or town responsible for calculating the tax increment; (5) a statement as to whether the issuance of any bonds contemplated under this chapter will be general or special obligation bonds; (6) the portion of the captured assessed value to be applied to the development program and resulting tax increments in each year of the program; and (7) a statement of the estimated impact of tax increment financing on all taxing jurisdictions in which the district is located.

Section 2. Development districts; development programs and powers.

(a) Districts. Notwithstanding any general or special law to the contrary, any city or town by vote of its town meeting, town council or city council with the approval of the mayor where required by law may designate development districts within the boundaries of the city or town provided, however, that:

- (1) a development district may consist of one or more parcels or lots of land, whether or not contiguous, or one or more buildings or structures, whether or not adjacent, on one or more parcels of land. The total area of all development districts shall not exceed twenty-five percent of the total area of a city or town. The boundaries of a development district may be altered only after meeting the requirements for adoption under this subsection.

(2) the development district has been certified as an approved development district by the economic assistance coordinating council established by section three B of chapter twenty-three A pursuant to regulations adopted by said council. The economic assistance coordinating council shall find, based on the information submitted to it in support of the designation of the development district by the city or town and such additional investigation as the economic assistance coordinating council shall make, and incorporate in its minutes, that the designation of the development district is consistent with the requirements of this section and will further the public purpose of encouraging increased residential, industrial and commercial activity in this commonwealth.

(b) Program. The city or town shall adopt a development program for each development district. The program shall be adopted at the same time as the district, as part of the district adoption proceedings, or if at a different time, in the same manner as adoption of the district, with the same certification requirements of subsection (a). Once approved, the program may be altered or amended only after meeting requirements for adoption under this subsection.

(c) Powers. Within development districts, and consistent with the development program, the city or town may acquire, construct, reconstruct, improve, preserve, alter, extend, operate, maintain or promote development intended to meet the objectives of the development program. In addition to powers granted by any other law, for the purpose of carrying on a project as authorized by this chapter, a city or town shall have the following powers:

- (1) to incur indebtedness as hereinafter provided and to pledge tax increments and other project revenues for repayment thereof,
- (2) to create a department, designate an existing department, board officer, agency, municipal housing or redevelopment authority of the city or town or enter into a contractual agreement with a private entity to administer the activities authorized by this chapter;
- (3) to make and enter into all contracts and agreements necessary in order to carry out the development program;
- (4) to receive from the federal government or the commonwealth loans or grants for, or in aid of, a project and to receive contributions from any other source to defray project costs;
- (5) to purchase or acquire by eminent domain pursuant to the provisions of chapter seventy-nine or chapter eight A, insofar as such provisions may be applicable, and pursuant to all preliminary requirements prescribed by law, such property or interests therein within a district as the city or town may deem necessary in order to carry out the development program; provided, however, that any taking of property by eminent domain for any purpose for which the taking by the city or town could not be made in the absence of this chapter shall be authorized by a two-third vote as defined in section one of chapter forty-four;
- (6) to make relocation payments to such persons, businesses or organizations as may be displaced as a result of carrying out the development program;
- (7) to clear and improve property acquired by it pursuant to the development program and construct public facilities thereon, or contract for the construction development, redevelopment, rehabilitation, remodeling, alteration or repair of such property;
- (8) to cause parks, playgrounds, or schools, or water or sewer drainage facilities or any other public improvements which it is otherwise authorized to undertake, to be laid out, constructed or furnished in connection with the development program;
- (9) to lay out, construct, alter, relocate, change the grade of, make specific repairs upon or discontinue public ways and sidewalks in or adjacent to the development district;
- (10) to cause private ways, sidewalks, ways for vehicular travel, and similar improvements to be constructed within the development district for the particular use of the development district or those dwelling or working therein;
- (11) to adopt ordinances or by-laws under section five of chapter forty A, or repeal or modify such ordinances or by-laws, or establish exceptions to existing ordinances and by-laws regulating the design, construction and use of buildings;
- (12) to sell, mortgage, lease as lessor, transfer or dispose of any property or interest therein acquired by it pursuant to the project plan for development, redevelopment or rehabilitation in accordance with the development program;
- (13) to invest project revenue as hereinafter provided; and
- (14) to do all things reasonably necessary or convenient to carry out the powers granted in this chapter.

Section 3. District improvement financing.

(a) Captured assessed value. The city or town may retain all or part of the tax increment of an invested revenue district for purpose of financing the development program. The amount of tax increment to be retained is determined by designating the

amount of captured assessed value to be retained. When a development program for an invested revenue district is adopted, the city or town shall adopt a statement of the percentage of captured assessed value to be retained in accordance with the development program. The statement of percentage may establish a specific percentage or percentages or may describe a method or formula for determination of the percentage. The assessor shall certify the amount of the captured assessed value to the city or town each year.

(b) Original assessed value. On or after the formation of an invested revenue district, the assessor of the city or town in which it is located shall, on request of the city or town, certify the original assessed value of the taxable property within the boundaries of the invested revenue district. Each year, after the formation of an invested revenue district, the assessor of the city or town shall certify the amount by which the assessed value has increased or decreased from the original value.

(c) Development program fund; invested revenues. If a city or town has elected to retain all or a percentage of the retained captured assessed value under subsection (a), the city or town shall:

(1) establish a development program fund that consists of: (i) a development sinking fund account that is pledged to and charged with the payment of the interest and principal as the interest and principal fall due and the necessary charges of paying interest and principal on any notes, bonds or other evidence of indebtedness that were issued to fund or refund the costs of the development program fund and (ii) a project costs account that is pledged to and charged with the payment of project costs as outlined in the financial plan and are paid in a manner other than as described in subparagraph (i).

(2) annually set aside all tax increment revenues on retained captured assessed values and deposit all such revenues to the appropriate development program fund account in the following priority:

(A) to the development sinking fund account, an amount sufficient, together with estimated future revenues to be deposited to the account and earnings on the amount, to satisfy all annual debt service on bonds and notes issued under Section four of this chapter and the financial plan; and

(B) to the project cost account, an amount sufficient, together with estimated future revenues to be deposited to the account and earnings on the amount, to satisfy all annual project costs to be paid from the account;

(3) be permitted to make transfers between development program fund accounts as required, provided that the transfers do not result in a balance in the development sinking fund account that is insufficient to cover the annual obligations of that account; and

(4) annually return to the general fund of the city or town any tax increment revenue in excess of those estimated to be required to satisfy the obligations of the development sinking fund account.

Section 4. Financing.

(a) A city or town may, by two-thirds vote as defined in section one of chapter forty-four, authorize, issue and sell bonds, including, but not limited to, general obligation or revenue bonds or notes, to finance all project costs needed to carry out the development program within a development district. Without limiting the generality of the foregoing, such bonds may be issued for the payment of project costs which may include interest prior to and during the carrying out of a project, and, for a reasonable time thereafter, such reserves as may be required by any agreement securing the bonds and all other expenses incidental to planning, carrying out and financing the project.

(b) The bonds of each issue shall be dated and may be made redeemable before maturity with or without premium. Subject to the authorizing vote, the officers authorized to sell the bonds shall determine: the date or dates of the bonds provided that the bonds shall mature within thirty years from their respective dates; their denomination or denominations; the place or places of payment of the principal and interest, which may be at any bank or trust company within or without the commonwealth; their interest rate or rates; maturity or maturities; redemption privileges, if any; and the form and other details of the bonds. Notwithstanding any provisions of a municipal charter or general or special law to the contrary, bonds issued hereunder may provide for annual or more frequent installments of principal in equal, diminishing or increasing amounts with the first installment of principal to be due at any time within five years from the date of the issuance of the bonds, and subject to the authorizing vote, may provide for such rate or rates of interest as the officers authorized to sell the bonds shall deem proper, including rates variable from time to time as determined by such index, banker's loan rate or other method as may be specified in such bond. The bond shall be signed by the mayor or city manager as the case may be of a city or by a majority of the selectmen of a town council form of government either manually or by facsimile thereof. Any coupons attached thereto shall bear the facsimile signature of the city or town treasurer.

(c) In case of any officer whose signature, or a facsimile of whose signature, shall appear on any bonds, coupons, or notes issued under this chapter shall cease to be such officer before the delivery thereof, such signature or such facsimile shall nevertheless be valid and sufficient for all purpose the same as if he had remained in office until such delivery.

(d) The bonds shall be issued in registered form. Subject to the authorizing vote, the officers authorized to sell the bonds may sell the bonds in such manner, either at public or private sale, and for such price, as they may determine will best effect the purposes of this chapter.

(e) Prior to the preparation of definitive bonds, the city or town may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery. Provisions may be made for the placement of any bonds which shall have become mutilated or shall have been destroyed or lost.

(f) Bonds or notes issued hereunder may be secured in whole or in part by letters or lines of credit or other credit facilities. Any such insurance letter or line of credit or credit facility may provide for reimbursement to be made over such period of time, not to exceed two years beyond the maturity date of the bonds or notes so secured.

(g) In the discretion of the officers authorized to sell the bonds, but subject to the provisions of the vote authorizing the bonds, bonds issued hereunder may be secured by one or more trust agreements between the city or town and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the commonwealth. A trust agreement hereunder shall be in such form and executed in such manner as may be determined by such offers. A trust agreement may pledge or assign project revenue, in whole or in part, and may provide that the owner or holder of bonds issued thereunder may have a lien or mortgage on any facility acquired, improved or constructed with the proceeds of the tax increment bonds, may contain such provisions for protecting and enforcing their rights, security and remedies of the bondholders as may be reasonable and proper and not in violation of the law including, without limiting the generality of the foregoing: provisions defining defaults and providing for remedies in the event thereof, which may include the acceleration of maturities, and covenants setting forth duties of, and limitations on, the city or town in relation to carrying out and otherwise administering the project or projects; the custody, safeguarding, investment and application of project revenues; the issuance of additional bonds hereunder; the determination of tax increments; the fixing of fees and charges, if any, in relation to the project or projects; the collection of such project revenues; the use of any surplus bond proceeds; the establishment of reserves; and the replacement of bonds or coupons which shall become mutilated or be destroyed or lost. Subject to the provisions of this chapter, moneys subject to the trust agreement shall be held, invested, and applied as provided therein, provided that moneys not deposited in trust with a corporate trustee shall be in the custody of the city or town treasurer.

(h) It shall be lawful for any bank or trust company to act as a depository or trustee of proceeds of bonds or of other monies under any such trust agreement and to furnish such indemnifying bonds or to pledge such securities as may be required by the trust agreement. Any such trust agreement or resolution may set the rights and remedies of the bondholders and of the trustees and may restrict the individual right of action by a bondholder. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as operating expenses.

(i) Notwithstanding the provisions of chapter one hundred and six or any other general or special law to the contrary: (i) any pledge hereunder shall be valid and binding and shall be deemed continuously perfected from the time it is made; (ii) no filing need be made under the said chapter one hundred and six or otherwise; (iii) unless otherwise provided in the financing instruments, a pledge of project revenues shall be deemed to include a pledge of any accounts or general intangibles from which such revenues are derived, whether existing at the time of the pledge or thereafter acquired by the city or town and the proceeds of such accounts or general intangibles; and (iv) the pledged project revenues accounts and general intangibles shall be subject to the lien of the pledge without delivery or segregating and the lien of the pledge shall be valid and binding against all parties having claims of contract or tort or otherwise against the city or town.

(j) A pledge of project revenues under this chapter shall constitute a sufficient appropriation thereof for the purposes of any provision for appropriation and such revenues may be applied as required by the pledge without further appropriation. Notwithstanding the provisions of this subparagraph, administrative expenses shall be subject to appropriation.

(k) In anticipation of the issuance of bonds under this chapter, and subject to any provisions of the vote authorizing the bonds, the officers authorized to sell bonds may without further authorization issue temporary notes. The notes may be secured as in the case of bonds, and except as otherwise provided in this subparagraph, the provisions of subparagraphs (i) (k) (l) and (n) referring to bonds shall also be deemed to refer to the notes. The notes need not bear the seal of the city or town or a facsimile thereof. The notes shall be payable within two years from their respective dates, but the principal of and interest on notes issued for a short period may be refunded from time to time by the issuance of other notes maturing within two years from the original date of issuance of the indebtedness being refunded.

(l) A city or town may, when authorized by a majority vote as defined in section one of chapter forty-four, issue refunding bonds for the purpose of paying any of its bonds issued hereunder at maturity or upon acceleration of redemption. The refunding bonds may be issued at such time prior to the maturity or redemption of the refunded bonds as the city or town deems to be in the public interest. The refunding bonds may be issued in sufficient amounts to pay or provide the principal of the bonds being refunded, together with any redemption premium thereon, any interest accrued or to accrue to the date of payment of such bonds, the expense of issuance of the refunding bonds, the expenses of redeeming the bonds being refunded, and such reserves for debt service or other purposes from the proceeds of such refunding bonds as may be required by any agreement securing the bonds.

The issuance of refunding bonds, the maturities and other details thereof, the security thereof, the rights of holders thereof, and the rights, duties and obligations of the city or town with respect thereto shall be governed by the provisions of this chapter relating to the issuance of bonds other than refunding bonds insofar as the same may be applicable.

(m) The bonds and notes issued under this chapter shall not at any time be included in the debt of the city or town for the purpose of ascertaining its legal borrowing capacity, nor shall the tax increment be included in calculating total tax assessed in paragraph (a) of section twenty-one C of chapter fifty-nine or the maximum levy limit in paragraph (f) of section twenty-one C of chapter fifty-nine. Except as otherwise provided herein, such bonds and notes shall not be subject to the provisions of chapter forty-four.

(n) Subject to any agreement securing bonds or notes issued under this chapter, the proceeds of such bonds or notes pledged for tax increments and other project revenues may be deposited or invested in such investments as may be lawful for fiduciaries in the commonwealth.

(o) All project revenues received pursuant to the provisions of this chapter shall be deemed to be trust funds to be held and applied solely as provided in this chapter.

(p) Any holder of bonds or notes issued under this chapter, or of any of the coupons appertaining thereto, and the trustee under any trust agreement securing the same except to the extent the rights herein given may be restricted by any agreement securing the same, may bring suit upon the bonds, notes or coupons and may, either at law or in equity, by suit, action mandamus or other proceedings, protect and enforce all rights under the laws of the commonwealth or granted under this chapter or under any such agreement, and may enforce or comply to the performance of all duties required by this chapter or by such agreement to be performed by the city or town or by any officer thereof.

(q) Bonds and notes issued under the provisions of this chapter are hereby made securities in which all insurance companies, trust companies, banking associations, savings banks, cooperative banks, investment companies, executors, trustees and other fiduciaries, and all other persons whatsoever who are or may hereafter be authorized to invest in bonds or notes or other obligations of a similar nature may properly and legally invest funds, including capital deposits or other funds in their control and belonging to them. Such debt obligations are hereby made securities which may properly and legally be deposited with and received by any state or municipal office or any agency or political subdivision of the commonwealth for any purpose for which the deposits of bonds or other obligations of the commonwealth now or may hereafter be authorized by law.

(r) Notwithstanding any of the provisions of this chapter or any recitals in any bonds or notes issued under this chapter, all such bonds and notes shall be deemed to be investment securities under chapter one hundred and six.

(s) The bonds and notes issued under this chapter, their transfer and the income therefrom, including any profits made on the sale thereof, shall be at all times free from taxation within the commonwealth.
The amendment was adopted.

After remarks, the question on passing the bill to be engrossed, in concurrence, with the amendments, was determined by a call of the yeas and nays, at one minute before seven o'clock P.M., on motion of Mr. Panagiotakos, as follows, to wit (yeas 36 — nays 0):

YEAS.

Antonioni, Robert A. Montigny, Mark C.

Berry, Frederick E. Moore, Richard T.

Brewer, Stephen M. Morrissey, Michael W.

Chandler, Harriette L. Murray, Therese

Clancy, Edward J., Jr. Nuciforo, Andrea F., Jr.

Creem, Cynthia Stone O'Leary, Robert A.

Fargo, Susan C. Pacheco, Marc R.

Glodis, Guy W. Panagiotakos, Steven C.

Havern, Robert A. Resor, Pamela

Hedlund, Robert L. Rosenberg, Stanley C.

Jacques, Cheryl A. Shannon, Charles E.

Joyce, Brian A. Sprague, Jo Ann

Knapik, Michael R. Tarr, Bruce E.

Lees, Brian P. Tisei, Richard R.

Lynch, Stephen F. Tolman, Steven A.

Magnani, David P. Tucker, Susan C.

Melconian, Linda J. Walsh, Marian

Menard, Joan M. Wilkerson, Dianne — 36.

NAYS — 0.

ABSENT OR NOT VOTING.

Creedon, Robert S., Jr. Travaglini, Robert E. — 2.

The yeas and nays, having been completed at three minutes past seven o'clock P.M., the bill was passed to engrossed, in concurrence, with the amendments. [For text of the Senate amendments, printed as amended, see Senate document numbered 2119.]

Sent to the House for concurrence in the amendments.

The House Bill relative to dress codes in public schools (House, No. 2670),— **was read a second time and ordered to a third reading.**

PAPER FROM THE HOUSE.

A Bill making certain appropriations for the fiscal year ending June 30, 2002, before final action on the General Appropriation Bill for that fiscal year (House, No. 4551,— being a message from Her Honor the Lieutenant-Governor, Acting Governor),— was read.

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

Matter Taken Out of the Notice Section of the Calendar.

There being no objection, the following matter was taken out of the notice section of the Calendar and considered, as follows:

The House Bill directing the retirement board of the city of Holyoke to retire John Daly (House, No. 4457),— **was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence.**

PAPERS FROM THE HOUSE.

A Bill designating the tourist information center on state highway Route 2 in the town of Lancaster as the Johnny Appleseed visitor center (House, No. 1136,— on petition),— was read.

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

Engrossed Bills.

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

Relative to town meetings in the town of Burlington (see House, No. 1446);

Authorizing the town of Plymouth to lease certain land (see House, No. 4174); and

Authorizing the town of Hanover to issue an additional license for the sale of wines and malt beverages not to be drunk on the premises (see House, No. 4233).

Report of Committees.

By Ms. Menard, for the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the Senate petition of Therese Murray, Matthew C. Patrick and Ruth W. Provost for legislation to authorize the Division of Fisheries and Wildlife to convey an easement over a certain parcel of land in Bourne.

Senate Rule 36 was suspended, on motion of Ms. Murray, and the report was considered forthwith. Joint Rule 12 was suspended; and the petition (accompanied by bill) was referred to the committee on State Administration.

Sent to the House for concurrence.

PAPERS FROM THE HOUSE.

Petitions were referred, in concurrence, as follows:

Petition (accompanied by bill, House, No. 0000) of Robert M. Koczera, other members of the General Court and others for legislation to protect the privacy of elders;

Under suspension of Joint Rule 12, to the committee on Human Services and Elderly Affairs.

Petition (accompanied by bill, House, No. 0000) of Daniel F. Keenan relative to the funding of regional retirement systems of abolished counties;

Under suspension of Joint Rule 12, to the committee on Public Service.

Resolutions.

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

Resolutions (filed by Messrs. Birmingham and Berry) “honoring Mayor Peter Torigian and the Peabody International Festival”;

Resolutions (filed by Messrs. Brewer, Antonioni and Moore) “commending Audrey Greenwald for her lifelong commitment and dedication to serving the needs of all people”;

Resolutions (filed by Mr. Magnani) “honoring John A. Stefanini”;

Resolutions (filed by Mr. Rosenberg) “on the occasion of the thirtieth anniversary of the University Without Walls Program at the University of Massachusetts Amherst”; and

Resolutions (filed by Ms. Wilkerson) “congratulating Mary Lee Maye on the occasion of her ninetieth birthday.”

Order Adopted.

On motion of Ms. Melconian,—

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

Adjournment in Memory of Judge Henry P. Crowley.

The Senator from Middlesex and Norfolk, Ms. Creem, moved that when the Senate adjourns today, it adjourn in memory of the Honorable Judge Henry P. Crowley, the former First Justice of the Brookline District Court, serving the public in that capacity for 32 years. Mr. Crowley

also served our nation honorably in the United States Army during World War II. Prior to his appointment to the bench, he was a member of the Brookline Democratic Town Committee, Brookline Town Meeting and the Advisory Committee. He worked admirably on behalf of the interests of the people of Brookline, the Commonwealth of Massachusetts and our nation. The motion prevailed.

Accordingly, as a mark of respect to the memory of Judge Henry P. Crowley, at eleven minutes past seven o'clock P.M, on motion of Mr. Lees, the Senate adjourned to meet again tomorrow at eleven o'clock A.M.