

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

UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



JOURNAL OF THE SENATE.

Thursday, June 1, 2005.

Met at four minutes past one o'clock A.M. (Mr. Brewer in the Chair).

The Senator from Worcester, Hampden, Hampshire and Franklin, Mr. Brewer, offered the following prayer:

Lord, help us to recognize and appreciate our assets and talents and to avoid becoming discouraged by our limitations.

Lord, please love us when we find it hard to love ourselves, help us to see ourselves as the unique precious individuals which we are.

Let us feel the joy of your loving care. Amen

The Chair (Mr. Brewer), members, guests and employees then recited the pledge of allegiance to the flag.

Distinguished Guests.

There being no objection, the President handed the gavel to Mr. O'Leary for the purpose of an introduction. Mr. O'Leary then introduced, in the rear of the Chamber, his students from the Massachusetts Maritime Academy.

There being no objection, the President handed the gavel to Mr. Brown for the purpose of an introduction. Mr. Brown then introduced, seated in the rear of the Chamber, Jeffrey Chin and William Small and their families. Jeffrey Chin and William Small are currently students at King Philip Regional High School and will be attending the United States Military Academy at West Point in September.

There being no objection, the Chair (Mr. Havern) handed the gavel to Mr. Panagiotakos for the purpose of an introduction. Mr. Panagiotakos then introduced thirty-eight English as a second language U.S. history students from Lowell High School. The students, seated in the Senate Galleries, were accompanied by their teachers, John Croes and Caroline Yunta.

Petitions.

Mr. Timilty presented a petition (accompanied by bill, Senate, No. 2568) of James E. Timilty, Philip Travis, Virginia J. Coppola and Elizabeth A. Poirier (by vote of the town) for legislation to exempt Craig Blake of Norton from the maximum age requirements for appointment as a firefighter in the town of Norton [Local approval received],— **and the same was referred, under Senate Rule 20, to the committee on Public Service. Sent to the House for concurrence.**

Petitions were presented and referred, as follows:

By Mr. Antonioni, a petition (subject to Joint Rule 12) of Robert A. Antonioni for legislation relative to student information;

By the same Senator, a petition (subject to Joint Rule 12) of Robert A. Antonioni for legislation relative to student instruction;

By Mr. Montigny, a petition (subject to Joint Rule 12) of Mark C. Montigny, Susan C. Fargo, Cory Atkins, Anthony J. Verga and other members of the General Court for legislation to extend emergency prescription drug coverage for seniors and the disabled; and

By Mr. O'Leary, a petition (subject to Joint Rule 12) of Robert A. O'Leary, Edward M. Augustus, Jr., Mark C. Montigny, Kevin

G. Honan and other members of the General Court for legislation to require automatic external defibrillator devices in health clubs;

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

Report of a Committee.

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

The House Bill relative to certain insurance benefits for part time elected officials of the town of Norwell (printed in House, No. 4386).

Committee Discharged.

Ms. Murray, for the committee on Ways and Means, reported, asking to be discharged from further consideration Of the Senate Bill relative to certain musical performances and the protection of performing groups (Senate, No. 2530); and Of the House Bill relative to certain evidence of collective bargaining results (House, No. 429);

And recommending that the same severally be referred to the Senate committee on Ethics and Rules. Under Senate Rule 36, the reports were severally considered forthwith and accepted.

Resolutions.

There being no objection, the President handed the gavel to Mr. Antonioni for the purpose of a presentation.

Mr. Antonioni presented "Resolutions congratulating Rita Noonan on the occasion of her college graduation."

After remarks, Mr. Antonioni read the resolutions and, after further remarks, the resolutions were adopted.

The following resolutions (having been filed with the Clerk) were severally considered forthwith and adopted, as follows:—
Resolutions (filed by Mr. Hedlund) "on the occasion of the one hundredth birthday of Freda Mester Green";
Resolutions (filed by Mr. Joyce) "congratulating Firefighter Wayne MacDonald"; and
Resolutions (filed by Mr. Joyce) "congratulating Sergeant Detective James Wolfe."

Engrossed Bill Returned by Governor with Recommendation of Amendment.

The engrossed Bill relative to the Purple Heart highway in Worcester County (see Senate, No. 1930) (which on Monday, May 22, 2006, had been laid before the Governor for his approbation), was returned to the Senate Clerk by the Governor on Wednesday, May 31, 2006 at ten minutes past four o'clock P.M., with a message recommending an amendment.

The message (Senate, No. 2567) was read and the Senate proceeded to reconsider the bill, in accordance with the provisions of Article LVI of the Amendments to the Constitution.

Pending action thereon, the bill was referred to the committee on Bills in the Third Reading, on motion of Mr. Lees.

Orders of the Day.

The Orders of the Day were considered, as follows:

Bills

Relative to protecting banking consumers (Senate, No. 600);

Relative to parking for handicapped individuals and disabled veterans (Senate, No. 1172);

Authorizing the town of Shrewsbury to lease certain land (House, No. 4205);

Exempting the school custodian in the town of Hull from the civil service law (House, No. 4208);

Extending the term of agreement between the town of Shrewsbury and the town of Westborough for the Westborough Treatment Plant (House, No. 4565);

Relative to certain conservation restrictions in the town of Edgartown (House, No. 4570); and

Abolishing the library district in the towns of Mendon and Upton (House, No. 4681);

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

The Senate Bill establishing a sick leave bank for Shelley Nunes, an employee of the Barnstable District Court (Senate, No. 2538),— **was read a third time and passed to be engrossed.**

Sent to the House for concurrence.

The House bills

Establishing a sick bank for Michael Abdow, an employee of the Trial Court (House, No. 4834); and

Establishing a sick leave bank for Debra A. Flagg, an employee of the Department of Mental Retardation (House, No. 4915);

Were severally read a third time and passed to be engrossed, in concurrence.

The House Bill requiring public notice prior to restricting MassHealth (House, No. 4284),— **was read a second time and, after remarks, was ordered to a third reading.**

The Senate Resolve studying trafficking of persons and involuntary servitude (Senate, No. 2289),— **was read a second time and ordered to a third reading.**

The House Bill regulating health examinations for private school children (House, No. 3637) (its title having been changed by the committee on Bills in the Third Reading),— **was read a third time.**

Pending the question on passing the bill to be engrossed, on motion of Mr. Hart, the further consideration thereof was postponed until Thursday, June 8.

The Senate Bill establishing the Martha's Vineyard and Nantucket housing banks (Senate, No. 2555),— **was read a third time. Pending the question on passing the bill to be engrossed, Mr. Tisei moved that the bill be laid on the table; and, in accordance with the provisions of Senate Rule 24, the consideration of the motion to lay on the table was postponed, without question, until the next session.**

The House Bill granting school nurses eligibility for professional teacher status (House, No. 1087) (its title having been changed by the committee on Bills in the Third Reading),— **was read a third time.**

After remarks, the question on. passing it to be engrossed, in concurrence, was determined by a call of the yeas and nays, at twenty-eight minutes before two o'clock P.M., on motion of Mr. Lees, as follows, to wit (yeas 34 — nays 0) [**Yeas and Nays No. 282**]:

YEAS.	
Antonioni, Robert A.	McGee, Thomas M.
Augustus, Edward M., Jr.	Menard, Joan M.
Baddour, Steven A.	Montigny, Mark C.
Barrios, Jarrett T.	Moore, Richard T.
Brewer, Stephen M.	Morrissey, Michael W.
Brown, Scott P.	Murray, Therese
Buoniconti, Stephen J.	O'Leary, Robert A.
Chandler, Harriette L.	Pacheco, Marc R.
Creem, Cynthia Stone	Panagiotakos, Steven C.
Fargo, Susan C.	Resor, Pamela
Hart, John A., Jr.	Spilka, Karen E.
Havern, Robert A.	Tarr, Bruce E.
Hedlund, Robert L.	Timilty, James E.
Jehlen, Patricia D.	Tisei, Richard R.
Joyce, Brian A.	Tolman, Steven A.
Knapik, Michael R.	Tucker, Susan C.
Lees, Brian P.	Walsh, Marian — 34.
NAYS — 0.	
ABSENT OR NOT VOTING.	
Berry, Frederick E.	Nuciforo, Andrea F., Jr.
Creedon, Robert S., Jr.	Rosenberg, Stanley C. — 4.

ANSWERED “PRESENT”.	
Wilkerson, Dianne — 1.	

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

The House Bill further regulating municipal affordable housing trusts funds (House, No. 4793) (its title having been changed by the committee on Bills in the Third Reading),— **was read a third time and, after remarks, was passed to be engrossed, in concurrence.**

The Senate Bill promoting school nutrition (Senate, No. 2373),— **was considered; the main question being on passing the bill to be engrossed.**

On motion of Mr. Moore, the further consideration thereof was postponed until Thursday, June 15.

The Senate Bill relative to the negotiation of taxes due under a tax increment financing (TIF) (Senate, No. 1701),— **was considered; and, after remarks, it was ordered to a third reading.**

The message from His Excellency the Governor, returning, with his disapproval of certain sections contained in the engrossed Bill promoting access to affordable, quality, accountable health care (see House, No. 4479, amended) (as relates to section 112), which, on Wednesday, April 5, 2006, had been laid before the Governor for his approbation,— having previously come from the House, in part, several sections having been passed by the House notwithstanding the reduction or disapproval of the Governor (for message, see House, No. 4857),— **was considered; the main question being on passing section 112 notwithstanding the disapproval of His Excellency the Governor.**

Pending the question on the motion to lay the matter on the table, and pending the main question on passing section 112, notwithstanding the disapproval of His Excellency the Governor, on motion of Mr. Lees, the further consideration thereof was postponed until Thursday, June 15.

The House Bill relative to HIV and Hepatitis C prevention (House, No. 4176, amended),— **was considered; the main question being on ordering it to a third reading.**

The pending motion, previously moved by Mr. Lees, to lay the matter on the table was considered; and, after debate, the question on laying the bill on the table was determined by a call of the yeas and nays, at eight minutes past two o'clock P.M, on motion of Mr. Lees, as follows, to wit (yeas 11 — nays 24) [**Yeas and Nays No. 283**]:

YEAS.	
Baddour, Steven A.	Lees, Brian P.
Brewer, Stephen M.	Pacheco, Marc R.
Brown, Scott P.	Tarr, Bruce E.
Buoniconti, Stephen J.	Timilty, James E.
Hedlund, Robert L.	Tisei, Richard R. — 11.
Knapik, Michael R.	
NAYS.	
Antonioni, Robert A.	Moore, Richard T.
Barrios, Jarrett T.	Morrissey, Michael W.
Chandler, Harriette L.	Murray, Therese
Creem, Cynthia Stone	O'Leary, Robert A.
Fargo, Susan C.	Pacheco, Marc R.
Hart, John A., Jr.	Panagiotakos, Steven C.
Havern, Robert A.	Resor, Pamela

Jehlen, Patricia D.	Spilka, Karen E.
Joyce, Brian A.	Tolman, Steven A.
McGee, Thomas M.	Tucker, Susan C.
Menard, Joan M.	Walsh, Marian
Montigny, Mark C.	Wilkerson, Dianne — 24.
ABSENT OR NOT VOTING.	
Berry, Frederick E.	Nuciforo, Andrea F., Jr.
Creedon, Robert S., Jr.	Rosenberg, Stanley C. — 4.

The yeas and nays having been completed at twelve minutes past two o'clock P.M., the motion to lay the bill on the table was negatived.

The amendment previously recommended by the committee on Ways and Means striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2512, previously amended (Menard-Murray) in section 3, in subsection (d) of proposed section 27A, by adding the following sentence:— “Included in the recommendations for legislative action shall be punishments and fines associated with inappropriate, unsafe or unlawful disposal of the hypodermic needles and lancets.”; and by striking out section 12,— **was considered.**

Ms. Menard moved that the amendment be amended in section 3, in the third sentence of subsection (a) of proposed section 27A, by inserting after the word “agencies” the following words:— “that choose to participate”.

The amendment was **adopted.**

Mr. Hart moved that the amendment be amended by inserting after section 14 the following section:—

“Section 15. The department of public health shall perform a comprehensive study and review of the existing needle exchange programs established pursuant to section 215 of chapter 111 of the General Laws, as appearing in the 2004 Official Edition. The study shall include, but not be limited to: a review and analysis of the relationship between the provisions of this act and the operation of the needle exchange programs; the success of existing needle exchange programs; whether existing needle exchange programs should be maintained without change, phased out, or expanded to other municipalities.”

After debate, the question on adoption of the amendment was determined by a call of the yeas and nays, at one minute before three o'clock P.M, on motion of Mr. Hedlund, as follows, to wit (yeas 35 — nays 0) [**Yeas and Nays No. 284**]:

YEAS.	
Antonioni, Robert A.	McGee, Thomas M.
Augustus, Edward M., Jr.	Menard, Joan M.
Baddour, Steven A.	Montigny, Mark C.
Barrios, Jarrett T.	Moore, Richard T.
Brewer, Stephen M.	Morrissey, Michael W.
Brown, Scott P.	Murray, Therese
Buoniconti, Stephen J.	O'Leary, Robert A.
Chandler, Harriette L.	Pacheco, Marc R.
Creem, Cynthia Stone	Panagiotakos, Steven C.
Fargo, Susan C.	Resor, Pamela
Hart, John A., Jr.	Spilka, Karen E.
Havern, Robert A.	Tarr, Bruce E.
Hedlund, Robert L.	Timilty, James E.

Jehlen, Patricia D.	Tisei, Richard R.
Joyce, Brian A.	Tolman, Steven A.
Knapik, Michael R.	Tucker, Susan C.
Lees, Brian P.	Walsh, Marian — 35.
Wilkerson, Dianne	
NAYS — 0.	
ABSENT OR NOT VOTING.	
Berry, Frederick E.	Nuciforo, Andrea F., Jr.
Creedon, Robert S., Jr.	Rosenberg, Stanley C. — 4.

Mr. Havern in the Chair, the yeas and nays having been completed at four minutes past three o'clock P.M., the amendment was adopted.

Messrs. Tarr, Lees, Hedlund and Brown moved that the bill be amended by inserting after the words “embalming supplies.” the following:— “And provided further, that not more than 5 hypodermic syringes or hypodermic needles shall be sold to an individual per transaction, with no more than 2 transactions per week, without a prescription.”.

The amendment was *rejected*.

Messrs. Tarr, Lees, Hedlund and Brown moved that the bill be amended by inserting at the end the following new section:— “SECTION 15. Section 321 of said Chapter 94C, as so appearing, is hereby further amended by adding, in line 1, after the word ‘possess’ the following:— ‘or purchase’.”

After remarks, the question on adoption of the amendment was determined by a call of the yeas and nays, at six minutes past three o'clock P.M, on motion of Mr. Lees, as follows, to wit (yeas 34 — nays 1) [**Yeas and Nays No. 285**]:

YEAS.	
Antonioni, Robert A.	Chandler, Harriette L.
Augustus, Edward M., Jr.	Creem, Cynthia Stone
Baddour, Steven A.	Hart, John A., Jr.
Barrios, Jarrett T.	Havern, Robert A.
Brewer, Stephen M.	Hedlund, Robert L.
Brown, Scott P.	Jehlen, Patricia D.
Buoniconti, Stephen J.	Joyce, Brian A.
Knapik, Michael R.	Panagiotakos, Steven C.
Lees, Brian P.	Resor, Pamela
McGee, Thomas M.	Spilka, Karen E.
Menard, Joan M.	Tarr, Bruce E.
Montigny, Mark C.	Timilty, James E.
Moore, Richard T.	Tisei, Richard R.
Morrissey, Michael W.	Tolman, Steven A.
Murray, Therese	Tucker, Susan C.
O’Leary, Robert A.	Walsh, Marian

Pacheco, Marc R.	Wilkerson, Dianne — 34.
NAY.	
Fargo, Susan C. — 1.	
ABSENT OR NOT VOTING.	
Berry, Frederick E.	Nuciforo, Andrea F., Jr.
Creedon, Robert S., Jr.	Rosenberg, Stanley C. — 4.

The yeas and nays having been completed at ten minutes past three o'clock P.M., the amendment was **adopted**.

Messrs. Tarr, Lees, Hedlund and Brown moved that the bill be amended in section 3, by inserting after the words "embalming supplies." the following:—"When selling hypodermic syringes or hypodermic needles without a prescription, a pharmacist or wholesale druggist must require proof of identification that validates the individual's age,"

After remarks, the amendment was **adopted**.

Messrs. Tarr, Lees, Hedlund and Brown moved that the bill be amended by inserting at the end thereof the following 2 new sections:

"SECTION 15. Two per cent of the cost of any hypodermic syringe or hypodermic needle sold in the commonwealth, other than those sold or distributed by prescription from a licensed physician, shall be deposited in the Drug Abuse Clean-Up and Recovery Fund, as established by section 2SSS of chapter 29.

SECTION 16. Section 2RRR of chapter 29 is hereby amended by inserting at the end thereof the following new section:—

Section 2SSS. (a) There is hereby established and set up on the books of the commonwealth a separate fund to be known as the Massachusetts Drug Abuse Clean-Up and Recovery Fund, hereinafter referred to as the clean-up fund, to which shall be credited any monies collected pursuant to section 15 of chapter ____ of the Acts of 2006.

(b) The public purpose of the clean-up fund shall be to provide resources to safely dispose of any hypodermic syringes or hypodermic needles that are discarded in public places. Any balance of remaining funds not so used at the end of the fiscal year shall be provided to the executive office of health and human services to supplement funds used to treat drug addictions.

(c) The executive office of public safety, in consultation with the executive office of health and human services, shall promulgate policies, rules and regulations consistent with this chapter to implement subsections (a) and (b)."

The amendment was *rejected*.

Messrs. Tarr, Lees, Hedlund and Brown moved that the bill be amended by inserting at the end thereof a new section:

"SECTION 15. This act shall become effective upon the completion of reports by the Department of Public Health and the Executive Office of Public Safety. Said reports shall include analysis of the impact of the provisions of this act, should it become effective, and shall include statistics on the prevalence of intravenous drug use in the commonwealth, current expenditures to combat drug offenders, current expenditures to treat intravenous drug users, the ability of the commonwealth's resources to sustain the provisions of this act and any other information or statistics on the use of intravenous drugs that may impact the provisions of this act. Said reports shall be submitted to the legislature on or before July 1, 2008 and this act shall not become effective until said reports are submitted in accordance with this section."

Pending the question on adoption of the amendment, Ms. Chandler and Mr. Moore moved to amend the amendment (Lees) by striking the amendment and inserting in place thereof the following words:—

"SECTION 15. No earlier than 24 months and no later than 36 months after the effective date of this act, the department of public health shall submit a report to the house and senate committees on ways and means and the joint committee on public health which shall include analysis of the impact of this act. The report shall include, but not be limited to, statistics on the methods by which disposal of hypodermic syringes or hypodermic needles are conducted, increases or decreases in the spread of Hepatitis C and human immunodeficiency virus, and proposed changes to the act consistent with the public health and welfare."

The further amendment was adopted.

The pending amendment (Lees) was then considered; and it was adopted, as amended.

Messrs. Tarr, Lees, Hedlund and Brown moved that the bill be amended by inserting at the end thereof a new section;

"SECTION 15. This act shall be submitted for acceptance to the registered voters of a city at a regular city election if the city

council thereof so votes, and of a town at an annual town election upon petition of two hundred registered voters or of twenty per cent of the total number of registered voters, substantially in the form of the following question, which shall be placed on the official ballot used for the election of officers at such city or town election:

‘Shall the city (or town) vote to accept the provisions of section 27 of chapter 94C of the General Laws, which authorizes pharmacies to sell hypodermic syringes or hypodermic needles to persons 18 or older without a prescription?’

YES.

NO.

If a majority of the votes in answer to said question is in the affirmative, then said act shall thereupon take full effect in such city or town, but not otherwise.”

The amendment was *rejected*.

Messrs. Tarr, Lees, Hedlund and Brown moved that the bill be amended by inserting by inserting at the end thereof a new section:

“SECTION 15. This act shall expire on July 1, 2007.”

The amendment was *rejected*.

Ms. Menard moved that the bill be amended in section 3, in subsection (b) of proposed section 27A, by striking out the words “and (3) the establishment of sharps collection centers located in municipal facilities including, but not limited to fire stations, police stations, senior centers and public health offices” and inserting in place thereof the following words:—

“(3) the establishment of sharps collection centers located in municipal facilities, including, but not limited to, fire stations, police stations, senior centers and public health offices; and

(4) medical waste mail-back programs approved by the United States Postal Service.”

The amendment was adopted.

The Ways and Means amendment was then adopted, as amended. [For text of Senate amendments, see Senate, No. 2569.]

The bill (House, No. 4176, amended) was then ordered to a third reading.

The House Bill relative to streamlining and expediting the permitting process in the Commonwealth (House, No. 4968),— **was read a third time.**

Pending the question on passing the bill to be engrossed, Ms. Chandler moved that the bill be amended by inserting after section 7 the following section:—

“SECTION 7A. Section 11 of said chapter 40A, as so appearing, is hereby amended by striking out the last paragraph and inserting in place thereof the following paragraph:—

Upon the granting of a special permit, or any extension, modification or renewal thereof, the permit granting authority or special permit granting authority shall issue to the owner and to the applicant, if other than the owner, a copy of its decision, certified by the permit granting authority or special permit granting authority, containing the name and address of the owner, identifying the land affected, setting forth compliance with the statutory requirements for the issuance of the permit and certifying that copies of the decision and all plans referred to in the decision have been filed with the planning board and city or town clerk. A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk and either that: (i) no appeal has been filed or such appeal has been filed within such time; or (ii), if it is a special permit which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit accompanied by the certification of the city or town clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the time prescribed whether or not an appeal has been filed within that time and that the grant of the application or petition resulting from the failure to act has become final, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner’s certificate of title. The fee for recording or registering shall be paid by the owner or applicant. During the pendency of an appeal, this paragraph shall not terminate or shorten the tolling of the 6 month periods provided under the second paragraph of section 6.”

The amendment was *rejected*.

Mr. O’Leary moved that the bill be amended in section 9, in proposed clause (1) of the third sentence of section 9 of chapter 43D of the General Laws, by inserting after the words “federal, state” the following word:— “, regional”.

The amendment was **adopted**.

Ms. Chandler moved that the bill be amended by adding the following section:—

“SECTION 16. Not later than 180 days after the effective date of this act, the chief justice for administration and management of the trial court, in consultation with the registers of deeds of Essex and Middlesex, the counties of Suffolk, Norfolk, Bristol,

Plymouth, Barnstable, and Dukes and in the former counties of Hampden, Hampshire, Berkshire and Worcester, and the county of Franklin, shall submit a report to the house and senate committees on ways and means and the joint committee on the judiciary which report shall include the feasibility of developing 2 divisions of the land court, an eastern division, which shall hold its session in Boston, made up of the former counties of Essex and Middlesex, the counties of Suffolk, Norfolk, Bristol, Plymouth, Barnstable, and Dukes, and a western division, which shall hold its sessions in Worcester, including the former counties of Hampden, Hampshire, Berkshire and Worcester, and the county of Franklin. The report shall include estimated expenses of the eastern and western divisions of the land court as well as possible physical locations in the city of Boston and the city of Worcester.”

The amendment was **adopted**.

Ms. Chandler moved that the bill be amended by inserting after section 5 the following section:—

“SECTION 5A. Section 10 of chapter 30A of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by adding the following paragraph:—

The right of intervention provided by this section shall not be available in or with respect to a proceeding concerning or arising out of a decision of the department of environmental protection under or pursuant to chapter 91 including, without limitation, licenses, license determinations, applicability determinations, and municipal harbor plan approvals.”

The amendment was rejected.

Mr. Hart moved that the bill be amended in section 8, in the first sentence, by inserting after the word “permitting”, the following words:— “pursuant to chapter 43D”.

The amendment was **adopted**.

Mr. Hart moved that the bill be amended in section 9, in proposed subsection (b) of section 3 of chapter 43D, by striking out the figure “\$100,000” and inserting in place thereof the following figure:— “\$200,000”.

The amendment was **adopted**.

The President in the Chair, Mr. Hart moved to amend the bill by inserting after section 10 the following section:

“SECTION 10A. Section 25C of chapter 152 of the General Laws, as so appearing, is hereby amended by adding the following subsection:—

(11) Where either the attorney general or a superior court decides that probable cause exists to show that an employer has not fully complied with this chapter, then any 10 persons may bring on behalf, and in the name, of the Workers’ Compensation Trust Fund established by subsection (2) of section 65 a civil action to recover amounts which by law should have been paid by the employer pursuant to this chapter to cover the employer’s employees who engaged in employment in the commonwealth. The 10 persons may petition in writing that the attorney general or a court hold a probable cause hearing to decide whether the probable cause exists, and shall serve a copy of the petition to the employer named within 5 days. The attorney general or the court in which the petition was filed shall hold a hearing within 30 days, and after the conclusion of the hearing, shall render a decision within 30 additional days. The decision may be appealed when a cause of action filed under this section has been finally adjudicated, unless the petition is denied. At the hearing, it shall be prima facie evidence that probable cause exists if it is shown that:

- (i) an employee was paid any portion of wages in cash currency with no deductions or taxes withheld;
- (ii) no accompanying pay slip or check showing the wage payment and withholdings or deductions as required by section 148 of chapter 149 was provided;
- (iii) an individual was misclassified as an independent contractor where the individual was in fact an employee;
- (iv) wages were not timely paid;
- (v) the employer failed to withhold from the employee’s wages all related state taxes; or
- (vi) employees have not been properly reported on payroll records required by section 27B of chapter 149.

Nothing contained above, however, shall be construed as limiting or prohibiting other information that might be used to establish the requisite probable cause that this chapter was not fully complied with, and any information produced need not be admissible at a trial. At the probable cause hearing, it shall not be grounds for objecting that the information produced will be inadmissible in a trial if the information appears reasonably sufficient that it might lead to the discovery of other information that could be admissible at a trial.

After the decision that probable cause exists has been made, the persons who brought the petition shall serve a copy of the decision on any insurer that was or is entitled to collect amounts not paid and the persons shall simultaneously state any intention to file suit under this section. At least 90 days after the service, the persons may file a civil action in accord with this section. Persons who prevail in an action filed pursuant to this section shall be entitled to recover 25 per cent of the amounts unlawfully not paid or \$25,000, whichever is less, together with costs and reasonable attorneys fees, as well as an additional amount from the defendant as liquidated damages equal to 25 per cent of the amount not paid or \$25,000, whichever is less. The liquidated

damages are compensatory and not intended to be penal or punitive. After an action under this section is filed in a court, an insurer that failed to file a complaint or seek arbitration to recover or collect all the amounts which would have been due to the insurer from a defendant in the action shall be prohibited from attempting to recover or collect any amounts sought in the action which the insurer failed to seek to recover or collect, unless the insurer obtains the written and voluntary consent of the persons who have initiated the suit under this section. When the written consent is provided, a court may substitute the insurer as the plaintiff. When the insurer is substituted as the plaintiff, the case shall proceed without further regard to this section or the Workers' Compensation Trust Fund.

A settlement made between an insured and an insurer shall not be considered to prohibit or limit an action under this section to recover other amounts that should have been paid to cover employees under this chapter and which the insurer did not recover by such settlement or otherwise.

Except as provided herein and unless the insurer has been substituted in the action, any amounts recovered by the persons who filed the civil action under this section shall be deposited into the Workers' Compensation Trust Fund, except those amounts payable to those persons in accord with this section.

An insurer, however, who pays a claim may recover from the amounts that are deposited into the Workers' Compensation Trust Fund a premium that should have been paid to that insurer which would have provided coverage for that specific claimant and claim.

Nothing contained herein shall be considered as limiting or prohibiting any political subdivision, public entity or office, for example, any division, commission, commissioner, director, attorney general, and any law enforcement entity or office, presently entitled to bring any action, criminal or civil, against a defendant to an action under this section from proceeding against the defendant in any appropriate forum. The forum, court, or agency, however, may consider and offset the amounts recovered, or likely recoverable, by an action pursuant to this section in imposing a verdict or judgment, or against imposing a fine or other penalty.

The section shall not affect, or apply to, insurance contracts that were made before the effective date of this section. In addition to what is contained above, an action filed under this section may be filed only after 90 days following the expiration of the then present term of the workers' compensation policy effected by the action, if one existed."

After remarks, the amendment was *rejected*.

Messrs. Barrios and Joyce moved that the bill be amended by inserting after section 10 the following section:

"SECTION 10A. Section 32 of chapter 184 of the General Laws, as so appearing, is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraph:—

Conservation, preservation, agricultural preservation, watershed preservation and affordable housing restrictions are interests in land and may be acquired by any governmental body or charitable corporation or trust which has power to acquire interest in the land, in the same manner as it may acquire other interests in land. A restriction may be enforced by injunction or other proceeding, and shall entitle representatives of the holder to enter the land in a reasonable manner and at reasonable times to assure compliance. If the court in a judicial enforcement proceeding, or the decision maker in an arbitration or other alternative dispute resolution enforcement proceeding, finds there has been a violation of the restriction or of any other restriction described in subsection (c) of section 26, then in addition to any other relief ordered, the petitioner bringing the action or proceeding shall be awarded reasonable attorneys' fees and costs incurred in the action or proceeding. The a restriction may be released, in whole or in part, by the holder for consideration, if any, as the holder may determine, in the same manner as the holder may dispose of land or other interests in land, but only after a public hearing upon reasonable public notice, by the governmental body holding the restriction or if held by a charitable corporation or trust, by the mayor, or in cities having a city manager the city manager, the city council of the city or the selectmen of the town, whose approval shall be required, and in case of a restriction requiring approval by the secretary of environmental affairs, the Massachusetts historical commission, the director of the division of water supply protection of the department of conservation and recreation, the commissioner of food and agriculture, or the director of housing and community development, only with like approval of the release."; and by adding the following section:

"SECTION 19. Notwithstanding any general or special law to the contrary, section 10A shall apply to all enforcement actions commenced after its effective date relative to applicable restrictions granted before, on and after that date."

The amendment was adopted.

Mr. O'Leary moved that bill be amended in section 8, in the first sentence, by inserting after the words "purpose of expediting permitting" the following words:— "and promoting sustainable development".

The amendment was adopted.

Mr. Hart moved to amend the bill, in section 9, in proposed section 2 of chapter 43D, by striking out the definition of "Priority development site" and inserting in place thereof the following definition:—

"Priority development site", a privately or publicly owned property that is:

(1) commercially or industrially zoned; (2) eligible under applicable zoning provisions, including special permits or other

discretionary permits, for the development or redevelopment of a building at least 50,000 square feet of gross floor area in new or existing buildings or structures; and (3) designated as a priority development site by the board. Several parcels or projects may be included within a single priority development site. Wherever possible, priority development sites shall be located adjacent to areas of existing development or in underutilized buildings or facilities, or close to appropriate transit services.

The amendment was adopted.

Mr. McGee moved that the bill be amended by inserting after section 3 the following 2 sections:

“SECTION 3A. Section 49 of chapter 7 of the General Laws, as so appearing, is hereby amended by adding the following subsection:—

(e) The retirement dispute resolution committee shall be comprised of the attorney general or his designee, the state auditor or his designee, and the chairman of the public employee retirement administration commission or his designee

SECTION 3B. Section 50 of said chapter 7, as so appearing, is hereby amended by adding the following 7 paragraphs:

There shall be within the public employee retirement administration, but not subject to its control, an office of retirement dispute resolution under the supervision and control of a director who shall be appointed by the retirement dispute resolution committee provided for in section 49. The director shall be a person with professional experience in public retirement law, shall maintain complete impartiality with respect to the matters coming before the office and shall devote full time to the duties of his office. The office of retirement dispute resolution may: (a) conduct hearings as provided for in subdivision (4) of section 16 of chapter 32; (b) conduct hearings as provided for in section 91A of said chapter 32; and (c) undertake any other activities necessary to implement the powers and duties set forth in this paragraph.

The director shall, subject to the approval of the retirement dispute resolution committee, select and assign persons to conduct hearings on behalf of the office.

The director shall, subject to the approval of the retirement dispute resolution committee, establish an annual budget and supplemental budgets. Expenditures in excess of amounts collected as fees for appeals shall be funded from the investment income account of the state employees and state teachers' system.

The director may promulgate, pursuant to chapter 30A, such regulations as may be necessary to carry out the functions of the office as authorized by this section.

The director may establish reasonable fees for appeals brought under subdivision (4) of section 16 of chapter 32. Such shall be received by the state treasurer and deposited in a separate account and shall be expended, subject to appropriation, at the direction of the director, with the approval of the retirement dispute resolution committee, for the cost of operation of the office, including personnel.

The office shall prepare annually a report on the status of all case that have been filed with the office and shall file the report with the clerks of the senate and house of representatives.”; and by inserting after section 6 the following 3 sections:—

“SECTION 6A. Section 16 of chapter 32 of the General Laws, as so appearing, is hereby amended by striking out subdivision (4) and inserting in place thereof the following subdivision:

(4) (a) On matters other than those subject to review by the district court as provided for in subdivision (3) or other than those which would have been subject to review had the requirement for the minimum period of creditable service been fulfilled, any person when aggrieved by any action taken or decision made by the retirement board or rendered by the public employee retirement administration commission, or by the failure of a retirement board or the public employee retirement administration commission to act, may appeal to the office of retirement dispute resolution by filing therewith a claim in writing within 15 days of notification of such action or decision of the retirement board or the commission, or may so appeal within 15 days after the expiration of the time specified in sections 1 to 28, inclusive, within which a board or the commission shall act upon a written request thereto, or within 15 days after the expiration of 1 month following the date of filing a written request with the board or the commission if no time for action thereon is specified, in case the board or the commission failed to act thereon within the time specified or within 1 month, as the case may be. The office of retirement dispute resolution, after giving due notice, shall, not less than 10 nor more than 60 days after filing of any such claim of appeal, assign such appeal for a hearing. After the conclusion of such hearing, the office of retirement dispute resolution shall submit to the parties a written decision which shall be final and binding upon the board involved and upon all other parties, and shall be complied with by such board and by such parties. Any person, upon making an appeal involving a disability retirement allowance, shall be permitted to retire for superannuation retirement, if otherwise eligible, pending the decision of the office of retirement dispute resolution, but in no event shall such action prejudice the person from receiving any further benefits which the office of retirement dispute resolution may grant in its decision nor shall the person upon a finding in favor of the employer be required to reimburse the employer for payments made prior to the decision of the office of retirement dispute resolution.

(b) On appeals involving disability or where medical reports are part of the proceedings, the office of retirement dispute resolution may request further information from the members of the appropriate regional medical panel, or may employ a registered physician to advise them in determination of an appeal.

(c) The office of retirement dispute resolution may subpoena witnesses, administer oaths and examine such parts of the books and records of the parties to a proceeding as relate to questions in dispute. Fees for such witnesses shall be the same as for witnesses before the courts in civil actions.

(d) The office of retirement dispute resolution shall arrange for the publication of its decisions.

(e) The office of retirement dispute resolution shall establish a fee structure for appeals brought under this section, which shall be subject to the approval of the commissioner of administration.

(f) The office of retirement dispute resolution shall submit to the retirement dispute resolution committee on an annual basis a report on the status of all cases that have been assigned for a hearing.

(g) Sections 9A and 46C of chapter 30, sections 41 and 46 of chapter 31, and chapter 150E shall not apply to the director or any other employee of the office of retirement dispute resolution

SECTION 6B. Section 91A of said chapter 32, as so appearing, is hereby amended by striking out, in lines 25 and 26, the words ‘an opportunity to be heard by the retirement board’ and inserting in place thereof the following words:— may request a hearing by the office of retirement dispute resolution,

SECTION 6C. Said section 91A of said chapter 32, as so appearing, is hereby further amended by striking out the eighth sentence and inserting in place thereof the following sentence:— Termination of a member’s rights in and to a retirement allowance for failure to submit a statement to the commission shall be effective as of the date the statement was due to be submitted to the commission.” and by adding the following 2 sections:—

“SECTION 17. Notwithstanding any general or special law to the contrary, beginning July 1, 2007 any matters of appeal relating to chapter 32 of the General Laws shall be filed with the office of retirement dispute resolution in accordance with this act, but cases pending before the division of administrative law appeals and the contributory retirement appeals board on that date shall proceed until a decision has been rendered and any appeals from such decision have been concluded.

SECTION 18. On or before July 1, 2007, all books, papers, records, documents and other materials related to matters appealed pursuant to subdivision (4) of section 16 of chapter 32 of the General Laws in the possession of the contributory retirement appeals board and the division of administrative law appeals shall be transferred to the office of retirement dispute resolution, but any such books, papers, records, documents or other material related to matters pending on that date shall be transferred to the office when a decision has been rendered and appeals from any such decision have been concluded.”

The amendment was adopted.

Ms. Wilkerson moved that the bill be amended by inserting after section 3B the following 2 sections:—

“SECTION 3C. Section 2 of chapter 21A of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by inserting after clause (7) the following clause:—

(7A) develop state-wide policies to promote environmental justice in the commonwealth and protect and regulate the use of areas of critical environmental justice concern in the commonwealth.

SECTION 3D. Said chapter 21A, as so appearing, is hereby further amended by adding the following 2 sections:—

Section 21. As used in this section and in section 22, the following words shall have the following meanings unless the context clearly requires otherwise:—

‘Cleaner production’, a manufacturing process or approach to manufacturing production that is based on toxics use reduction and pollution prevention and that strives to incorporate the following components: waste reduction, non-polluting production, energy efficiency, safe and healthy work environments and environmentally sound products and packaging.

‘Disproportionate burden’, an unfair share of environmental pollution from industrial, commercial, state or municipal operations or limited access to natural resources, including open space and water resources borne by a group of people.

‘Equal protection’, protection for a group of people, based on race, ethnicity, class, gender or handicap from bearing a disproportionate burden.

‘Environmental benefits’, access to funding, open space, enforcement, technical assistance, training or other beneficial resources disbursed by the secretary of environmental affairs, its agencies and its offices.

‘Environmental justice’, equal protection and meaningful involvement of all people with respect to the development, implementation and enforcement of environmental laws, regulations and policies and the equitable distribution of environmental benefits.

‘Environmental justice population’, a neighborhood in which the annual median household income is equal to or less than 65 per cent of the state-wide median or whose population is made up 25 per cent minority, foreign born or lacking English language proficiency or a community that the secretary has determined has borne a disproportionate burden or otherwise not received equal protection.

‘Foreign born’, individuals who identify themselves on federal census forms as not United States citizens at birth.

‘Lacking English language proficiency’, households that, according to federal census forms, do not have an adult proficient in English residing therein.

‘Low income’, median annual household income at or below 65 per cent of the state-wide median income for Massachusetts, according to federal census data.

‘Meaningful involvement’, that all neighborhoods have the right to participate in partnership with government in environmental decision-making, including needs assessment, planning, implementation, enforcement and evaluation, and that all neighborhoods are enabled and administratively assisted to participate fully through education and training means and encouraged to develop environmental stewardship.

'Minority', individuals who identify themselves on federal census forms as non-white or Hispanic.

'Neighborhood', a census block group as defined by the United States Census Bureau, but not including people who live in college dormitories or people under formally authorized, supervised care or custody.

'Supplemental environmental project', the performance of environmentally beneficial projects in the settlement of environmental enforcement cases.

Section 22. The secretary of environmental affairs shall establish an environmental justice program consisting of, but not limited to, the following components:

- (a) a policy position entitled the director of environmental justice and brownfields redevelopment within the office of the secretary. The director shall act as the initial point of contact on all environmental justice matters and shall coordinate the implementation of this policy, track progress and prepare annual reports for public distribution. The director shall develop a work plan for the implementation of the environmental justice program within the office of the secretary;
- (b) identification of environmental justice populations to be serviced by this section via geographic information systems mapping or other suitable tools, and updating of the map as new United States census data becomes available;
- (c) establishment of a procedure under which additional communities that does not fall under the strict demographic definition of an environmental justice population may petition for such status. The secretary shall make a finding whether the petitioner has borne a disproportionate burden or otherwise has not received equal protection;
- (d) establishment of regional agency outreach teams of liaisons from each agency and region. The team shall consist of a coordinator and existing agency staff. The teams shall, without limitation: (1) open lines of communication with local neighborhood groups through routine meetings; (2) establish specific task forces; (3) further identify language issues; (4) identify enforcement priorities on a local basis; (5) identify a list of community improvement projects; (6) allow issues with existing facilities to be raised and addressed; (7) assist the department of environmental protection and other agencies with targeting enforcement; (8) assist the office of technical assistance and other agencies with targeting assistance; and (9) identify potential economic development opportunities that promote cleaner production and sustainable business practices;
- (e) establishment and coordination of the efforts of a working group made up of senior-level managers from each agency within the executive office of environmental affairs, the department of economic development, the department of housing and community development and the department of public health, as well as representatives from at least 2 environmental justice populations. The working group shall maximize state resources, research and technical assistance to further the goals of this section to ensure environmental justice concerns are evaluated and addressed in each of the agencies' jurisdiction and programs;
- (f) direction of agencies under the secretary to designate senior-level managers to participate in and actively support the working group and the regional agency environmental justice outreach teams;
- (g) direction of agencies under the secretary to identify and promote agency-sponsored projects, funding decisions, rulemakings or other actions intended to further environmental justice in the commonwealth;
- (h) identification of resources to create, restore and maintain open spaces located in neighborhoods where environmental justice populations reside. At a minimum, the agencies charged with acquiring and maintaining state lands shall make the promotion of preserving and restoring open spaces in neighborhoods in which environmental justice populations reside a priority;
- (i) providing an introductory environmental justice training program for employees in the executive office of environmental affairs, watershed teams and municipalities applying for grant programs or for any other resources prioritized or focused on neighborhoods in which environmental justice populations reside. Staff serving on regional agency environmental justice outreach teams, employees or organizations disbursing state funds to municipalities, individuals and organizations for the provision of open space, river maintenance or restoration, education and technical assistance, environmental policy staff and the environmental justice working group shall receive such training;
- (j) development of fact sheets describing programs directly relevant to obtaining funding or additional resources for environmental justice populations including, but not limited to, the urban self help program, Massachusetts Environmental Trust and the Massachusetts environmental policy act. The fact sheets shall be made available in languages other than English;
- (k) development of a distribution list of interested members of environmental justice populations, non-profit organizations, and others to be incorporated into mailing lists for newsletters and other general outreach information;
- (l) development and maintenance of a list of alternative information outlets that service environmental justice populations including, but not limited to, media in languages other than English, for the purpose of seeking public comments or publishing public notices;
- (m) establishment of multiple information repositories in neighborhoods in which environmental justice populations reside;
- (n) direction of agencies to develop and implement a public participation strategy that focuses agency resources on outreach activities to enhance public participation and input to agency decision making that potentially affect environmental justice populations including, but not limited to: (1) scheduling public meetings or hearings at locations and times convenient for neighborhood stakeholders; (2) translating public notices into other languages; (3) offering interpreters and translated documents at public meetings; (4) providing notices as early as possible to all neighborhoods potentially impacted by a decision; and (5) assisting environmental justice populations with grant applications and questions about environmental regulations to assist them with compliance and sustainability;
- (o) cooperation with other agencies as necessary to maximize site remediation and redevelopment programs under chapter 206 of the acts of 1998 and the promotion of nonpolluting development in neighborhoods where environmental justice populations reside;
- (p) direction of the environmental justice regional agency outreach teams to identify and address environmental justice issues and to identify and reclaim brownfields sites identified under chapter 206 of the acts of 1998 within each region;

(q) direction of the Massachusetts environmental policy act office to: (1) develop enhanced public participation for any project that exceeds an Environmental Notification Form threshold for air, solid and hazardous waste, other than remediation projects, or wastewater and sewage sludge treatment and disposal, if the project site is located within 1 mile of an environmental justice population, or in the case of projects exceeding the threshold for air, within 5 miles of an environmental justice population; and require enhanced analysis of impacts and mitigation for an Environmental Impact Report scope if the project exceeds a mandatory Environmental Impact Report threshold for air, solid and hazardous waste, other than remediation projects, or wastewater and sewage sludge treatment and disposal, and the project site is located within 1 mile of an environmental justice population or, in the case of projects exceeding a mandatory threshold for air, within 5 miles of an environmental justice population. Thresholds for the forms and reports identified in this subsection are codified at 310 CMR 11.00 et seq; and (2) exempt site assessment grants and loans granted under the Brownfields Redevelopment Fund, as well as investment tax credits for equipment, tenant fit-ups, and other post-development activities administered under chapter 206 of the acts of 1998 from the category of state financial assistance for the purposes of triggering Massachusetts environmental policy act review. Projects undertaken under chapter 206 of the acts of 1998 that otherwise trigger Massachusetts environmental policy act review may be considered environmental restoration projects and subject to expedited review. In making a decision, the secretary shall consider the extent to which the new proposal would prevent pollution and eliminate or minimize risks to public health and the environment;

(r) direction of the department of environmental protection to: (1) prioritize neighborhoods in which environmental justice populations reside when selecting sectors and facilities for inspection and monitoring, prosecuting non-compliance, providing compliance assistance and allocating resources; (2) prioritize municipal outreach for sites identified under chapter 21E to neighborhoods with environmental justice populations; (3) incorporate environmental justice as a criterion for awarding technical assistance grants to non-profit organizations; (4) prioritize technical assistance to environmental justice populations in neighborhoods with hazardous waste sites identified under chapter 21E; (5) communicate with the list of community-based organizations in neighborhoods in which environmental justice populations reside in addressing compliance matters; (6) consider environmental justice as a factor in establishing priorities for activity use limitation audits under chapter 21E; (7) incorporate environmental justice as a criterion in prioritizing the investigation of sites, negotiating cost recovery under chapter 21E; (8) provide for commensurate cost recovery to municipalities for taxes owed, exclusive of interest and penalties, on sites identified under said chapter 21E and located in neighborhoods in which environmental justice populations reside; and (9) meet regularly with the executive office of environmental affairs and the department of public health to coordinate on environmental issues potentially affecting public health, including matters related to exposures from multiple sources of pollution.”; and by adding the following section:—

“SECTION 20. The executive office of environmental affairs shall adopt the initial regulations required by clause (7A) of section 2 of chapter 21A of the General Laws within 90 days after the effective date of this act.”

Pending the question on adoption of the amendment, Mr. Barrios moved that the amendment (Wilkerson) be amended in section 3D, in subclause (8) of clause (r) of the proposed section 22 of chapter 21A, of the General Laws, by striking out the words “and (9)” and inserting in place thereof the following words:— “(9) conduct a study on the number of hazardous waste sites, nuclear or fossil fuel power plants, or solid waste facilities located within 2 miles from any environmental justice community, water quality of nearby water bodies and groundwater and air pollution emissions, including both stationary and mobile sources. The study shall be completed on or before December 31, 2007, shall be posted on the department’s website and shall be updated every 5 years; (11) create a general cumulative pollution threshold for all types of facilities or pollution sources studied that any community can safely house and prohibit the permitting of new facilities or facility expansions or updates that exceed the cumulative threshold for a community; (12) create and require a new permit that requires pollution and emissions information on all pollutants tracked in the cumulative impact study and any prior violations of a facility for the purpose of updating the cumulative impact study and publishing publicly on the department website and in an annual report of all new industries permitted in environmental justice communities; and (13)””; in said section 3D, in said proposed section 22 of said chapter 21A, by adding the following 3 clauses:—

“(s) establishment of a procedure under which additional communities that do not fall under the strict demographic definition of an environmental justice population, and do not make up an entire census block, may petition for such status. The petition shall be submitted by 10 citizens, demonstrate that the definition of an environmental justice population is met, and delineate proposed geographic boundaries of the environmental justice population. The secretary shall make a finding whether the petitioners have borne a disproportionate burden or otherwise has not received equal protection;

(t) establishment of an environmental justice advisory committee to the secretary, consisting of 2 representatives from the business community, 2 representatives from environmental justice populations, 2 representatives of regional environmental justice advocacy organizations, 1 representative of a public health/environmental health advocacy organization, 1 representative of a state-wide environmental organization and 1 representative of a state-wide community development organization. The advisory committee shall meet at least quarterly to review programs established under this section and provide input as to its effective implementation; and

(u) require that anyone proposing to develop or expand a facility or pollution source studied, as provided in subclause (9) of clause (s), shall complete a notice of intent to obtain a permit in all environmental justice communities prior to submitting an application for a permit. The applicant shall publish a notice of intent to obtain a permit at least once in the newspaper of largest circulation in the community in which the facility is located or proposed to be located, and deliver a copy of the notice to the department 3 days prior to its publication. The applicant shall also publish notice of intent to obtain a permit in local ethnic

newspapers if they exist, and alternative outlets, as described in clause (m), in the city in which the facility located or proposed to be located. Notices in local ethnic newspapers shall be published in the language of the newspapers. The department shall mail the notice of intent to obtain a permit to: (1) the chief executive and board of health of the municipality in which the facility is located or proposed to be located; (2) the environmental justice advisory committee; and (3) all residents and property owners within 500 feet of the proposed facility or action. The department shall establish the form and content of the notice to include: (i) the location and nature of the proposed activity; (ii) the location at which a copy of the application is available for review and copying; (iii) a description, including a telephone number and address, of the manner in which a person may contact the department for further information; (iv) a description, including a telephone number and address, of the manner in which a person may contact the applicant for further information; (v) a description of the manner in which a person may provide comments to the applicant, including contact information and time and location of any public meeting to be held; (vi) deadlines, primed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice; (vii) description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application; (viii) description of any other legally required public comment period, including duration, contact information, and the time and location of any public meeting to be held; and (ix) a compliance history of the plant or company representative of the applicant's interests. The applicant shall make all descriptions available in non-technical, jargon-free and easily understood English, as well as, upon request, in non-English languages spoken by 20 per cent or more of the residents of the environmental justice community. The applicant shall make all copies and versions of the application available for review and copying at a public place in the city or town in which the facility is located or proposed to be located, and in any bordering cities or towns within 1 mile of the proposed location."

The further amendment was adopted.

The pending amendment (Wilkerson) was then considered; and, it was adopted, as amended.

The bill, as amended, was then passed to be engrossed, in concurrence, with the amendments. [For text of Senate amendments, printed as amended, see Senate, No. 2571.]

Sent to the House for concurrence in the amendments.

PAPERS FROM THE HOUSE.

Engrossed Bill Returned by Governor with His Objections Thereto.

The engrossed Bill relative to making certain changes in the organization and operation of the Northern Berkshire Industrial Park and Development Corporation (see House, No. 4376), which, on Thursday, February 9, 2006, had been laid before His Excellency the Governor for his approbation,— came from the House the same having been returned by His Excellency the Governor, with his objections thereto in writing [for message, see House, No. 4698], and having passed that branch, notwithstanding said objections.

The message (House, No. 4698) was read; and the Senate proceeded to reconsider the bill, in accordance with the provisions of the Constitution.

The question on passing the bill, in concurrence, the objections of His Excellency the Governor to the contrary notwithstanding, was determined by a call of the yeas and nays, as required by Chapter I, Section I, Article II, of the Constitution, at twenty-seven minutes before four o'clock P.M., as follows, to wit (yeas 29 — nays 6) [Yeas and Nays No. 286]:

YEAS.	
Antonioni, Robert A.	Montigny, Mark C.
Augustus, Edward M., Jr.	Moore, Richard T.
Baddour, Steven A.	Morrissey, Michael W.
Barrios, Jarrett T.	Murray, Therese
Brewer, Stephen M.	O'Leary, Robert A.
Buoniconti, Stephen J.	Pacheco, Marc R.
Chandler, Harriette L.	Panagiotakos, Steven C.
Creem, Cynthia Stone	Resor, Pamela
Fargo, Susan C.	Spilka, Karen E.
Hart, John A., Jr.	Timilty, James E.
Havern, Robert A.	Tolman, Steven A.
Jehlen, Patricia D.	Tucker, Susan C.

Joyce, Brian A.	Walsh, Marian
McGee, Thomas M.	Wilkerson, Dianne — 29.
Menard, Joan M.	
NAYS.	
Brown, Scott P.	Lees, Brian P.
Hedlund, Robert L.	Tarr, Bruce E.
Knapik, Michael R.	Tisei, Richard R. — 6.
ABSENT OR NOT VOTING.	
Berry, Frederick E.	Nuciforo, Andrea F., Jr.
Creedon, Robert S., Jr.	Rosenberg, Stanley C. — 4.

Mr. Havern in the Chair (having been appointed by the President, under authority conferred by Senate Rule 4, to perform the duties of the Chair), the yeas and nays having been completed at twenty-three minutes before four o'clock, the bill was passed by the Senate, notwithstanding the objections of His Excellency the Governor, two-thirds of the members present and voting having approved the same.

Matters Taken Out of the Orders of the Day.

There being no objection, the following matters were taken out of the Orders of the Day and considered as follows:
The House Bill validating certain orders passed by the Barnstable town council (House, No. 4627),— was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence.

The House Bill designating a bridge in the city of Amesbury as the First Lieutenant Derek S. Hines Memorial Bridge (House, No. 4803),— was read a third time and passed to be engrossed, in concurrence.

The House Bill changing the membership of the town meeting of the town of Shrewsbury (House, No. 4206) (its title having been changed by the committee on Bills in the Third Reading),— **was read a third time and passed to be engrossed, in concurrence.**

PAPER FROM THE HOUSE.

Committee of Conference.

The House Bill making appropriations for the fiscal year 2007 for the maintenance of the departments, boards, commissions, institutions and certain activities of the Commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements (House, No. 4901),— came from the House with the endorsement that the House had NON-concurred in the Senate amendment striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2500, printed as amended, and had asked for a committee of conference on the disagreeing votes of the two branches; and that Representatives DeLeo of Winthrop, St. Fleur of Boston and deMacedo of Plymouth had been appointed the committee on the part of the House.

On motion of Ms. Murray, the Senate insisted on its amendment and concurred in the appointment of a committee of conference; and Senators Murray, Panagiotakos and Knapik were appointed on the part of the Senate.

The bill was returned to the House endorsed accordingly.

Report of a Committee.

By Mr. Brewer, for the committee on Bills in the Third Reading, reported, asking to be discharged from further consideration of the amendment recommended by the Governor to the engrossed Bill relative to the licensure of massage therapists (Senate, No. 2258, amended) (for message sec Senate, No. 2556),— was considered; and, it was accepted.

The President stated that under the provisions of Article LVI of the Amendments to the Constitution, the bill was before the Senate subject to amendment and re-enactment.

**On motion of Ms. Menard, the Senate then rejected the Governor's amendment.
Sent to the House for its action.**

Order Adopted.

Mr. Barrios offered the following order, to wit:

Ordered, That notwithstanding the provisions of Joint Rule 10 the committee on Public Safety and Homeland Security be granted until Friday, June 30, 2006, within which to make its final report on current Senate document numbered 1338 relative to public safety.

Under the rules referred to the committees on Rules of the two branches, acting concurrently.

Subsequently, Mr. Buoniconti, for said committee; reported, that the order ought to be adopted.

The rules were suspended, on motion of Mr. Tolman, and the order was considered forthwith and adopted.

Sent to the House for concurrence.

Report of Committees.

By Mr. Buoniconti, for the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the Senate petition of Bruce E. Tarr, Barry R. Finegold, Susan. C. Tucker, Geoffrey D. Hall and other members of the General Court for legislation relative to the Northeast Solid Waste Committee.

Senate Rule 36 was suspended, on motion of Mr. Tarr, and the report was considered forthwith. Joint Rule 12 was suspended; and the petition (accompanied by bill) was referred to the committee on Environment, Natural Resources and Agriculture.

Sent to the House for concurrence.

PAPERS FROM THE HOUSE.

A petition (accompanied by bill, House, No. 5005) of John J. Binienda and others relative to the payment of certain tax title charges by owners of condominiums,— **was referred, in concurrence, under suspension of Joint Rule 12, to the committee on Revenue.**

Emergency Preamble Adopted.

An engrossed Bill authorizing the Commissioner of the Division of Capital Asset Management and Maintenance to convey and acquire certain parcels of land in the town of Bridgewater (see Senate, No. 2511), having been certified by the Senate Clerk to be rightly and truly prepared for final passage and containing an emergency preamble,— **was laid before the Senate; and, a separate vote being taken in accordance with the requirements of Article LXVII of the Amendments to the Constitution, the preamble was adopted in concurrence, by a vote of 2 to 1.**

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

Engrossed Bills.

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

Designating a certain bridge in the town of Carver as the SFC Robert Rooney Bridge (see Senate, No. 1944);

Relative to the environmental trust (see House, No. 1283);

Regulating betterment assessments in the town of Marion (see House, No. 4201, amended);

Relative to the use of certain land in the town of Stockbridge (see House, No. 4595, amended); and

Authorizing recall elections in the town of Framingham (see House, No. 4694).

Order Adopted.

On motion of Mr. Lees,—

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

On motion of the same Senator, at sixteen minutes before four o'clock. P.M., the Senate adjourned to meet on the following Monday at eleven o'clock A.M.