Bill as Introduced

SB 86 – AS INTRODUCED

2011 SESSION

11-0213 06/05

SENATE BILL 86

AN ACT requiring the department of labor to warn employers of certain violations prior to imposing a fine.

SPONSORS: Sen. Luther, Dist 12; Sen. Bradley, Dist 3; Sen. Barnes, Jr., Dist 17; Sen. Boutin, Dist 16; Sen. Bragdon, Dist 11; Sen. Carson, Dist 14; Sen. De Blois, Dist 18; Sen. Forsythe, Dist 4; Sen. Gallus, Dist 1; Sen. Groen, Dist 6; Sen. Lambert, Dist 13; Sen. Morse, Dist 22; Sen. Odell, Dist 8; Sen. Prescott, Dist 23; Sen. Rausch, Dist 19; Sen. Sanborn, Dist 7; Sen. Stiles, Dist 24; Sen. White, Dist 9; Rep. Infantine, Hills 13; Rep. Umberger, Carr 1; Rep. Chandler, Carr 1; Rep. Hunt, Ches 7; Rep. Bettencourt, Rock 4

COMMITTEE: Commerce

ANALYSIS

This bill requires the department of labor to issue one warning to employers for certain violations before a fine may be imposed.

Explanation:Matter added to current law appears in bold italics.Matter removed from current law appears [in brackets and struckthrough.]Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

SB 86 - AS INTRODUCED

11-0213 06/05

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

AN ACT requiring the department of labor to warn employers of certain violations prior to imposing a fine.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Civil Penalties. Amend RSA 273:11-a to read as follows:

2 273:11-a Civil Penalties.

I. In addition to any criminal penalty provided under this title, the commissioner may, after
hearing, impose a civil penalty not to exceed \$2,500, as determined by the commissioner, for any
violation of any of the provisions of this title or of any rule adopted pursuant to this title.

6 I-a. Unless an employer willfully intends to cause harm, the commissioner shall 7 issue one written warning to the employer when, in the opinion of the commissioner, the 8 violation poses no threat to public safety or welfare. The employer shall have 60 days from 9 receipt of the warning to cure the defect causing the violation.

I-b. Any person on whom a penalty is imposed under this section may appeal as provided in
 RSA 273:11-c and 273:11-d. All moneys collected under this section shall be deposited in the general
 fund.

II. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to the conduct of
 hearings under paragraph I.

15 2 Effective Date. This act shall take effect 60 days after its passage.

SB 86 - AS AMENDED BY THE SENATE

03/30/11 1182s

2011 SESSION

11-0213 06/05

- SENATE BILL 86
- AN ACT requiring the department of labor to warn employers of certain violations prior to imposing a fine.
- SPONSORS: Sen. Luther, Dist 12; Sen. Bradley, Dist 3; Sen. Barnes, Jr., Dist 17; Sen. Boutin, Dist 16; Sen. Bragdon, Dist 11; Sen. Carson, Dist 14; Sen. De Blois, Dist 18; Sen. Forsythe, Dist 4; Sen. Gallus, Dist 1; Sen. Groen, Dist 6; Sen. Lambert, Dist 13; Sen. Morse, Dist 22; Sen. Odell, Dist 8; Sen. Prescott, Dist 23; Sen. Rausch, Dist 19; Sen. Sanborn, Dist 7; Sen. Stiles, Dist 24; Sen. White, Dist 9; Rep. Infantine, Hills 13; Rep. Umberger, Carr 1; Rep. Chandler, Carr 1; Rep. Hunt, Ches 7; Rep. Bettencourt, Rock 4

COMMITTEE: Commerce

ANALYSIS

This bill requires the department of labor to issue one warning to employers for certain violations before a fine may be imposed.

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SB 86 - AS AMENDED BY THE SENATE

03/30/11 1182s

11-0213 06/05

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

AN ACT requiring the department of labor to warn employers of certain violations prior to imposing a fine.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Civil Penalties. RSA 273:11-a is repealed and reenacted to read as follows:

273:11-a Civil Penalties.

I. In addition to any criminal penalty provided under this chapter, the commissioner may, after hearing, impose a civil penalty not to exceed \$2,500, as determined by the commissioner, for any violation of any of the provisions of this chapter or of any rule adopted pursuant to this chapter. All moneys collected under this section shall be deposited in the general fund.

II. Except as provided in paragraph III, the commissioner shall issue one written warning to
the employer. The employer shall have 30 days from receipt of the warning to cure the defect
causing the violation.

10 III. No warning shall be issued if, in the opinion of the commissioner, the employer intends 11 to cause harm, the violation poses a threat to public safety, or the violation involves any of the 12 following:

13

 $\mathbf{2}$

(a) Failure to pay an employee in full and on time under RSA 275:43.

(b) Payment of wages by checks on a financial institution that is not convenient to the
place of employment as required by RSA 275:43, I(e).

16

(c) Failure to pay final wages in full as required by RSA 275:44.

- 17 (d) Failure to pay amounts withheld for court ordered child support to the custodial18 parent.
- 19

(e) Continuation of wage withholding for insurance benefits that have been cancelled.

20 (f) Illegal withholding of wages to compensate employer for employee actions resulting in
21 loss or damage.

22 23 (g) Failure to comply with RSA 275-A:4-a regarding illegal aliens.

(h) Requiring that employees to perform any illegal activities under threat of job loss.

IV. Any person on whom a penalty is imposed under this section may appeal as provided in
 RSA 273:11-c and 273:11-d.

V. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to the conduct of
 hearings under paragraph IV.

28 2 Civil Penalties. Amend RSA 157-A:10-a, II to read as follows:

29

II. The commissioner shall conduct hearings in the manner required under rules adopted

SB 86 - AS AMENDED BY THE SENATE - Page 2 -

1 pursuant to RSA 541-A and 273:11-a, [H] V.

- 2 3 Civil Penalties. Amend RSA 157-B:13-a to read as follows:
- 3 II. The commissioner shall conduct hearings in the manner required under rules adopted
- 4 pursuant to RSA 541-A and 273:11-a, [H] V.
- 5 4 Effective Date. This act shall take effect 60 days after its passage.

CHAPTER 182 SB 86 – FINAL VERSION

03/30/11 1182s 06/01/11 2064eba

2011 SESSION

11-0213 06/05

SENATE BILL 86

- AN ACT requiring the department of labor to warn employers of certain violations prior to imposing a fine.
- SPONSORS: Sen. Luther, Dist 12; Sen. Bradley, Dist 3; Sen. Barnes, Jr., Dist 17; Sen. Boutin, Dist 16; Sen. Bragdon, Dist 11; Sen. Carson, Dist 14; Sen. De Blois, Dist 18; Sen. Forsythe, Dist 4; Sen. Gallus, Dist 1; Sen. Groen, Dist 6; Sen. Lambert, Dist 13; Sen. Morse, Dist 22; Sen. Odell, Dist 8; Sen. Prescott, Dist 23; Sen. Rausch, Dist 19; Sen. Sanborn, Dist 7; Sen. Stiles, Dist 24; Sen. White, Dist 9; Rep. Infantine, Hills 13; Rep. Umberger, Carr 1; Rep. Chandler, Carr 1; Rep. Hunt, Ches 7; Rep. Bettencourt, Rock 4

COMMITTEE: Commerce

ANALYSIS

This bill requires the department of labor to issue one warning to employers for certain violations before a fine may be imposed.

Explanation:Matter added to current law appears in bold italics.Matter removed from current law appears [in-brackets-and struckthrough.]Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

03/30/11 1182s 06/01/11 2064eba

> 11-0213 06/05

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

AN ACT requiring the department of labor to warn employers of certain violations prior to imposing a fine.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1	182:1	Civil Penalties .	RSA 273:11-a is repealed and reenacted to read as follow	/8;
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2 273:11-a Civil Penalties.

I. In addition to any criminal penalty provided under this chapter, the commissioner may, after hearing, impose a civil penalty not to exceed \$2,500, as determined by the commissioner, for any violation of any of the provisions of this chapter or of any rule adopted pursuant to this chapter. All moneys collected under this section shall be deposited in the general fund.

II. Except as provided in paragraph III, the commissioner shall issue one written warning to
the employer. The employer shall have 30 days from receipt of the warning to cure the defect
causing the violation.

10 III. No warning shall be issued if, in the opinion of the commissioner, the employer intends 11 to cause harm, the violation poses a threat to public safety, or the violation involves any of the 12 following:

13

(a) Failure to pay an employee in full and on time under RSA 275:43.

- (b) Payment of wages by checks on a financial institution that is not convenient to the place of employment as required by RSA 275:43, I(e).
- 16

(c) Failure to pay final wages in full as required by RSA 275:44.

- 17 (d) Failure to pay amounts withheld for court ordered child support to the custodial18 parent.
- 19

(e) Continuation of wage withholding for insurance benefits that have been cancelled.

- 20 (f) Illegal withholding of wages to compensate employer for employee actions resulting in
 21 loss or damage.
- $\mathbf{22}$
- (g) Failure to comply with RSA 275-A:4-a regarding illegal aliens.
- 23 (h) Requiring that employees to perform any illegal activities under threat of job loss.
- IV. Any person on whom a penalty is imposed under this section may appeal as provided in
 RSA 273:11-c and 273:11-d.
- V. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to the conduct of
 hearings under paragraph IV.

CHAPTER 182 SB 86 - FINAL VERSION - Page 2 -

1 182:2 Civil Penalties. Amend RSA 157-A:10-a, II to read as follows:

.

2 II. The commissioner shall conduct hearings in the manner required under rules adopted

3 pursuant to RSA 541-A and 273:11-a, [H] V.

- 4 182:3 Civil Penalties. Amend RSA 157-B:13-a, II to read as follows:
- 5 II. The commissioner shall conduct hearings in the manner required under rules adopted

6 pursuant to RSA 541-A and 273:11-a, [H] V.

7 182:4 Effective Date. This act shall take effect 60 days after its passage.

8 Approved: June 14, 2011

9 Effective Date: August 13, 2011

Amendments

Commerce March 24, 2011 2011-1182s 06/05

Amendment to SB 86

Amend the bill by replacing all after the enacting clause with the following:

1 Civil Penalties. RSA 273:11-a is repealed and reenacted to read as follows:

273:11-a Civil Penalties.

I. In addition to any criminal penalty provided under this chapter, the commissioner may, after hearing, impose a civil penalty not to exceed \$2,500, as determined by the commissioner, for any violation of any of the provisions of this chapter or of any rule adopted pursuant to this chapter. All moneys collected under this section shall be deposited in the general fund.

II. Except as provided in paragraph III, the commissioner shall issue one written warning to the employer. The employer shall have 30 days from receipt of the warning to cure the defect causing the violation.

III. No warning shall be issued if, in the opinion of the commissioner, the employer intends to cause harm, the violation poses a threat to public safety, or the violation involves any of the following:

(a) Failure to pay an employee in full and on time under RSA 275:43.

(b) Payment of wages by checks on a financial institution that is not convenient to the place of employment as required by RSA 275:43, I(e).

(c) Failure to pay final wages in full as required by RSA 275:44.

(d) Failure to pay amounts withheld for court ordered child support to the custodial parent.

(e) Continuation of wage withholding for insurance benefits that have been cancelled.

(f) Illegal withholding of wages to compensate employer for employee actions resulting in loss or damage.

(g) Failure to comply with RSA 275-A:4-a regarding illegal aliens.

(h) Requiring that employees to perform any illegal activities under threat of job loss.

IV. Any person on whom a penalty is imposed under this section may appeal as provided in RSA 273:11-c and 273:11-d.

V. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to the conduct of hearings under paragraph IV.

2 Civil Penalties. Amend RSA 157-A:10-a, II to read as follows:

II. The commissioner shall conduct hearings in the manner required under rules adopted pursuant to RSA 541-A and 273:11-a, [H] V.

3 Civil Penalties. Amend RSA 157-B:13-a to read as follows:

II. The commissioner shall conduct hearings in the manner required under rules adopted pursuant to RSA 541-A and 273:11-a, [H] V.

4 Effective Date. This act shall take effect 60 days after its passage.

Committee Minutes

AMENDED SENATE CALENDAR NOTICE COMMERCE

Senator Russell Prescott Chairman Senator Raymond White V Chairman Senator Tom De Blois Senator Matthew Houde Senator Andy Sanborn

For Use by Senate Clerk's Office ONLY				
Bill Status				
Docket				
Calendar				
Proof: Calendar Bill Status				

Date: March 10, 2011

HEARINGS

		Tuesday	3/15/2011			
COMMERCE			LOB 102	9:00 AM		
(Name of Committee)			(Place)	(Time)		
		EXECUTIVE SES	SION MAY FOLLOW			
Commen		has been canceled and resched				
	SB 1871	has been rescheduled from 3/2	2/11 to 3/15/11 at 10:30 a.m.			
9:00 AM	SB179	relative to qualified purch	asing alliances.			
9:30 AM	SB111	relative to short sales of a	homeowner's residence.			
9:50 AM	SB86	requiring the department of fine.	of labor to warn employers of certa	in violations prior to imposing a		
10:10 AM	SB191		of independent contractors for the	e purposes of workers'		
10:30 AM	SB187	relative to fair debt collect	ion.			
Sponsors	:					
SB179						
Sen. Aman	da Merrill	Sen. Nancy Stiles	Rep. Peter Schmidt	Rep. Donald Andolina		
Rep. Dorot	hea Hooper	Rep. David Watters	-	•		
SB111						
Sen. David	Boutin					
SB86						
Sen. Jim Lu		Sen. Jeb Bradley	Sen. John Barnes, Jr.	Sen. David Boutin		
Sen. Peter I	_	Sen. Sharon Carson	Sen. Tom De Blois	Sen. James Forsythe		
Sen. John C		Sen. Fenton Groen	Sen. Gary Lambert	Sen. Chuck Morse		
Sen. Bob O		Sen. Russell Prescott	Sen. Jim Rausch	Sen. Andy Sanborn		
Sen. Nancy Stiles		Sen. Raymond White	Rep. William Infantine	Rep. Karen Umberger		
Rep. Gene	Chandler	Rep. John Hunt	Rep. David Bettencourt			
SB191						
Sen. Tom I	De Blois					
SB187	· C	Der Der St. Detter				
Sen. Sharor		Rep. David Bettencourt	Rep. Matt Quandt	Sen. David Boutin		
Rep. Jennif	er Colley	Rep. Gene Chandler				

Patrick Murphy 271-3067

Sen. Russell Prescott

Chairman

Commerce Committee Hearing Report

To: Member of the Senate

From: Patrick Murphy, Legislative Aide

Re: Hearing Report on SENATE BILL 86 requiring the department of labor to warn employers of certain violations prior to imposing a fine.

Hearing Date: March 15, 2011

Members of the Committee Present:

Senator Prescott, Senator White, Senator De Blois, Senator Sanborn, Senator Houde

Members of the Committee Absent:

None

Sponsor(s):

Sen. Luther, Dist 12; Sen. Bradley, Dist 3; Sen. Barnes, Jr., Dist 17; Sen. Boutin, Dist 16; Sen. Bragdon, Dist 11; Sen. Carson, Dist 14; Sen. De Blois, Dist 18; Sen. Forsythe, Dist 4; Sen. Gallus, Dist 1; Sen. Groen, Dist 6; Sen. Lambert, Dist 13; Sen. Morse, Dist 22; Sen. Odell, Dist 8; Sen. Prescott, Dist 23; Sen. Rausch, Dist 19; Sen. Sanborn, Dist 7; Sen. Stiles, Dist 24; Sen. White, Dist 9; Rep. Infantine, Hills 13; Rep. Umberger, Carr 1; Rep. Chandler, Carr 1; Rep. Hunt, Ches 7; Rep. Bettencourt, Rock 4

What the bill does:

This bill requires the department of labor to issue one warning to employers for certain violations before a fine may be imposed.

Supporters of the bill:

Sen. Luther, Dist 12; Sen. Bradley, Dist 3; Sen. Barnes, Jr., Dist 17; Sen. Boutin, Dist 16; Sen. Bragdon, Dist 11; Sen. Carson, Dist 14; Sen. Forsythe, Dist 4; Sen. Morse, Dist 22; Sen. Rausch, Dist 19; Rep. Chandler, Carr 1; Bob Dunn, Greater Nashua Chamber of Commerce; Mike Somers, NH Lodging & Restaurant Association; Curtis Barry, Retail Merchant Association of NH; Dave Juvet, BIA; Dan Bennett, NH Auto Dealers Association

Those in opposition to the bill: None Speaking to the bill/Neutral:

None

1

Summary of testimony received:

Senator Luther

- Introduced amendment 0880s. Senator Luther was asked to bring this bill forward because there has been a lot of concern in the business community that the Department of Labor has been going into businesses and issuing fines on the spot.
- Section 1 of the amendment allows the Commissioner of the Department of Labor to impose a civil penalty after one written warning to the employer not to exceed \$2,500 for any violation of the provisions of this chapter or of any rule adopted pursuant to this chapter. All money collected under this section will be deposited in the general fund. This amendment should better address businesses that do knowingly violate the law.

Bob Dunn, Greater Nashua Chamber of Commerce

In many cases the importance of a stable regulatory environment can be even more important than the tax environment. Regulatory powers really can effect the day to day operations of business. The idea is to achieve compliance in a cooperative environment. This is absolutely the way to go.

Mike Somers, NH LRA

- We are a heavily regulated industry. We have had issues with the Department of Labor on minor issues that have led to significant actions by the Department. This bill will help small business in the long run.
- In response to questions from the Committee, the witness responded that he isn't sure if he would be comfortable with the warning also going to the employees because if the infraction is a simple clerical error it could effect employer/employee relations unnecessarily.

Senator Sanborn disclosed that he is on the Board of the NH LRA and does intend to participate in the process on this bill.

Funding:

None

Action: Pending Speakers

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. . . .

Senate Commerce Committee: Sign-In Sheet

@Date: March 15, 2011

Time: 9:50 a.m.

Public Hearing on SB 86

SB 86

Requiring the department of labor to warn employers of certain violations prior to imposing a fine.

	Name	Representing					
V	SEN MANIY SEL	cs 50 #24	Support	- Oppose	Speaking?	Yes	No XI
A	Sert. David Bou	tid Senate District #16	Support	Oppose	Speaking?	Yes	No
V	SEN. SHARAN CAR	SON SD #14	Support		Speaking?	Yes	No
U	Sen. Jin Rause	x SD#19	Support	Oppose	Speaking?	Yes	No
V	Sen. Bragdon	District 11	Support	Oppose	Speaking?	Yes	No
`	Ken. Bradler		Support	Oppose	Speaking?	Yes	No
V	BOB DUNN	- Greater Nashva Chamber of Commerce	Support	Oppose	Speaking?	Yes	No
	MILLY Somaks	N.U. LODGING & RESTAURANT ASSOC	Support	Oppose	Speaking?	Yes	No
	CURRIS J. BARRY	2 RETAILMERCHANTT AJJOC. OF NH	Support	Oppose	Speaking?	Yes	No
	Dave Juret	Business + Indrotry Assic (BIA)	Support	Oppose	Speaking?	Yes	No X
3	Sen. Morse	SD-32	Support	Oppose	Speaking?	Yes	No-
	Sen. Forsythe	Dist 4	Support	Oppose	Speaking?	Yes	No X
	Dan Bennett	NH Auto Dealers - Assoc	Support	Oppose	Speaking?	Yes	No X
	Rep. bene Chandler		Support	Oppose	Speaking?	Yes	No Ø
	Sen. Bainly	V Dist. 17	$\boldsymbol{\times}$				X

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Date: March 24, 2011

THE COMMITTEE ON Commerce

to which was referred Senate Bill 86

AN ACT requiring the department of labor to warn employers of certain violations prior to imposing a fine.

Having considered the same, the committee recommends that the Bill:

OUGHT TO PASS WITH AMENDMENT

BY A VOTE OF: 3-0

AMENDMENT # 1182s

Senator Raymond White For the Committee

Patrick Murphy 271-3067

New Hampshire General Court - Bill Status System

Docket of SB86

Docket Abbreviations

Bill Title: requiring the department of labor to warn employers of certain violations prior to imposing a fine.

Official Docket of SB86:

Date	Body	Description
1/19/2011	S	Introduced and Referred to Commerce, SJ 3, Pg.35
2/2/2011	S	Hearing: 2/22/2011, Room 102, LOB, 10:00 a.m.; SC10
2/10/2011	S	Hearing: === CANCELLED === 2/22/11, Room 102, LOB, 10:00 a.m.; SC11
2/24/2011	S	Hearing: === RESCHEDULED === 3/15/11, Room 102, LOB, 9:40 a.m.; SC13
3/10/2011	S	Hearing: === TIME CHANGE === 3/15/11, Room 102, LOB, 9:50 a.m; SC15
3/24/2011	S	Committee Report: Ought to Pass with Amendment #2011-1182s , 3/30/11; SC17
3/30/2011	S	Committee Amendment 1182s, AA, VV; SJ 11, Pg.203
3/30/2011	S	Ought to Pass with Amendment 1182s, MA, VV; OT3rdg; SJ 11, Pg.203
3/30/2011	S	Passed by Third Reading Resolution; SJ 11, Pg.239
3/31/2011	Н	Introduced and Referred to Labor, Industrial and Rehabilitative Services; HJ 35, PG.1241
4/5/2011	н	Public Hearing: 4/12/2011 10:45 AM LOB 307
5/4/2011	Н	Executive Session: 5/10/2011 1:30 PM LOB 307
5/12/2011	н	Committee Report: Ought to Pass for May 18 (Vote 13-3; RC); HC 39, PG.1325
5/18/2011	н	Ought to Pass: MA VV; HJ 44, PG.1550
5/25/2011	н	Enrolled Bill Amendment #2064e Adopted; HJ 46, PG.1609
6/1/2011	S	Enrolled Bill Amendment #2011-2064e Adopted; SJ 20, Pg.544
6/8/2011	н	Enrolled; HJ 51, PG.1724
6/8/2011	S	Enrolled
6/14/2011	S	Signed by the Governor on 06/14/2011; Effective 08/13/2011; Chapter 0182

NH House

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NH Senate

Other Referrals

COMMITTEE REPORT FILE INVENTORY

SB 86 ORIGINAL REFERRAL

_ RE-REFERRAL

1. This inventory is to be signed and dated by the Committee Aide and placed inside the folder as the first item in the Committee File.

2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.

3. The documents which have an "X" beside them are confirmed as being in the folder.

4. The completed file is then delivered to the Calendar Clerk.

- \underline{x} DOCKET (Submit only the latest docket found in Bill Status)
- $\underline{}$ COMMITTEE REPORT
- $\underline{\times}$ CALENDAR NOTICE
- ____ HEARING REPORT
- \times HANDOUTS FROM THE PUBLIC HEARING
- $\underline{\checkmark}$ PREPARED TESTIMONY AND OTHER SUBMISSIONS
- $\underline{\times}$ SIGN-UP SHEET(S)

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

- <u>×</u> AMENDMENT # <u>11825</u> AMENDMENT # _____
- _____ AMENDMENT # _____ AMENDMENT # _____

ALL AVAILABLE VERSIONS OF THE BILL:

- _____ AS INTRODUCED _____ AS AMENDED BY THE HOUSE
- ______ FINAL VERSION ______ AS AMENDED BY THE SENATE
- ★ OTHER (Anything else deemed important but not listed above, such as amended fiscal notes):

IF YOU HAVE A RE-REFERRED BILL, YOU ARE GOING TO MAKE UP A DUPLICATE FILE FOLDER

DATE DELIVERED TO SENATE CLERK	8-5-11	Patrick	Murphy
		Ву Сом	MITTEE AIDE

Revised 2011