

(The Clerk announced the results.)

The bill is passed.

Mr. Morelle.

MR. MORELLE: Yes, thank you, sir. I understand if you're a member of the Tourism Committee that Mr. O'Donnell would like to extend an invitation to the Speaker's Conference Room for the Committee on Tourism, Speaker's Conference Room.

ACTING SPEAKER AUBRY: Mr. O'Donnell invites you to the Speaker's Conference Room. Committee on Tourism, please, now.

The Clerk will read.

THE CLERK: Assembly No. A06279, Calendar No. 443, Englebright, Gottfried, Santabarbara, Ortiz, Dinowitz, Colton, Lifton, Glick, Fahy, Titone, Abinanti, Otis, Jean-Pierre, Lavine, Mosley, Simon, Galef, Jaffee, Cook, Rivera, D'Urso, Hunter, Hooper, Steck, Peoples-Stokes, Sepulveda, Skoufis, Williams, Bichotte, Ramos, Weprin, Titus, Hyndman, Seawright, Lupardo, L. Rosenthal, Barron, Walker, Carroll, Barrett, De La Rosa. Concurrent Resolution of the Senate and Assembly proposing an amendment to Article I of the Constitution, in relation to the right to clean air and water and a healthful environment.

ACTING SPEAKER AUBRY: Mr. Englebright, a (sic) explanation is requested. Shh.

MR. ENGLEBRIGHT: Thank you, Mr. Speaker. This is a legislative resolution that is beautiful by its simplicity. It is a

proposed Constitutional amendment to establish a fundamental right and a clean and healthful environment. The language is quite simple: *The environmental rights of each person shall be to a clean air -- to clean air and clean water and a healthful environment.* I'd just like to also mention that this is an important part of the Assembly's Earth Day Package which we're seeing unfolding before us here and I just want to take a moment to thank Speaker Carl Heastie for making sure that we pay attention to the needs of our citizens and their health and the health of the environment on this very special day. And this particular measure is one of several that we're going to have a chance to vote on today out of respect for the people of the State and the environment that supports them.

ACTING SPEAKER AUBRY: Mr. Goodell.

MR. GOODELL: Thank you, Mr. Speaker. Would the sponsor yield?

ACTING SPEAKER AUBRY: Will you yield --

MR. ENGLEBRIGHT: I yield.

ACTING SPEAKER AUBRY: Mr. Englebright will yield, Mr. Goodell.

MR. GOODELL: Thank you very much, Mr. Englebright. You correctly note, of course, that this is a very simply-worded Constitutional amendment that states that people would have a right to clean air and water and a healthful environment. Can you tell us what you mean by "clean" and, for example, we turn on our tap water, we use it to wash, bathe, drink, but our tap water is

certainly not distilled so any tap water in the State of New York has some impurities. What do you mean by "clean?"

MR. ENGLEBRIGHT: Clean basically means that if you are interacting with the environment that you're not being harmed; that if you are consuming water that it does not have poison; if you are breathing air, it is not contaminated and will not have a negative impact on the biology of yourself or your loved ones.

MR. GOODELL: Then by clean do you mean that the water or the product or whatever subject matter is meets current environmental standards as defined by this Legislature or the DEC, the EPA or other regulatory entities?

MR. ENGLEBRIGHT: At the very least, yes, but in a larger sense, this language is meant to reassure each and every citizen of this great State that a part of being a citizen of this State is to know that the Legislature has taken time to place before the voters the very premise of whether or not being healthy is -- is worthy of our attention. I believe that if we are able to place this before the voters that they will answer yes.

MR. GOODELL: Well, as you know, we have a substantial agricultural presence in the State of New York. Successful agricultural practice involves, not surprisingly, the application of fertilizer. It also involves integrated pest management which can involve the application of pesticides, all of which are tightly regulated, the application of pesticides both in quantity and methodology. Does this give a basis for people who move in next to a farm to bring an

action to ban the use of pesticides on the farm for crop protection?

MR. ENGLEBRIGHT: There's no specific leverage provided in that direction by the passage of this measure. This is very clearly a -- a very general premise, but let me just point out as one who grew up on a farm that I greatly respect the tradition of farming. It's something common to each and every community in New York. There is no intent to contradict that tradition or to unhinge the production of food in any way. We only hope that the individuals who are operating the given farm do so in a manner that is conducive to good public health.

MR. GOODELL: I appreciate your farming background and I think you bring a valuable perspective. As you know, though, sometimes those who are on a farm very much appreciate the important role of herbicides, pesticides, fertilizer and other routine activities that are not always understood or appreciated by those who neighbor a farm. And so, we have a lot of dairy farms, for example, in my district. We certainly appreciate having that wholesome milk. Not everyone appreciates living downwind. I just bring that to your attention that what some people perceive as clean air and water may very much depend on their perspective.

But I -- I want to move on. This also talks about healthful environment. As you know, there's been a lot of controversy overtime over whether or not fluoride should be added into drinking water for municipal systems. And at one time, a lot of people argued against it claiming that the addition of this chemical would be

harmful. Others argue that the addition of this artificial chemical - I mean, it's not naturally occurring - this chemical was healthy and would promote better teeth. Does -- can you explain how -- how would this language dealing with a healthful environment play out in all those areas where government has additives, whether it's Vitamin A, government or industry, private sector, whether it's additional vitamins or additional chemicals into our drinking water like flourine -- fluoride; how would this play out?

MR. ENGLEBRIGHT: It doesn't really have any negative impact upon the use of chemicals that are important to our quality of life and to the quality of our health. What healthful means is that we're going to have policies that are conducive to good health. That does not exclude the judicious and appropriate use of chemicals. We're made of chemicals. We live in an environment that is full of chemicals. Simply saying somebody's using chemicals does not disqualify the possibility that they may be using it wisely or overall in a manner that is consistent with a healthful overall environment.

MR. GOODELL: As you know, more recently we've had a lot of controversy over GMOs, genetically modified organisms, GMOs, and we've had a lot of controversy over whether a product should be labeled as "organic." We even have controversy over what that means. Would this Constitutional provision provide a basis for individuals or anyone to say you cannot have GMOs, or you can have GMOs? I mean, keep in mind, on GMOs, some people argue that GMOs are healthful because it's a natural way of combating insect and

disease, others -- and it's an extension of our normal good husbandry. Others argue the opposite. So, doesn't this give an independent judicial platform to address those issues?

MR. ENGLEBRIGHT: I don't believe it does. We consulted with the National Council of State Legislatures. There are six other states that have passed a measure very, very similar to this. We have not seen any notable trend of increased litigation or lawsuits. I'm just not aware that GMOs are within the reach of this particular measure. What this measure is intended to do is set the stage for a general expectation on the part of every citizen that they have as strong a right as the right to free speech to grow up without being injured, without being poisoned, without being contaminated, to have an opportunity to bring their children into the world and know that they, too, will have those same rights.

MR. GOODELL: There is no Constitutional impediment for us as a Legislature to adopt environmental laws on any particular subject, is there?

MR. ENGLEBRIGHT: There is not.

MR. GOODELL: And so, we don't -- so, we don't need this amendment in order to authorize us to act.

MR. ENGLEBRIGHT: This amendment does not negatively impact us in any way; indeed, it does not take away, but rather adds, it adds a context so that when we pass very specific legislation, the context, the larger context, is already well-defined. That's what this does. It enlarges the circle. It does not shrink away

from our ability to do good things for the people who sent us here.

MR. GOODELL: Thank you very much, Mr. Englebright.

On the bill.

ACTING SPEAKER AUBRY: On the bill, Mr. Goodell.

MR. GOODELL: I certainly appreciate and share Mr. Englebright's desire that our residents have clean air and water and a healthy environment. Nobody in this room disputes that. Now, as my colleague correctly pointed out, we as a Legislature absolutely have the power to regulate in this area. We don't need a Constitutional amendment for us to exercise our discretion to ensure that our residents have a clean and healthy environment. Nor is this amendment needed for our Department of Environmental Conservation or others to enact regulations to ensure that we have clean water and air and a healthy environment.

So, what does this Constitutional amendment do? If we don't need it and the regulatory Bodies don't need it, why should we adopt it? I want to keep everyone mindful that when you put in a Constitutional amendment of this nature, you are shifting power away from the Legislature, away from us, to the Judiciary. And so no longer will the Legislature be solely responsible for ensuring clean air and water. No longer will the DEC and its experts be responsible for ensuring clean air and water, but this would give a Constitutional right to every individual to bring a private right of action against their local

government or against the MTA or against NYSERDA or against their city claiming that whatever the city is doing or the MTA is doing or the City of New York is doing or any local government is doing or any local business or industry is violating their Constitutional right. And that litigation won't be heard here, that will be heard in the courts. It'll be heard by someone ultimately who is not elected, that was appointed in the Court of Appeals.

And so, my friends, if we want to retain the authority to make sure that we have the correct balance, that we want to allow a local government to include fluoride in their water because we've made a determination that the benefits exceed the risks. If we want to make sure that our agricultural community can continue to operate and our business can operate, we should retain that authority and not transfer it to the courts. Since there's no compelling reason to enact this, there's no legal justification as to why we need to enact it, but there's a lot of potential mischief if we just open up the door to anyone with any concept of what might be healthy or not healthy, or whether they think it's clean or clean enough and that's a balancing act that should be done carefully, thoughtfully by the Legislature and those who are -- have the expertise to do so. Thank you, Mr. Speaker.

Thank you, Mr. Sponsor.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: The Clerk will record the vote.

(The Clerk recorded the vote.)

Mr. Cahill to explain his vote.

MR. CAHILL: Thank you, Mr. Speaker. This -- the elegance and simplicity of this measure is exceeded only by its great importance to New Yorkers and to future generations. The air, water and a healthful environment are as fundamental to us as speech, religion, assembly and other basic rights. It's important to make this statement. It's important to amend our Constitution to demonstrate a recognition that while our time here is temporary, maybe even momentary, our obligation to generations to come is permanent. I withdraw my request and vote in the affirmative.

ACTING SPEAKER AUBRY: Mr. Cahill in the affirmative.

Mr. Englebright to explain his vote.

MR. ENGLEBRIGHT: Thank you, Mr. Speaker. I just want to add that there is a context of need to reassure the people of the State that this proposed Constitutional amendment is intended to address. That need is defined in the newspapers almost every day: New contamination events, new threats to the public health in places like Hoosick Falls and Newburgh and West Hampton. There's a need to reassure the people that it is their right to know that this is a priority, that the environment itself deserves to have the support of our attention and that the proposed amendment to our Constitution is an initiative that will, I believe, enhance the expectation that the intertwined and mutually-interdependent ideas of environmental

protection and public health are worthy of our collective best efforts and attention. I am pleased to recommend this measure to my colleagues, and I vote yes.

ACTING SPEAKER AUBRY: Mr. Englebright in the affirmative.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Mr. Morelle.

MR. MORELLE: Thank you, Mr. Speaker. The Labor Committee would conclude our Committee work for the day, so I'd like to ask members of that Committee to join Ms. Titus in the Speaker's Conference Room. Labor in the Speaker's Conference Room.

ACTING SPEAKER AUBRY: Ms. Titus is in the Speaker's Conference Room momentarily. Please join her.

The Clerk will read.

MR. MORELLE: Actually, Mr. Speaker, let me give you the next several bills that I'd like to ask us to take up.

ACTING SPEAKER AUBRY: Certainly.

MR. MORELLE: Calendar No. 600 by Mr. Englebright, which is on page 71. I'd like to follow that with Calendar No. 766, also by Mr. Englebright, on page 85; then Calendar No. 773 on page 86 by Mr. Englebright and then to complete the grand slam, another Mr. Englebright bill, Calendar No. 774, which is on page 86