

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Twelfth
Legislature***

OF THE

STATE OF MAINE

Volume II

FIRST REGULAR SESSION

December 5, 1984 - June 20, 1985

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STATE OF MAINE
One Hundred and Twelfth Legislature
First Regular Session
JOURNAL OF THE SENATE
In Senate Chamber
Tuesday
June 11, 1985
Senate called to Order by the President.

Prayer by Father Thomas Joyce of Saint Mary's Catholic Church in Augusta.

FATHER JOYCE: O God, we humbly ask Your blessing on all gathered here this morning. We ask that You sustain them in their work, a special blessing on their behalf that they may always have the strength and courage to accomplish the task that is theirs to fulfill.

In realizing that all laws emanate from You, there is said to be both a pious and a patriotic duty, one's service to one's fellow human beings could be summed up in that great virtue of charity, of love of God, a love of neighbor.

We, therefore, ask Your blessing and as all things begin and end with You, we begin this meeting with our humble prayer and we thank You for Your past blessing and petition for Your help in the future. Amen.

Reading of the Journal of Yesterday.

Off Record Remarks

PAPERS FROM THE HOUSE

Non-concurrent Matter

Bill "An Act to Implement the Recommendations of the Maine Land and Water Resources Council Ground Water Review Policy Committee" (S.P. 353) (L.D. 961) (H "A" H-244 to C "A" S-132; S "A" S-213)

In Senate June 6, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-132) AS AMENDED BY HOUSE AMENDMENT "A" (H-244)**, thereto and **SENATE AMENDMENT "A" (S-213) in NON-CONCURRENCE**.

Comes from the House **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-132) AS AMENDED BY HOUSE AMENDMENTS "A" (H-244) AND "B" (H-367)**, thereto and **SENATE AMENDMENT "A" (S-213) in NON-CONCURRENCE**.

The Senate **RECEDED and CONCURRED**.

Non-concurrent Matter

Bill "An Act to Revise the Maine Securities Act" (H.P. 1022) (L.D. 1500) (C "A" H-333)

In Senate June 7, 1985, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-333)**, in concurrence.

Comes from the House **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-333) and HOUSE AMENDMENT "A" (H-368) in NON-CONCURRENCE**.

The Senate **RECEDED and CONCURRED**.

COMMITTEE REPORTS

House

Ought to Pass As Amended

The Committee on **TRANSPORTATION** on Bill "An Act to Establish Special Motor Vehicle License Plates for Firefighters" (H.P. 617) (L.D. 887)

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-362)**.

Comes from the House, with the Report **READ and ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-362) AS AMENDED BY HOUSE AMENDMENT "A" (H-369)** thereto.

Which Report was **READ and ACCEPTED**, in concurrence.

The Bill **READ ONCE**.

Committee Amendment "A" (H-362) **READ**.

House Amended "A" (H-369) to Committee Amendment "A" (H-362) **READ and ADOPTED**, in concurrence.

Committee Amendment "A" (H-362) as Amended by House Amendment "A" (H-369), thereto **ADOPTED**, in concurrence.

The Bill as Amended **ASSIGNED FOR SECOND READING LATER IN TODAY'S SESSION**.

SECOND READERS

The Committee on **Bills in the Second Reading** reported the following:

House As Amended

Bill "An Act to Amend the Provisions Governing the Conversion of a Mutual Insurer" (Emergency) (H.P. 1024) (L.D. 1476) (C "A" H-279)

Which was **READ A SECOND TIME and PASSED TO BE ENGROSSED, as Amended**, in concurrence.

Senate As Amended

Bill "An Act Making Authorizations and Allocations Relating to Federal Block Grants for the Expenditures of State Government for the Fiscal Years Ending June 30, 1985, June 30, 1986, and June 30, 1987" (Emergency) (S.P. 222) (L.D. 585) (C "A" S-250)

Bill "An Act to Amend Certain Provisions of the Laws Pertaining to Child Support" (S.P. 385) (L.D. 1065) (C "A" S-253)

Which were **READ A SECOND TIME and PASSED TO BE ENGROSSED, as Amended**.

Under suspension of the Rules, ordered sent down forthwith for concurrence.

ENACTORS

The Committee on **Engrossed Bills** reported as truly and strictly engrossed the following:

An Act to Amend the Law Relating to Deputy Sheriffs, Appointments and Removal (S.P. 312) (L.D. 801) (C "A" H-351)

An Act to Amend the Election Laws (H.P. 274) (L.D. 344) (H "C" H-332 to C "A" H-214)

Which were **PASSED TO BE ENACTED** and having been signed by the President, were presented by the Secretary to the Governor for his approval.

An Act to Authorize a Self-liquidating Bond Issue for the County of Cumberland to Raise Funds for the Construction of a Courthouse Addition, Capital Improvements to the Existing Structure and a Related Parking Facility (S.P. 547) (L.D. 1460) (S "B" S-241 to C "A" S-160)

On motion by Senator **PEARSON** of Penobscot, placed to the **SPECIAL APPROPRIATIONS TABLE**, pending **PASSAGE TO BE ENACTED**.

An Act Concerning Nomination Petitions for Unenrolled Candidates (H.P. 1063) (L.D. 1542)

Comes from the House with the Bill and Accompanying Papers **INDEFINITELY POSTPONED**.

Which was **PASSED TO BE ENACTED**, and signed by the President in **NON-CONCURRENCE**.

Sent down for concurrence.

RECALLED FROM ENGROSSING

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Gauthreaux.

Senator **GAUVREAU:** Mr. President, is the Senate in possession of L.D. 246?

THE PRESIDENT: The Chair would answer in the affirmative, the Bill having been recalled.

Bill "An Act to Prevent Discrimination Against Retired Maine Residents who have Previously been Members of the Maine State Retirement System" (H.P. 212) (L.D. 246) (C "A" H-342)

(In Senate June 10, 1985, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-342)**, in

concurrence.)

(**RECALLED** from Engrossing pursuant to Joint Order: (S.P. 635))

On motion by Senator **GAUVREAU** of Androscoggin, the Senate **RECONSIDERED** its action whereby this Bill was **PASSED TO BE ENGROSSED AS AMENDED**.

On further motion by the same Senator, the Senate **SUSPENDED THE RULES**.

On further motion by the same Senator, the Senate **RECONSIDERED** its action whereby it **ADOPTED** Committee Amendment "A" (H-342).

On further motion by the same Senator, Senate Amendment "A" (S-249) to Committee Amendment "A" (H-342) **READ and ADOPTED**.

Committee Amendment "A" (H-342) as amended by Senate Amendment "A" (S-249) thereto **ADOPTED**, in **NON-CONCURRENCE**.

On further motion by the same Senator, the Bill was **PASSED TO BE ENGROSSED as Amended in NON-CONCURRENCE**.

On further motion by the same Senator, the Senate **SUSPENDED THE RULES** and ordered the Bill sent down forthwith for concurrence.

Senator **GAUVREAU** of Androscoggin was granted unanimous consent to address the Senate On the Record.

Senator **GAUVREAU:** Thank you, Mr. President and Men and Women of the Senate. Briefly, L.D. 246 addresses a specific problem which Legislators who are prior educators have in the sense that although these teacher/legislators are eligible during their legislative tenure to participate in the group health program, which we all enjoy, after the legislative service these teacher/legislators are no longer able, should they choose, to take part in the group health program.

L.D. 246 corrected this inequity and provided the same retirement benefit to teacher/legislators as all the rest of us do enjoy.

However, in the original bill, as amended by Committee Amendment "A" (H-342) there was an ambiguity possibility that the language could have been construed to allow all former teachers who served in the Legislature prior to the 112th to take part in the program. That would have a substantial fiscal impact. The Amendment which I have offered limits the effect of L.D. 246 to current members and only members from now on. Thank you.

ORDERS OF THE DAY

The President laid before the Senate the Tabled and Specially Assigned matter:

Emergency

An Act to Amend the Wood Measurement Laws (H.P. 960) (L.D. 1381) (C "A" H-272)

Tabled — June 10, 1985, by Senator **VIOLETTE** of Aroostook.

Pending — Motion of Senator **CARPENTER** of Aroostook to **RECONSIDER** action whereby the Bill **FAILED OF ENACTMENT**

(In Senate June 5, 1985, **FAILED OF ENACTMENT in NON-CONCURRENCE**.)

(In House June 4, 1985, **PASSED TO BE ENACTED**.)

On motion by Senator **CARPENTER** of Aroostook, the Senate **RECONSIDERED** its action whereby this Bill **FAILED OF ENACTMENT**.

THE PRESIDENT: The pending question is **ENACTMENT**.

The Chair recognizes the Senator from Aroostook, Senator **McBreairty**.

Senator **McBREAIRTY:** Mr. President and Honorable Members of the Senate. I would urge you not to Enact this amendment to L.D. 1381. This amendment is no better than it was the other day when it failed Enactment.

During the ten years that I've been here I have been one of the strongest supporters of business that you could have in the Maine

Legislature. For several years I got a perfect score from the Maine State Chamber of Commerce. I never dreamed that I, an old conservative Republican, would ever be in a position of trying to convince Democrats to kill a bill that is unfair to labor.

As I stated before, the Wood Measurement Law we now have on the books is a result of several years work by the Agriculture Committee, a summer study by the Joint Select Committee, many, many meetings, public hearings, compromises and legislative debate. I spent the greater part of this last weekend, the last two weekends to be exact, studying the Wood Measurement Law we now have, the rules that were put together by the Department of Agriculture and the amendment that we have before us today. The more time I spend on this issue the more convinced I am that to be fair to all concerned we must allow the Wood Measurement Law we now have to be tried before we pass any amendments that completely guts the law.

What does the law we have now do? It requires that if a woodcutter is hired by a contractor, the contractor must provide the cutter with written specifications as to how the wood is to be prepared. If the cutter prepares the wood so that the wood meets the written specifications he will be paid in full for the total volume cut. When you see fifty and one hundred acre clear cut strips of wood with nothing left, the cutter has been ordered to cut this wood, the wood is gone, somebody has used it for some purpose. It has either gone into saw logs, chips, pulp or fuel. If they didn't want this wood, they wouldn't have had it cut and they wouldn't have moved it.

Any wood that the cutter prepares that doesn't meet specifications at the time of cutting may be marked by the contractor as a cull. After a tree is marked a cull, the cutter has one of two choices, he may bring the cull up to specifications if possible, or forfeit being paid for his services on all cull wood. The law requires that the purchaser treat the contractor in the same manner.

The law does require that the scalers be licensed. I have not heard any controversy over this issue. Scalers should have been licensed a hundred years ago. The law requires more accountability by all concerned. It allows the price for the cutter of wood to be negotiated but requires that all properly prepared wood be paid for by both the contractor and the purchaser. Is there anything wrong with that?

How would you like to negotiate a price per hour and in thirty days have to turn around and negotiate how many hours you'd be paid for or what percentage of you hour you'd be paid for? I don't believe you would like it. I can't see any reason whatsoever why a cutter that wants to work, a contractor that wants to be fair and a purchaser that is honest can't try the Wood Measurement Law that we now have without any amendment. Try it and find out what's wrong, see how it works and if it don't work, we'll fix it.

What does this amendment do? This amendment mandates that every time a contractor hires a cutter he must pay the cutter on gross scale for the first thirty days. If he has ten crews and he hires five today, in thirty days he pays them on net scale. If he hires a new cutter, he has to go on gross scale. How would you do that? How would you get cutters in the same woods, one to cut on gross scale and one on net? This amendment requires that if you have a break, if it isn't continuous and you hire them back, you are under the law again, you've got to go thirty days under gross scale.

Now, after the thirty days the cutter and contractor may negotiate a new contract based on net scale. What power does a cutter have to negotiate with Irving in northern Maine who owns the woods, owns the mills, has Canadian crews available that gets a dollar and thirty-eight cents for every dollar that our cutters get.

What power would they have? How would all of you like to negotiate price for providing a service in thirty days after negotiating, I guess I've said that before, the percentage of that service you get paid for.

This Amendment does say that if a cutter refuses to accept net scale and the contractor retaliates in any way, the cutter may take civil action against the contractor. The amendment states that the civil action may be brought either by the aggrieved or at the request of the State Sealer, by the Attorney General's office. If I was a contractor no more would I vote for that section of the law, no way would I vote for it. If the Attorney General handles this it will be as bad as they claim the Workers' Comp is with the free lawyer to the employee, that's what you'd have, a free lawyer to the employee for retaliation.

If you had ten crews working, five of them agreed to go on net scale, five of them required gross scale which one would you lay off if you were going to lay off a crew? You'd lay off the crew that demanded gross scale. This would be grounds for retaliation claims, no doubt that what it would. The contractor would have to hire his own lawyer, the cutter might have representation, he might not, depending on the whims of the State Sealer.

If this amendment passes, how will the contractor ever be able to lay off a cutter who refuses to accept net scale without being accused of retaliation which would end up in court.

If this amendment is defeated, I suggest that another amendment be offered that will create a Joint Select Sub-committee made up of at least three members from the Agriculture Committee who worked on this Wood Measurement Law for three or four years, and three members from the Natural Resource Committee who helped draft this amendment. The Committee will monitor the implementation of our Wood Measurement Law and report back to the Second Session of the 112th Legislature as to what changes may be necessary. I'd have no problem adding to this committee somebody from the University of Maine that would have knowledge in woods.

I would hope, today, that you will defeat enactment of this Bill, give it a chance to work, give all of these people an honest chance to work together. This is what has been needed for a long time. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Usher.

Senator **USHER:** Thank you, Mr. President. Could I request that the Secretary read the Committee Report?

Which Report was **READ.**

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Usher.

Senator **USHER:** Thank you, Mr. President and Members of the Senate. First of all, I would like to thank the good Senator from Aroostook, Senator McBreairey, to have great concerns about fairness and also to have a great concern about informing the Democrats of the Maine Senate that we should kill this Bill. I thank you for your good advice, good Senator.

But, the Committee Report say it all, whether they be Democrats or Republicans. It is a unanimous Report. There was concern about fairness, we were concerned about fairness and also as a Legislative procedure, has compromised. There was a great deal of discussion done on this matter and a compromise was reached. It was reached by both sides.

The Energy and Natural Resources Committee agreed to go along with the idea of net scale agreements under certain conditions, it would deter coercion and retaliation against the woodworkers who do not want to enter into the agreement.

This Bill represents a trial to see if the agreement approach deserves the basic fairness behind the present law. The Committee was assured by industry representatives and the

other side also that there would not be any coercion or retaliation and there would be some good faith efforts to make this work in a fair manner. If the system does not work, then we will go back to the payment for services based on gross scale under all circumstances. This was the compromise. That is what the Committee agreed on, a unanimous report.

I move the enactment of this Legislation.

THE PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Carpenter.

Senator **CARPENTER:** Mr. President and Ladies and Gentlemen of the Senate. We've debated this Bill for a long time and I'll try not to belabor it too long but I understand that this area is an area that's foreign not only to myself, somewhat, but also to many of you.

During the last two or three days I've tried to think of analogies of what we're talking about here. I'm going to tell you exactly what net scale means. Let's take a look at this State of Maine Audit Report that was put on our desks the other day. It's made out of something that every politician understands, it's made out of paper. I know the State of Maine bought this paper from somebody, let's assume for a second that it was the Great Northern, and they bought the paper and it had to meet certain specifications. Great Northern Paper Company knew that they had to meet those specifications when they were contracting to harvest the wood to make paper to sell to the State. Great Northern Paper Company would have been given specifications for the audit book prior to entering into the contract.

So, now Great Northern has a great big bunch of paper and they come down to our friend Bob Norton in the Bureau of Audit and they say, "Okay, here's the paper to make your little audit book." And, he takes a look at the paper, or his people take a look at the paper, and they say, "That's not what we ordered Mr. Great Northern. That's not what we ordered. Here are the specifications of what we ordered and this doesn't meet it." If you go with net scale, at that point the Great Northern Paper Company would go back to the paper makers who made the paper and say, "give us back two dollars an hour because you didn't make it right." Even though we told you how to make it, you didn't make it according to what our ultimate buyer wants."

Now, I grew up on a potato farm in Aroostook County and I picked a lot of potatoes in my life time when I was a little fellow, and the way you pick potatoes is you're paid, in those days, twenty five cents a barrel to pick them up off the ground and put them into a basket then put them in a barrel, and the farmer comes and gets them and puts them into the potato house in the fall. Usually in the springtime we take them to the market.

Now, there's a change in that product, for whatever reason, but that product is not the same product that goes in that comes out. Here's the best analogy that I can think of. I'm told to pick just the good potatoes so I throw out the rocks, the rot and the sun burn as I'm picking but those potatoes go into the storage. Now, ultimately, on the other end, those potatoes may have deteriorated somewhat or them maybe changed specifications. But that's passing of title.

Don't you see, we have two different things here. We have a payment for service and we have a passing of titles. You have cutter, contractor, mill. The contractor owns the rights to that wood, the cutter doesn't own anything except his chain saw and his ax and maybe a skidder. He's told he'll be paid so much to deliver this type of wood to the contractor off the contractor's contract. The cutter owns nothing. The contractor owns the rights. The contractor then sells it to the company. That's a change of ownership, that's passing of title. Down here, all we're talking about is payment of service. There is the most important distinction in this

Bill.

The Senator from Aroostook, Senator McBreairty, talked about what you're really asking the cutters to do in this situation is that you're asking them to negotiate how many minutes there are in an hour. We have a law that says you'll be paid so much per hour, if you're working an hourly rate. That's fine, we all understand that but if you pass this Bill, what you're saying is that you can negotiate over how many minutes there are in a hour. That's what you're doing.

Net scale means that title to title and in that situation from the contractor to the mill, if the product gets to the mill and it does not meet the specifications then the mill is allowed to discount to the contractor. And you are now saying that should be then passed back to the person who was the cutter who was told what to cut, who was told what to bring to the pile, and as the Senator just explained to you, the Senator from Aroostook, Senator McBreairty, if he brings it to the pile and it doesn't meet the specifications, he doesn't get paid for it — period. But, now you are saying if it comes to the pile and it meets the specifications as his boss told him and then it goes on down the road and there is a further discount because those specifications of the contractor didn't marry up or didn't match the specifications of the mill the you are going to allow further pass through and that is wrong — that is wrong. That is like when I deliver my potatoes to the market in the springtime if for some reason there has been a 10% shrink, that's what we call it, for some reason that potato looked good to me and met the specifications when the farmer put it in the potato house, but now in the spring it doesn't meet the specification, I'm now going to go back and take five cents out of that twenty five cents I paid to the picker. If I suggested such a thing I would be literally tared and feathered in Aroostook County. But, that's exactly what we are saying.

We're saying let's negotiate between the farmer and the potato picker, let's negotiate as to how much there is in the barrel, a barrel is 165 pounds. I'm told I'm going to pick a barrel of potatoes then I understand that I'm going to pick a 165 pound barrel. If you allow this to go through some of the pickers would be picking 165 pound barrel and some would be picking 200 pound barrels. You are changing the basic standard, and it's different than anything else.

If a weaver is told to make the cloth for shirts and the weaver makes specification and the weaver is paid according to the agreed upon wage, if the cloth then gets to the shirt manufacturer from the owner of the cloth and for some reason it doesn't make specification, you wouldn't for a second think about going back to the person who did the weaving, it made specification now in the middle, you wouldn't think for a second about going back to the person who did the weaving and saying that you want some of your money back. That's exactly what this Bill will do and I think the Senator from Aroostook will verify that.

Yes, it was a unanimous report, it was — because the people who are here now fighting this Bill didn't believe they had the weight to stop it. They didn't believe they had the ability to stop this Bill. I fought for this Bill two years ago and then this year I was just too busy to get involved and I apologize to the Committee on Energy and Natural Resources. I just didn't have the time with everything else that was going on, but when I looked at the final product I found that I could not accept it and the people most directly impacted by this Bill have also found that they could not accept it because, in effect, we believe, they believe, that it guts the good law that we passed two years ago.

The Senator from Aroostook, Senator McBreairty, will tell you that the contractors in his area have adjusted, it has not been an

easy adjustment because you are talking a couple of hundred years of a way of doing business, but they have adjusted. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator McBreairty.

Senator **McBREAIRTY:** Mr. President and Honorable Members of the Senate. I realize that some Committee members feel that when they come out with a unanimous report that they are obligated to stick to that report even though they get new information and really feel down deep that they might have made a mistake. The one thing that I've always said is there is one thing worse than making a mistake and that is sticking to it after you know you've made it, then you are making a second mistake.

We had a bill in here the other day that had been enacted in both branches of the Legislature. It was a unanimous report. Senator Brown from Washington County had the bill held and we killed it a — a unanimous report. We had a bill here yesterday with a unanimous report and the Chairman of the committee got up and said, "I now can't support that Bill" because of some reason, I now can't remember what it was but she voted against it. So, don't let a unanimous report influence you.

I've had other people give me stories in the hall that were horror stories about this Wood Measurement Law. I've read the law, I've read the regulations and I wish somebody would show me in the law and the regulations where these horror sections are.

You've heard a lot about the green book. I think I counted them, it's in different sections so it isn't counted right straight through, I think there are 105 pages. In my ten years in the Maine Legislature I've never read a set of rules and regulations that's as plain, specific and any more in layman's language than these regulations. Not once while I was reading these over the weekend did I have to dig out my law books and refer back to some statute. Everything in it is plain and precise. A big part of this green book is just describing very well and in great detail the ten methods of scaling that people are allowed to use under the Wood Measurement Law.

I'd like to know, and I won't ask you to tell me, but I'm going to ask you anyway, how many of you here have read the Wood Measurement Law? It's Chapter 804 in last year's statutes. How many of you, including Committee members that came out with this amendment, have read the green book from cover to cover? Because you have to read both to realize what this amendment does. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Webster.

Senator **WEBSTER:** Mr. President and Ladies and Gentlemen of the Senate. I'd like to make a few points here this morning. I think that it would be appropriate that I give this Body a little history lesson about the bill that passed and part of the problems that I see with this Legislation and why I'm supporting the unanimous Committee Report to change the problem that I see with this Legislation that we passed a couple of years ago.

Let me explain to you the concerns of the people in my district and I've received probably fifty calls and letters on this issue from workers as well as the middlemen and none of the paper companies have called me. I think the reason is that they are not going to lose by the Bill. We can pass all the laws we want and assume that those costs will be passed on to the paper companies. But, there is no competition when it comes to where the company and what they going to pay for the product when it's produced and sold to them at the mill.

Let's take the example of the guy in my district who cuts wood for a living. He saws wood and he's paid by the middleman so much money for every cord he cuts. Right now the middleman might have a contract to deliver ten cord of fire wood to a mill. Obviously it is more than that but he delivers ten cord of fire wood

to the mill and he pays his worker so much for every cord that is cut based on what he gets paid from the mill. So, if he delivers ten cord of wood to the mill and gets paid ten dollars a cord, obviously the middleman is going to get one hundred dollars, but if the mills says of that ten cord, one cord of it I can't use because it's rotten. Well, the middleman tells the wood cutter, "I can't receive money for this wood, obviously, so how can I pay you? But, I'm still going to pay you X amount of dollars for the wood you cut." So, in other words, he pays him ten dollars a cord.

The problem comes when you pass a law like this and you say, "I don't care what the mill pays but you're going to pay the worker even if the wood is no good and the worker gets paid but the guy in between doesn't.

Now, Senator Carpenter made reference to potatoes earlier and I want to mention that. I think potatoes is a different subject because the market place deals with what you are going to receive for that potato in the final product when you sell it to the consumer. But the papers companies, we don't have any say on what they pay the middle guy.

You know, I think that it is a complicated issue and I don't claim to be an expert, but I do know that the guy in the middle is getting hurt and what's going to happen is, and I had a guy call me the other day who's now paying, he got his men working in some particular brand of wood, and he's paying his worker nine dollars a cord for every cord of wood the guy cuts. He says if we don't do something because he can't get paid for all the wood that's cut, the middle guy cannot get paid for all the wood that's delivered to the mill. So he says, "How are you helping the worker when I'm going to have to tell the worker that I can't pay you nine dollars any more because if I can't sell what you're giving me, then I'm going to have to pay you less money." So, the worker doesn't benefit, in my opinion, at least from what I can see, if he's getting paid less money for doing the same amount of work.

I don't claim to be an expert but I know that there is a problem. I think any of us who have been in the halls here for the last few days, anyone that went to the hearing when this Bill was heard and had 250 people, can assure you that there is a problem.

Now, this is a Committee that was unanimous. People who have a philosophy anywhere's near mine are supporting this Bill, went to the Committee hearing, people from Pine Tree Legal, people from the business community, everybody agrees that this is a compromise and is reasonable. Now, why this Senate cannot support a compromise that is reasonable is beyond me.

Now, I think we ought to look at the whole picture and it's not an issue that I can discuss intelligently on this Floor because I am not in this business any more than any of us here in the Senate are. I think it is easy to come up here after the hearing was over with, after deals have been struck. What concerns me most is that I would prefer the Bill that Representative Dexter or Mr. McGowan put in initially the way they were, without a compromise. I think we could have passed the Bill on this Floor which would have changed the law. The law is not good.

This is a compromise, I think we should support a compromise and I would ask you to do that.

THE PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator McBreairty.

Senator **McBREAIRTY:** Mr. President and Honorable Members of the Senate. It's very evident that one person in this Body hasn't read the law or the rules.

Let me read just a couple sections from the law that we're working under today. Section 8, . . . "PROPERLY PREPARED WOOD." "Properly prepared wood means wood that

was required to be harvested and yarded and was prepared as directed according to written cutting specifications."

Now, let me read you a little section about payment. "When payment is made for services harvesting wood, all the wood that is properly prepared shall be measured in full . . ." (it has to be properly prepared according to the specifications given to the cutter. If he cuts rotten wood that he wasn't told to cut then he gets nothing) . . . "without regard to its future merchantability or use." Nothing in this subsection prevents making reasonable deductions based on quantity factors, such as loose piling, short or undersized wood or for wood that was not designated to be harvested, hauled or chipped. That is the law.

THE PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Carpenter.

Senator **CARPENTER:** Mr. President and Ladies and Gentlemen of the Senate. I think that the key elements of what Senator McBreaity just said to you, "if the wood is properly prepared," those are the specifications that I talked about that the middleman puts on the cutter. He tells the cutter "I want you to bring in wood which is of this size and you are only going to be paid if you bring in wood that fits this dimension, and if you bring in that wood you will be paid so much per cord or so much per unit." Then, I am assuming at that point that the contractor knows what his buyer wants, he wants wood of this specification.

Let's say that the wood, in fact, comes in of this dimension and it gets up to the mill, the contractor has gone ahead and paid for it, even though it didn't meet his specifications, he gets up to the mill and the mill owner says "No, I wanted it this way, therefore I am going to have to discount you. (the contractor, the middleman) because you didn't bring me the wood according to the specifications that I ordered." Do you then go back and blame the cutter and punish the cutter because he prepared it the way he was told to prepare it? He has no ownership rights, he's being paid for a service, cutting. The ownership rights vest in the middle and ultimately it is transferred to the mill. Mr. President, I would ask for a Division.

THE PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator McBreaity. Senator **MCBREAIRTY:** Mr. President, I ask for a Roll Call.

THE PRESIDENT: The Senator from Aroostook, Senator McBreaity, has requested a Roll Call. Under the Constitution, in order for the Chair to order a Roll Call it requires the affirmative vote of at least one-fifth of those Senators present and voting.

Will all those Senators in favor of ordering a Roll Call, please rise and remain standing until counted.

Obviously more than one-fifth having arisen, a Roll Call is in order.

The Chair recognizes the Senator from Franklin, Senator Webster.

Senator **WEBSTER:** Mr. President, I pose a question to anyone who might choose to answer. I would like to know if this law, I burn firewood in my house, I burn nineteen cord a year so I handle a lot of firewood, and I would like to know if the wood cutter cuts a piece of wood right now under the law, that is twenty inches in diameter and looks to be a decent piece of wood that could go to a mill for pulp and he finds that wood has a four inch hole in the middle, it's rotten, I would like to know, since obviously the mill would not take rotten wood now, I would like to know what happens to the wood? Does the wood cutter just leave it there? And, what about all the time he spent cutting that wood?

THE PRESIDENT: The Senator from Franklin, Senator Webster, has posed a question through the Chair to any Senator who may respond if they so desire.

The Senator from Aroostook, Senator

McBreaity, asks Leave of the Senate to speak a fourth time.

Is there any objection?

The Senator has the Floor.

Senator **MCBREAIRTY:** Mr. President, my intent was only to try and answer a question.

I guess I would say again, that if the contractor tells a cutter to cut rotten wood or wood with holes in it, and it is going to a place where there isn't any market for that type of wood, he'd get paid.

Now, if he tells the cutter to cut wood that meets the specifications of the market place that the wood is going to, the contractor has a perfect right to mark that wood as a cull and the cutter would not get paid for it even though they moved it. If it got into the mill, if the cutter chose to disregard it and keep on cutting new wood rather than try to prepare the marked cull to meet specifications, it could still go through the system and nobody would have to pay for it.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Matthews.

Senator **MATTHEWS:** Mr. President and Members of the Senate, I just wanted to mention for the Record that I've been lobbied as I know all of you have by probably everyone in the State House, but I've yet to be lobbied by Pine Tree Legal Assistance on the Bill.

I would like to address a question through the Chair, if I may, to anyone who might choose to answer. How long has this new law been on the books?

THE PRESIDENT: The Senator from Kennebec, Senator Matthews, has posed a question through the Chair to any Senator who may respond if they so desire.

The Senator from Aroostook, Senator McBreaity, requests Leave of the Senate to speak a fifth time.

Is there objection?

The Senator has the Floor.

Senator **MCBREAIRTY:** As I understand it, the law and regulations went into affect on April 30th.

THE PRESIDENT: The pending question before the Senate is **ENACTMENT.**

Senator **KANY** of Kennebec who would have voted *Yea* requested and received permission to pair her vote with Senator **NAJARIAN** of Cumberland who would have voted *Nay*.

Senator **CLARK** of Cumberland who would have voted *Yea* requested and received permission to pair her vote with Senator **ANDREWS** of Cumberland who would have voted *Nay*.

THE PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Webster.

Senator **WEBSTER:** Mr. President and Ladies and Gentlemen of the Senate. Just to follow up on the question which I asked, I just would like to leave with the Senate this little thought.

The example I gave would be if a piece of wood, twenty-three or twenty-four inches around, was cut by the cutter who went out there and cut the wood himself and that wood was rotten and his middleman said "I don't want any rotten wood." then the answer was what I expected, the wood is left there, the worker gets nothing. Now, how does that benefit the wood cutter? That wood will be left in the wood, on the ground, because it does not meet specifications.

I mean, there is no way you can tell when you look at a tree that is twenty-four inches around that looks healthy that it is rotten in the middle.

My point is that the wood cutter does not benefit under that situation.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Kany.

Senator **KANY:** Mr. President and Senators. This is a very, very difficult issue and I am sympathetic with the Agriculture Committee which, over the years, has heard bills on this topic and with the Select Committee that drew up the current law, and I would really like to

answer the good Senator from Franklin, Senator Webster's earlier question.

That is, actually what is the effect of the current law? In my opinion the effect is that the contractor is now getting squeezed, taking too much risk, just as earlier the cutter had to take more risk than was reasonable. Earlier, prior to enactment of the current law, the cutter was squeezed. Unfortunately, we have not yet devised a perfect law. So, I am sympathetic with all sides on this issue. It is a labor question and the risks have not properly been spread.

THE PRESIDENT: The pending question is **ENACTMENT.**

A *Yea* vote will be in favor of **ENACTMENT.**

A *No* vote will be opposed.

The Doorkeepers will secure the Chamber. The Secretary will call the Roll.

ROLL CALL

YEAS:—Senators, Baldacci, Black, Brown, Diamond, Dutremble, Emerson, Erwin, Gill, Hichens, Maybury, Pearson, Perkins, Sewall, Shute, Stover, Trafton, Twitchell, Usher, Webster

NAYS:—Senators, Berube, Bustin, Carpenter, Chalmers, Danton, Dow, Gauvreau, Matthews McBreaity, Tuttle, Violette, The President — Charles P. Pray

ABSENT:—Senators None

This being an emergency measure and having received the affirmative vote of 19 Members of the Senate, with 12 Senators having voted in negative, and 19 being less than two-thirds of the entire elected Membership of the Senate, the Bill **FAILS OF ENACTMENT** in **NON-CONCURRENCE.**

Sent down for concurrence.

There being no objections all matters previously acted upon, except those items previously held, were ordered sent down forthwith for concurrence.

The President laid before the Senate the Tabled and Specially Assigned matter:

An Act to Establish a Medicaid Report (S.P. 592) (L.D. 1555)

Tabled — June 10, 1985, by Senator **VIOLETTE** of Aroostook.

Pending — **ENACTMENT**

(In Senate May 30, 1985, **PASSED TO BE ENACTED** in concurrence.)

(**RECALLED** from the Governor's Desk pursuant to Joint Order (S.P. 634.)

(In Senate June 10, 1985, **RECONSIDERED ENACTMENT**.)

On motion by Senator **GILL** of Cumberland, the Senate **SUSPENDED THE RULES.**

On further motion by the same Senator, the Senate **RECONSIDERED** its action whereby the Bill was **PASSED TO BE ENGROSSED.**

On further motion by the same Senator, Senate Amendment "A" (S-258) **READ** and **ADOPTED.**

Which was **PASSED TO BE ENGROSSED as Amended**, in **NON-CONCURRENCE.**

Under suspension of the Rules, ordered sent down forthwith for concurrence.

The President laid before the Senate the Tabled and Specially Assigned matter:

Bill "An Act Concerning Access to Telephone Toll Records by Prosecutors" (S.P. 536) (L.D. 1437) (C. "A" S-238)

Tabled — June 10, 1985, by Senator **VIOLETTE** of Aroostook.

Pending — **PASSAGE TO BE ENGROSSED AS AMENDED**

(In Senate June 10, 1985, **READ A SECOND TIME**.)

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Baldacci.

Senator **BALDACCI:** Mr. President and Members of the Senate. I would like to pose a question through the Chair as to the purpose of this particular Bill and whether this particular Bill, as it's drafted, addresses the con-

cerns that may have been registered in the Judiciary Committee.

THE PRESIDENT: The Senator from Penobscot, Senator Baldacci, posed a question through the Chair to any Senator who may respond if they so desire.

The Chair recognizes the Senator from Lincoln, Senator Sewall.

Senator **SEWALL:** Thank you, Mr. President and Members of the Senate. This Bill concerned the gathering of telephone information from telephone companies in prosecuting cases and generally it expanded allowing an assistant prosecutor and other people to get these records when it was in the middle of a case.

The problem that I think the Senator is alluding to is the problem that this Bill does not cover, through divestiture, does not cover the long distance calls handled by ATT, GTE and so forth. It does not cover that. We discussed it and decided that the Attorney General's office would still like this ability, even if it's within the State and the next session they'll come back after discussing the issue with the Securities Exchange Commission and other to find out a way that they can go about getting the records from those companies which were effected by divestiture.

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Baldacci.

Senator **BALDACCI:** Mr. President and Members of the Senate. The concern that I have, one of the concerns was correctly registered by the good Senator from Lincoln, Senator Sewall.

I would think, though, that if all it requires on this is an amendment to the Bill to include GTE, Sprint and MCI and ATT, the interstate tolls are, I think, would be a better concern because just a quick review of the Levesseur and Manning situation of the interstate crimes that were committed in robberies and bombings and those sort of things, it would be an access to the interstate records which would be of much greater assistance.

So, if it would only require an amendment to this Bill, I would just as soon see that the Bill was held pending a drafting of that amendment because I think that if we say on the Record that we're coming back next Session and try to include GTE, Sprint and MCI, I think we may be fueling the opposition to including them to be covered and building up such an opposition to it that even though our good intentions are to include them that it may not be possible. So, if we're going to do it, do it right.

THE PRESIDENT: The Chair recognizes the Senator from Lincoln, Senator Sewall.

Senator **SEWALL:** Thank you, Mr. President and Members of the Senate. I would only say that the entire Committee agrees that we want to include, and I want it part of the Record, that we intend to include those other companies.

The Attorney General's office tells us that doing that cannot be accomplished by a simple amendment, it's something that has to be worked out because we're dealing with a Federal Exchange Commission and we're dealing with a whole lot of other things.

But, it is completely our intent to include all of those long distance calls and those companies. It is simply a matter of trying to work this out on the Federal level and we are committed to doing that.

THE PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Carpenter.

Senator **CARPENTER:** Mr. President, Ladies and Gentlemen of the Senate. I concur wholeheartedly with the Senator from Lincoln, Senator Sewall.

We're not going as far here, perhaps, as ultimately we will ask to go, but because of the divestiture and the mixed bag of companies the Attorney General, whose Bill this is, tells us that they need more time to sort through that. We're expanding this only in that we're now

allowing more people, Assistant Attorney Generals, to ask for these records and district court judges to grant that request.

We're not going in terms of, in fact, the comment of the Senator from Penobscot, Senator Baldacci, that we're not going far enough, and I've talked this over with the representative of the phone companies and they just wanted to make sure, as I understand it, that we knew that we weren't going as far as we thought they wanted us to go, and we understand that, and we're not, at this point, prepared to go forward with any more. The next Session we may be, or the Attorney General's office may be. If in fact we are, we'll have to fight that battle there. I think the Committee's feeling was that we didn't want to lunge into this area and then have to come back and amend some of those companies out of it.

The present law says those companies under the jurisdiction of the Maine Public Utilities Commission, and that is what this law says also but because that jurisdiction may have changed because other things have changed within that sphere now we're not going to be able to get at as many as you could before divestiture. We understand that. But, this is one small step in that direction and probably there will be more later on. Thank you very much.

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Baldacci.

Senator **BALDACCI:** Mr. President and Members of the Senate. Having arisen three times on this issue, realizing I would have to be at the mercy of this Body to rise a fourth, I would like to point out that I think the concern that I have when it does get into telephone records and that sort of power that the Attorney General wants to be able to review those kind of records and then realizing the safety guidelines as far as getting it from the courts, I just share a tremendous amount of concern in that area plus the fact of the divestiture and having companies which are really going to be providing a lot of the information that would be needed in doing that type of work not be included and allowing them an opportunity to gear up their armies to combat any type of legislation in the next session and then leaving our only regulated telephone company, or companies, that go to the Public Utility Commission at the subservience of the Attorney General's Office and allowing a district court judge to give them that information, was a concern.

So, I've registered it and it's been on the Record. Thank you.

Which was **PASSED TO BE ENGROSSED as Amended.**

Sent down for concurrence.

The President laid before the Senate the Tabled and Specially Assigned matter:

Bill "An Act Relating to Alcohol-related Birth Defects" (S.P. 431) (L.D. 1198) (C "A" S-244)
Tabled — June 10, 1985, by Senator **VIOLETTE** of Aroostook.

Pending — Motion of Senator **BUSTIN** of Kennebec to **RECONSIDER INDEFINITE POSTPONEMENT**

(In Senate June 10, 1985, Bill and Accompanying Papers **INDEFINITELY POSTPONED.**)

THE PRESIDENT: The Chair recognizes the Senator from Lincoln, Senator Sewall.

Senator **SEWALL:** I request a Division.

THE PRESIDENT: The Senator from Lincoln, Senator Sewall, has requested a Division.

Will all those Senators in favor of the motion by the Senator from Kennebec, Senator **BUSTIN** to **RECONSIDER** its action whereby this Bill was **INDEFINITELY POSTPONED**, please rise in their places until counted.

The Chair recognizes the Senator from Kennebec, Senator Bustin.

Senator **BUSTIN:** I request a Roll Call.

THE PRESIDENT: The Senator from Kennebec, Senator Bustin, has requested a Roll

Call. Under the Constitution, in order for the Chair to order a Roll Call it requires the affirmative vote of at least one-fifth of those Senators present and voting.

Will All those Senators in favor of ordering a Roll Call, please rise and remain standing until counted.

Obviously more than one-fifth having arisen, a Roll Call is in order.

The pending question before the Senate is the motion of the Senator from Kennebec, Senator **BUSTIN**, that the Senate **RECONSIDER** its action whereby this Bill was **INDEFINITELY POSTPONED.**

Senator **VIOLETTE** of Aroostook who would have voted Yea requested and received permission to pair his vote with Senator **NAJARIAN** of Cumberland who would have voted Nay.

Senator **CLARK** of Cumberland who would have voted Nay requested and received permission to pair her vote with Senator **ANDREWS** of Cumberland who would have voted Yea.

THE PRESIDENT: The pending question before the Senate is the motion of the Senator from Kennebec, Senator **BUSTIN**, that the Senate **RECONSIDER** whereby this Bill was **INDEFINITELY POSTPONED.**

The Chair recognizes the Senator from Kennebec, Senator Bustin.

Senator **BUSTIN:** Thank you, Mr. President, Men and Women of the Senate. I hope you will be voting with this motion and I would like to address a few of the questions that were brought up yesterday during the debate.

The \$100 fine for only the agency stores and not the State stores, I don't know how you fine the State to pay the State, so it doesn't seem to be realistic to do that. And, the fine of \$100 is not \$100, it is up to \$100 and it's at the discretion of the judge and I think that it's a normal procedure to say "up to \$100" when you are writing laws like that, and if anyone remembers correctly, the reasons the Governor vetoed this Bill last time when it included all of the stores in the State is because it did not have a penalty on it. So, in deference to that feeling a penalty was put on it.

Secondly, the argument that you can disseminate the information in other ways, yes, of course you can. I've shown the signs and I've shown you the bumper stickers, I've shown you all of that. As all of us know who have ever run for political office, it costs a tremendous amount of money to publish brochures, to get bumper stickers printed up and distributed. If you put a sign in a liquor store or an agency store or a State store, then that is one sign that is in that store at the point of sale. I don't know any better way to inform people than where they are buying a product. I just don't know any better way to do that. It's the only way that you can do it and have the effect of meeting those people who are using the product right then and there. The efforts to disseminate the information to doctor's offices, pharmacists, dentists' offices psychologists, psychiatrists, social workers, all of those place, home health agencies, we're doing that, and we're doing it as fast as we can. There is no way that we can meet disseminating the information as fast as we can meet it by putting up a simple sign at the point of sale. That's the important issue and that's what I wish you would vote with me on. Give us a chance to at least look at whether that makes any difference.

The question of whether there is 1500 Fetal Alcohol Syndrome babies born or there is one, is it that material when you think that if one is born it's going to cost the State upwards of \$100,000, and I think that's a very conservative estimate, but at least \$30,000 a year for the simplest case, for the hardest cases it is probably going to cost \$100,000. That's what you are looking at and all you are doing is putting up a sign that warns somebody.

Now, I personally know of one person who gave birth to a FAS youngster. Senator Sewall

mentioned that she knew of one. I know that Senator Berube, before the hearing on this Bill, got a call from a grandmother who had just been presented with a FAS grandchild. So that's three. We're now talking about \$300,000 or \$90,000, whichever figure you want, the high end or the low end, for one year for three babies. I think it is worth putting a sign up and seeing if it works.

If it doesn't work, and it is so horrendous to you, then repeal it next year, but at least give us a chance to prove that what we say is true. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Webster.

Senator **WEBSTER:** Mr. President and Ladies and Gentlemen of the Senate. I think it is commendable that the good Senator from Kennebec has submitted this legislation and the sponsors are having well-meaning attempts here to address a problem that they perceive.

It seems to me that this is another attempt by the Government to legislate common sense. I wonder how many women out there don't realize that if they drink it might be harmful to their children. I have a two-year-old and I know my wife wouldn't even drink Tab, she was afraid that that might affect the baby and I think that most people out there understand this. I think they realize that if you drink it could be harmful to your child.

I guess I get awful frustrated with this Legislature and it's continuous attempts to legislate common sense, to tell everybody everything that they ought to be doing. This is a poor piece of legislation. I was in a store the other day in Fairbanks, which is in my district, a little off from Farmington, and the guy said to me, he said . . . "This is just what we need, you can add it to my other thirty-nine signs that I'm required to put up." He has to have a sign that says he sells seeds, and he sells produce and on and on and on and on.

Who reads the signs? That's what I want to know, who takes the time to read them? I mean, you'd have to spend twenty minutes in the store to read all the signs. I just don't see the necessity for this Bill. I think it is foolishness and I hope that we all continue on the way we did the other day and dispose of this in the proper manner.

THE PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Stover.

Senator **STOVER:** Thank you, Mr. President and Fellow Senators. I have to differ with my colleague, the Senator from Franklin, when he says that you can't legislate common sense, he's probably right there but after all, we have signs on cigarettes that says cigarettes may be injurious to your health. We have signs on bottles of medicine that say "Keep out of reach of children." This is another way of informing women who might not know that alcohol could have effects beyond what it would do to them individually.

As Senator Bustin says, what better place to put it than where they go to buy the product. They will go in there and see it and I do feel that the proprietors do have a responsibility, they are dealing with a drug that does have injurious effects and I can't think of a better way to do it. I support Senator Bustin all the way.

THE PRESIDENT: The Chair recognizes the Senator from Waldo, Senator Shute.

Senator **SHUTE:** Mr. President and Ladies and Gentlemen of the Senate. As I've listened to the debate on this issue and I didn't attend the hearing and I'm not on the Committee, but it's my understanding that only State Agency stores will be affected by these signs.

If that is correct, I only have two State agency stores in my County, Waldo County, and there out in the hinterlands, what happens to the other 90% of the people in Waldo County that never go to those towns that have agency stores?

I guess the couple of questions that I would like to ask some member of the Committee that

could probably answer them, is what percentage of the alcohol sold in the State is sold in agency stores and also, does this Bill cover bars, restaurants and cocktail lounges? And also, does it cover grocery stores where they sell beer and wine? What percent of the alcohol sold in the State does it cover?

Off Record Remarks

THE PRESIDENT: The Senator from Waldo, Senator Shute, has posed questions through the Chair to any Senator who may respond if they so desire.

The Chair recognizes the Senator from Kennebec, Senator Bustin.

Senator **BUSTIN:** Thank you, Mr. President, Men and Women of the Senate. To answer the question, I do not know what the percentage of alcohol is sold. It seems to me that it should be 100% because of State regulated stores, and we only have hard liquor sold in State stores and State agency stores.

As far as the Bill covering the restaurants and bars and Mom and Pop's grocery stores, no, it does not cover those.

THE PRESIDENT: The Chair recognizes the Senator from Waldo, Senator Shute.

Senator **SHUTE:** I guess maybe I stated the question wrong. What percent of the alcohol consumed in the State is bought through agency stores? I think if we're going to have these signs up, they should be in restaurants, bars, cocktail lounges and the grocery stores that sell beer and wine, unless beer and wine is not a threat.

One place I think these signs should be is at the little store there down in Kittery there.

Off Record Remarks

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Baldacci.

Senator **BALDACCI:** Mr. President and Members of the Senate. We've debated this issue in the last Session and we're now debating it again in this Session.

I think that in sitting and thinking about this particular issue, one has to realize that not everybody is female and not everybody is pregnant. And, rather than having to put up a sign in agency liquor stores or State liquor stores or any stores, I would think that it would be a lot easier if you got a list of all the pregnant women and you sent them a letter and you told them of the problems of having alcohol while they are pregnant. You are hitting directly at the source.

I mean, if you want to put another sign next to the sign that says "No personal checks, Canadian exchange," if you want to put up a sign that says the minimum wage, what workers' comp is, what unemployment is, your seafood license, if you want to put up another sign so that you can't even see how much the bill is after you've added it up to give the right change, then I think you should vote for this. But, if you really want to get at the problem which is the pregnant woman, which the Senator from Kennebec, Senator Bustin, is sincere about, and God love her, I think she is very sincere on this particular issue and I'd love to but I don't think it's really addressing it and if they would take the millions of dollars or two million dollars that the alcohol group gets, then mail letters to these people and tell them, it would be hitting directly at it and I would think that that would be a reasonable approach.

Thank you, Mr. President.

THE PRESIDENT: The Chair understands the Senator from Kennebec, Senator Bustin, asks Leave of the Senate to speak a fourth time.

Is it the pleasure of the Senate to grant this Leave?

It is a vote.

The Chair recognizes the Senator from Kennebec, Senator Bustin.

Senator **BUSTIN:** Thank you, Mr. President, Men and Women of the Senate. I did not want to rise a fourth time but I cannot resist responding to those questions.

Number one, if my good Seatmate, Senator Shute, would like to amend the Bill to include all of those stores then I would be more than happy to go along with that, but let's pass the Reconsideration motion so that he may do that.

And, he's absolutely correct, beer and wine also are the culprits. Anything that has alcohol in it is, indeed, going to cause a problem if the problem is going to occur. And, I will repeat again, this is the one eradicable disease in the Nation. All you have to do is not choose to drink. You can choose the Russian Roulette route, hope that your drinking does not cause Fetal Alcohol Syndrome, but I sure wouldn't want to choose that and I'll tell you, when I was pregnant with my two youngsters I was unaware, and I'm not going to say how long ago that was, I was unaware that I should not drink. I did not drink, fortunately, so I did not have to face that, so I did not have the problem. But think of those women, and there are doctors out there who still instruct women that it's okay to have a glass of wine.

Another important point. You have a fairly strong woman's lobby out on the Third Floor, outside the doors of these Houses. Four of whom are pregnant, I suspect none of them, because of the controversy that has occurred in these last two or three years over Fetal Alcohol Syndrome, has taken a drink. I know for a fact that one of them hasn't, I haven't talked to the other three. But, I suspect that they've learned, if they did not know before, that they shouldn't. Oughtn't we to allow the rest of the population to have that same advantage however we get that information out.

In response to the good Senator from Penobscot, Senator Baldacci's comment about sending letters to pregnant women. I guess I get a lot more education to do. Fetal Alcohol Syndrome can occur at conception and immediately in the first three months when almost none except perhaps the women might know whether or not she is pregnant. That is one of your more dangerous times. That's why you have to educate the population before the pregnancy occurs. It is absolutely essential that you educate them before. If the good Senator from Penobscot, Senator Baldacci, can explain to me how I can get a list of those pregnant who either intend to get pregnant or may be immediately pregnant and I can send an immediate response to them, perhaps that's one way, but, I still think that the point of sale is the most, the easiest, the most encompassing one, to do.

There are some other points that the Senator has brought up, some of which I can't remember but it was one that I really wanted to home in on, but I can't remember it. But, in any case I think that you are beginning to realize that despite the fact that I see a lot of smiles on the faces of the Members here, despite the fact that I see the hilarity of the situation or the conversation that's going on. Despite all that, and I can join in that humor, it is a serious issue. And you do need to take a look at it and you do need to give these people a chance.

I've talked just long enough to remember my point. Only women need to be told about this? Only women are concerned about the propagation of the race? Only women are concerned about the health of the babies in this world? NO!! NO!! Men are as responsible, and I dare to say, want to be as responsible as the women are in the health of those babies. And, if they read the signs and they know that there is a pregnant woman around them, they might just say . . . "Hey, I just saw a sign where I bought this fifth of whiskey and it says that you shouldn't drink during pregnancy. Don't you think you ought to check it out." That goes from grandmothers right down to sisters and

brothers and aunts and uncles and nieces and nephews. It is not only women who must take the responsibility for this. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Lincoln, Senator Sewall.

Senator **SEWALL:** Thank you, Mr. President, Members of the Senate. Very briefly, I just wanted to remind you the extent of this problem which we're about to terrify a bunch of young women who are pregnant by posting signs, making them worry that perhaps at the time of conception they had had a glass of wine and now something dreadful was going to happen and I want to quote again from Dr. George W. Hallett, Department of Pediatrics, Chief of the Department at the Maine Medical Center, when he said "During the past five years since that problem has been known, we have only been able to identify one or two children with this condition at Maine Medical Center."

I want you to think about the effects it might have on all these women who see the signs who perhaps get comments from other people when there's been absolutely no evidence that a moderate consumption of alcohol has anything to do with the instance of FAS. Why worry these people, if there isn't enough to worry about in this world, then one problem which is a serious problem, but not one that is in epidemic proportions.

THE PRESIDENT: The pending question before the Senate is the motion of the Senator from Kennebec, Senator **BUSTIN**, that the Senate **RECONSIDER** its action whereby this Bill and all accompanying papers were **INDEFINITELY POSTPONED**. A Roll Call has been ordered.

A Yes vote will be in favor of **RECONSIDERATION**.

A No vote will be opposed.

The Doorkeepers will secure the Chamber. The Secretary will call the Roll.

ROLL CALL

YEAS:—Senators, Berube, Bustin, Carpenter, Chalmers, Diamond, Erwin, Gauvreau, Gill, Hichens, Kany, Matthews, McBreaarty, Pearson, Stover, Tuttle, The President — Charles P. Pray

NAYS:—Senators, Baldacci, Black, Brown, Danton, Dow, Dutremble, Emerson, Maybury, Perkins, Sewall, Shute, Trafton, Twitchell, Usher, Webster

ABSENT:—Senators None

16 Senators having voted in the affirmative and 15 Senators having voted in the negative, with 4 Senators Pairing their votes, and No Senators being absent, the motion of Senator **BUSTIN** of Kennebec to **RECONSIDER** its action whereby this Bill was **INDEFINITELY POSTPONED**, **PREVAILS**.

The pending question is the motion of the Senator from Lincoln, Senator **SEWALL**, that this Bill and all accompanying papers be **INDEFINITELY POSTPONED**.

The Chair recognizes the Senator from Kennebec, Senator Bustin.

Senator **BUSTIN:** I request a Division.

THE PRESIDENT: The Senator from Kennebec, Senator Bustin, has requested a Division.

Will all those Senators in favor of **INDEFINITE POSTPONEMENT**, please rise in their places until counted.

The Chair recognizes the Senator from Kennebec, Senator Bustin.

Senator **BUSTIN:** I request a Roll Call.

THE PRESIDENT: The Senator from Kennebec, Senator Bustin, has requested a roll call. Under the Constitution, in order for the Chair to order a Roll Call it requires the affirmative vote of at least one-fifth of those Senators present and voting.

Will all those Senators in favor of ordering a Roll Call, please rise and remain standing until counted.

Obviously more than one-fifth having arisen, a Roll Call is in order.

The Chair recognizes the Senator from Androscoggin, Senator **GAUVREAU**.

Senator **GAUVREAU:** Thank you, Mr. President, Men and Women of the Senate. It is not my desire to prolong this lengthy debate at this point. We have other matters to attend to. I would like to explain why I voted for Reconsideration, but ultimately, went back to Indefinite Postponement.

I was waiting during the debate to discern any evidence that there is a casual relationship between exposure of the warning, either at the point of impact, in this case, purchasing liquor at a store and a decision not to consume alcohol. I have not yet heard any evidence, perhaps there were polls or some sort of evidence which was given to the Committee. I would be interested in that result.

It strikes me that if a person was at the liquor store buying liquor, it is very unlikely they are going to reconsider their action and leave the liquor store.

Although I certainly sympathize strongly with the intent of the sponsors of this Legislation, I think that it's been well debated. I really don't at this point, see any casual relationship between the warning and deterrence of consumption of alcohol by pregnant women.

THE PRESIDENT: The Chair recognizes the Senator from Arrostook, Senator Carpenter.

Senator **CARPENTER:** Mr. President and Ladies and Gentlemen of the Senate. I don't have any particular interest in this Legislation except that I just want to respond a second to what the Senator from Androscoggin, Senator Gauvreau, said.

It seems to me that what we've heard is that there is evidence that the use of alcohol by woman during pregnancy may cause Fetal Alcohol Syndrome. Now, if you move it back one step further, you say, "Well, does it do any good to warn them?" And I'm wondering, and I don't honestly know, but I'm wondering if this is not unlike the debate, or not like the debate, that probably went on in the Congress of the United States a few years ago on a discussion of whether or not to put this warning in very, very small print — "Warning — the Surgeon General has determined that cigarette smoking is dangerous to your health." And is there a connection? I don't know. What do the statistics say? Has that warning, in fact, reduced the consumption of cigarettes by the public because of the warning? I don't know.

It seems to me that the arguments are very similar and should be thought out perhaps in that light.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Bustin.

Senator **BUSTIN:** To answer the good Senator's question and it is a very good one, I have in my hand a communication from the *Journal of Learning Disabilities*, and it's called *Hyperactivity, Learning Disabilities and Alcohol*. And, it is authored by Sandra Gold, M.E.D., and Lee Sherry, Ph.D.

The forward to the article is, "the United States Food and Drug Administration had issued a warning to women that alcohol consumed during the prenatal period may cause deleterious effects on offsprings. The present article examines the professional literature in regard to the history of and research in alcohol consumption by pregnant women. New research findings suggest that maternal alcohol consumption may be the cause for behaviors of children that have led to their being diagnosed as learning disabled, hyperactivity, short attention span and emotional lapsed ability in children may be the direct result of mothers drinking during pregnancy."

"The present paper reaffirms the Food and Drug Administration's warning to pregnant women and potential mothers of the hazards of even mild or moderate drinking during pregnancy and the possible negative effects it may cause on a child's learning and behavior." One of the quotes in that is, and I'm just picking out quickly so I may not have all of them, "It has been understood for several years that

Familio alcoholism or drinking may affect children." "Research on the impact of maternal alcohol consumption on human infants has demonstrated that the Fetal Alcohol Syndrome, FAS, is a clinically observable abnormality," and that's quoted from Noble, 1978, Page 189. "FAS is characterized by four primary abnormalities, prenatal growth deficiency, small head size, decreased eye development and mental retardation." If that's not enough to convince you, I can't do any more.

THE PRESIDENT: The Chair recognizes the Senator from Lincoln, Senator Sewall.

Senator **SEWALL:** Thank you, Mr. President and Members of Senate. I guess if we're going to quote reports, I'll quote one from the *American Journal of Public Health*, which in 1983, it said . . . "One may regard it as unlikely that regular drinking of fewer than two drinks daily, either before or during pregnancy, is an important determinant of interuterine growth retardation." So, I think we're talking about those women who abuse alcohol and it may cause more than just this syndrome rather than those who use it somewhat.

And, let me add to the good Senator from Androscoggin, Senator Gauvreau, that most women going to buy alcohol in the State of Maine won't be dealing with this sign anyway because, you see, it doesn't have to be in the State liquor stores, it only has to be in the agency stores. So, it really, if you want to look at the problem, I suppose we should do what we've done for saccharine and all those sort of things, and mark the liquor bottle that this may be, if you are pregnant, and it may be for lots of other reasons, injurious to your health, but, this Bill doesn't do it. This Bill puts signs and raises money and that's what it's going to do — raise money from some of these agency stores if the sign isn't there and completely leave out the majority of liquor stores which happen to belong to the State and not be fined. Obviously the State can't fine itself, do not have to post the sign.

So, that's what you are doing, next to nothing except terrifying a few women and harassing some small businessmen.

Senator **VIOLETTE** of Arrostook who would have voted Nay requested and received permission to pair his vote with Senator **NAJARIAN** of Cumberland who would have voted Yea.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Matthews.

Senator **MATTHEWS:** Thank you, Mr. President and Members of the Senate. I'll be very brief and apologize for getting up on this issue but I think that we've kind of gotten off the track a little bit here.

Yes, there have been some comments and light heartedness and I've laughed too on a few of the things but I'll be voting in favor of this Bill today and voting against the Indefinite Postponement and I'll be doing so because I believe in the sanctity and the quality of life and the right of life.

There is an ingredient here, there's a person here that I think we haven't been thinking about and that's that little baby, that little child. My wife and I have just experienced the birth of our son and I thank the good Lord that he was born without any birth defects and healthy. My wife is a health educator and she didn't touch one drop during that pregnancy. And that's the question I think that you've got to think about here today.

Fetal Alcohol Syndrome and it's chances for happening are very, very strong or stronger, or more likely, during pregnancy when that baby is being formed and I think that you've got to think about that child. The opportunity for that baby to have the best that life can offer, living a wholesome life without any birth defects and I think that's the question here.

I really disagree strongly with any implication of mandation in this issue. It seems to me this takes care of the mandation issue by put-

ting a sign on the wall and giving people a little public information, much like the good Senator from Aroostook mentioned with cigarettes. Maybe the industry out there on this Floor is trying to lead us to believe that there's no casual relationship between drinking during pregnancy and birth defects and that is ludicrous and foolish. It is just as stupid as the attempt during one time before on tobacco and smoking. You've got to think about that baby and that pregnant woman.

I guess I strongly believe that a little bit of education may be the only fair way to go just to let that person know. There are many people out there, many pregnant women, that have no idea and I can tell you this from experience with my wife teaching health education, they have no idea about the importance of good diet, non-drinking during pregnancy and these are the people that just might be affected by looking at that sign and thinking about it before they take a drink.

I'll be supporting this Bill very, very strongly today because I believe in the sanctity of life.

THE PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Carpenter.

Senator **CARPENTER:** Mr. President and Ladies and Gentlemen of the Senate. With regards to the remarks of my friend, the Senator from Lincoln, Senator Sewall, I would pose a question.

She had commented that the majority, even if you believe that these signs were going to do any good, the majority of people buying alcohol would not see the sign because there was no requirement that the signs be posted in the State stores, just the agency stores. I'm asking a serious question. It seems to me in Line 35 through 37 of the Senate Amendment, which is S-244, and I'll read it to you. Paragraph 2 says . . . "Sign required. All special agency liquor stores licensed under Section 153 and all State liquor stores shall be required to display a warning sign," etc., etc. It seems to me that these signs are, in fact, going to be posted not only at the agency stores but also at the liquor stores.

THE PRESIDENT: The Chair recognizes the Senator from Lincoln, Senator Sewall.

Senator **SEWALL:** Thank you very much, Members of the Senate. Exactly my point! They can post them there now voluntarily if someone wanted to, they could certainly post them. But, if there's no sanction, if you can't be fined for not doing it, what sort of strength does that have in the law?

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Baldacci.

Senator **BALDACCI:** Mr. President and Members of the Senate. Being on a very serious note in regards to this particular issue that I think it's very important to remember that this is between a woman who is pregnant and her obstetrician or her doctor to discuss these issues, to go over the complications and problems with that.

It isn't something to place a sign somewhere reminding her or her family that if she drinks while she's pregnant, she's going to have problems. I think you are taking it out of the client/patient relationship and you're plastering it all over the walls of the State telling her that she'd better not drink while she's pregnant. I think women are pretty damn smart when it comes to these sort of things.

As I was growing up my mother used to always tell me that girls were always smarter than boys. Well, let me submit to you, Members of the Senate, that I think that women are pretty sharp today and they realize for most part that they shouldn't be drinking or doing other things, that they shouldn't be doing it. But, the good Senator from Aroostook, Senator Carpenter, knows since 1973 the little label on the cigarettes says it can be hazardous to your health, still buys cigarettes and so do I, even though it still says it can be hazardous to your health. But this is a personal thing between a

woman and a physician and it isn't something that you want plastered all over the State.

I would think that we would want to In- definitely Postpone this Bill.

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Maybury.

Senator **MAYBURY:** Thank you, Mr. President. I would like to pose a question through the Chair. If we are to assume that the average person is able to read and understand and is caring enough to find out the information concerning what will happen to them if they choose to become pregnant, what will happen and how will this sign help the person who cannot read?

THE PRESIDENT: The Senator from Penobscot, Senator Maybury, has posed a question to any Senator who may respond if they so desire.

The Chair recognizes the Senator from Knox, Senator Chalmers.

Senator **CHALMERS:** Thank you, Mr. President and Ladies and Gentlemen of the Senate. No, of course I'm not going to respond to that. I suppose she'll have somebody who can read read it to her.

I would respond to the good Senator from Lincoln's statement that this is going to terrify women. I would just quote to you from the Bill, all the message is going to say is . . . "Drinking alcoholic beverages during pregnancy may cause birth defects." I submit that this isn't going to terrify, this is another step in education and I'm glad to hear it's going to be plastered all over. I thought one of the arguments was that it was not going to be shown anywhere therefore why pass it. So, if it's going to be plastered all over and if it's education and if it will save one child then I think it is a good thing. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Waldo, Senator Shute.

Senator **SHUTE:** Mr. President and Ladies and Gentlemen of the Senate. This Bill and the debate on this Bill has been likened to the warning that's put on the cigarette packages by action of the Congress. I would submit to you that if the Congress of the United States had said that we only have to put warnings on Lucky Strikes, Camels and Pall Malls, that Bill wouldn't have passed, or if we only have to put warnings in agency stores and we don't have to put warnings in restaurants, we don't have to put them in grocery stores, drug stores or quick-stop stores, the cigarette warning bill would never had passed.

I guess the other thing I would like to mention is how much protection does this Bill give to the woman that doesn't drink hard liquor, that only goes to grocery stores to buy wine or beer?

THE PRESIDENT: The pending question is the motion of the Senator from Lincoln, Senator **SEWALL** that this Bill and all accompanying papers be **INDEFINITELY POSTPONED**.

Senator **CLARK** of Cumberland who would have voted Yea requested and received permission to pair her vote with Senator **ANDREWS** of Cumberland who would have voted Nay.

Off Record Remarks

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Lincoln, Senator **SEWALL**, that this Bill and all accompanying papers be **INDEFINITELY POSTPONED**.

A Yes vote will be in favor of **INDEFINITE POSTPONEMENT**.

A No vote will be opposed.

The Doorkeepers will secure the Chamber. The Secretary will call the Roll.

ROLL CALL

YEAS:—Senators, Baldacci, Berube, Black, Brown, Danton, Dow, Dutremble, Emerson, Gauvreau, Maybury, Perkins, Sewall, Shute, Trafton, Twitchell, Usher, Webster

NAYS:—Senators, Bustin, Carpenter, Chalmers, Diamond, Erwin, Gill, Hichens, Kany, Matthews, McBreairty, Pearson, Stover, Tuttle, The President — Charles P. Pray

ABSENT:—Senators None

17 Senators having voted in the affirmative and 14 Senators having voted in the negative, with 4 Senators Pairing their votes and No Senators being absent, the motion by the Senator from Lincoln, Senator **SEWALL**, that this Bill and all accompanying papers be **INDEFINITELY POSTPONED, PREVAILS**.

Sent down for concurrence.

The President laid before the Senate the Tabled and Specially Assigned matter:

Resolve, Authorizing Colwell Construction Company, Incorporated, to Bring a Civil Action Against the State of Maine (S.P. 550) (L.D. 1467) (C "A" S-242)

Tabled — June 10, 1985, by Senator **VIOLETTE** of Aroostook.

Pending — **PASSAGE TO BE ENGROSSED AS AMENDED**

(In Senate June 10, 1985, **READ A SECOND TIME**.)

On motion by Senator **VIOLETTE** of Aroostook, Tabled until Later in Today's session, pending **PASSAGE TO BE ENGROSSED AS AMENDED**.

The President laid before the Senate the Tabled and Specially Assigned matter:

Bill "An Act to Amend the Laws Related to Motor Vehicle Dealers and to Address Certain Problems Related to Motor Vehicle Auctions in Maine" (H.P. 1084) (L.D. 1575) (C "A" H-348)

Tabled — June 10, 1985, by Senator **VIOLETTE** of Aroostook.

Pending — **PASSAGE TO BE ENGROSSED AS AMENDED**

(In Senate June 10, 1985, **READ A SECOND TIME**.)

(In House June 6, 1985, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-348)**.)

On motion by Senator **DANTON** of York, the Senate **SUSPENDED THE RULES**.

On further motion by the same Senator, the Senate **RECONSIDERED** its action whereby it **ADOPTED** Committee Amendment "A" (H-348).

On further motion by the same Senator, Senate Amendment "A" (S-256) to Committee Amendment "A" (H-348) **READ** and **ADOPTED**.

Committee Amendment "A" (H-348) as amended by Senate Amendment "A" (S-256) thereto was **ADOPTED**, in **NON-CONCURRENCE**.

Which was **PASSED TO BE ENGROSSED, as Amended in NON-CONCURRENCE**.

Sent down for concurrence.

Under suspension of the Rules, there being no objections, all matters previously acted upon, except those items previously held, were ordered sent down forthwith for concurrence.

Out of order and under suspension of the Rules, the Senate considered the following:

COMMITTEE REPORTS

Senate

Leave to Withdraw

The following **Leave to Withdraw** reports shall be placed in the Legislative Files without further action pursuant to Rule 15 of the Joint Rules:

Bill "An Act Relating to Parental or Court Consent Prior to Performing and Abortion on a Minor" (S.P.403) (L.D. 1113)

Bill "An Act Concerning Access to Birth Records of Adopted Persons" (S.P. 462) (L.D. 1265)

Out of order and under suspension of the Rules, the Senate considered the following:

COMMITTEE REPORTS

**House
Divided Report**

The Majority of the Committee on **BUSINESS AND COMMERCE** on Bill "An Act Relating to the Authority of Medical Service Organizations and Nonprofit Hospitals to make Incidental Indemnity Payments" (H.P. 1129) (L.D. 1636)

Reported that the same **Ought to Pass**.

Signed:

Senators:

BUSTIN of Kennebec
DANTON of York

Representatives:

BAKER of Orrington
BRANNIGAN of Portland
ALIBERTI of Lewiston
MURRAY of Bangor
TELOW of Lewiston
RYDELL of Brunswick
MARTIN of Van Buren

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-352)**.

Signed:

Senator:

SEWALL of Lincoln

Representatives:

STEVENS of Bangor
ARMSTRONG of Wilton
HILLOCK of Gorham

Comes from the House with the Majority **OUGHT TO PASS** Report **READ** and **ACCEPTED** and the Bill and Accompanying Papers **COMMITTED** to the Committee on **TAXATION**.

Which Reports were **READ**.

The Majority **OUGHT TO PASS** Report was **ACCEPTED**, in concurrence.

The Bill **READ ONCE**.

Under suspension of the Rules, the Bill **READ A SECOND TIME** and **PASSED TO BE ENGROSSED** in **NON-CONCURRENCE**.

Sent down forthwith for concurrence.

Out of order and under suspension of the Rules, the Senate considered the following:

SECOND READERS

The Committee on **Bills in the Second Reading** reported the following:

House As Amended

Bill "An Act to Establish Special Motor Vehicle License Plates for Firefighters" (H.P. 617) (L.D. 887) (H "A" H-369 to C "A" H-362)

Which was **READ A SECOND TIME** and **PASSED TO BE ENGROSSED**, as Amended, in concurrence.

Off Record Remarks

ORDERS OF THE DAY

On motion of Senator **DANTON** of York, the Senate removed from the Special Highway Table:

EMERGENCY

An Act to Amend Certain Motor Vehicle Laws (S.P. 605) (L.D. 1599) (H "A" H-379 to S "A" S-200)

Tabled—June 6, 1985, by Senator **DANTON** of York.

Pending—**ENACTMENT**

(In House June 5, 1985, **PASSED TO BE ENACTED**.)

(In Senate June 3, 1985, **PASSED TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENT "A" (S-200)**)

On further motion by same Senator, the Senate **SUSPENDED THE RULES**.

On further motion of same Senator, the Senate **RECONSIDERED** its action whereby the Bill was **PASSED TO BE ENGROSSED AS AMENDED**.

On further motion of same Senator, Senate Amendment "B" (S-259) **READ** and **ADOPTED**.

Which was **PASSED TO BE ENGROSSED AS AMENDED** in **NON-CONCURRENCE**.

Under suspension of the Rules, ordered sent down forthwith for concurrence.

THE PRESIDENT: Reference is made to L.D. 1217, Bill "An Act to Authorize and Award System to Aid in Coyote Control"

In reference to the action of the Senate on June 10, 1985, whereby it **INSISTED** and joined in a **SECOND COMMITTEE OF CONFERENCE**, the Chair appoints the following Members on the part of the Senate as Conferees:

Senator **MATTHEWS** of Kennebec
Senator **USHER** of Cumberland
Senator **WEBSTER** of Franklin

There being no objections all matters previously acted upon, with the exception of those items previously held, were sent forthwith.

Senate At Ease

Senate called to Order by the President.

On motion by Senator **USHER** of Cumberland, **RECESSED** until 11:45 a.m. this morning.

After Recess

Senate called to Order by the President.

Out of order and under suspension of the Rules, the Senate considered the following:

ENACTORS

The Committee on **Engrossed Bills** reported as truly and strictly engrossed the following:

An Act to Amend the Code of Fair Practices and Affirmative Action as the Equal Opportunity Standard for State Financed Agencies (S.P. 166) (L.D. 453) (C "A" S-222)

An Act to Amend Judicial Certification Procedures (S.P. 500) (L.D. 1361) (C "A" S-239)

An Act Affecting the Statutes of Agencies within the Department of Business, Occupational and Professional Regulation (S.P. 556) (L.D. 1502) (C "A" S-232)

An Act to Establish Legislative Council Oversight of Expenditures for Joint Standing Committees, Joint Select Committee and Legislative Investigating Committees (S.P. 587) (L.D. 1544) (S "A" S-236 to C "A" S-210)

An Act Concerning the Court Mediation Service and the Conduct of Mediation (S.P. 597) (L.D. 1566)

An Act to Protect Railroad Rights-of-way (H.P. 414) (L.D. 581)

Which were **PASSED TO BE ENACTED** and having been signed by the President, were presented by the Secretary to the Governor for his approval.

An Act to Amend Certain Provisions of the Maine Criminal Code (S.P. 499) (L.D. 1360)

On motion by Senator **PEARSON** of Penobscot, placed on the **SPECIAL APPROPRIATIONS TABLE**, pending **ENACTMENT**.

An Act to Ensure Adequate Services for Head Injured Persons in Maine (S.P. 572) (L.D. 1507) (S "A" S-252; C "A" S-246)

On motion by Senator **PEARSON** of Penobscot, placed on the **SPECIAL APPROPRIATIONS TABLE**, pending **ENACTMENT**.

An Act Concerning Access to Medical Care for Persons without Adequate Health Insurance (H.P. 552) (L.D. 824) (C "A" H-341)

On motion by Senator **PEARSON** of Penobscot, placed on the **SPECIAL APPROPRIATIONS TABLE**, pending **ENACTMENT**.

Off Record Remarks

Out of order and under suspension of the Rules, the Senate considered the following:

ENACTORS

The Committee on **Engrossed Bills** reported

as truly and strictly engrossed the following:
An Act to Amend the Charter of the Bingham Water District (H.P. 799) (L.D. 1100) (C "A" H-363)

An Act to Amend the Laws Concerning Immunity so as to Address Juvenile Crime (H.P. 1008) (L.D. 1456)

An Act to Allow the New Spouse of a Remarried Retirement System Member to be covered After the Member's Death (H.P. 1020) (L.D. 1473) (H "A" H-347 to C "A" H-343)

An Act Authorizing State Employees to Purchase State Property Upon Retirement or Leaving Office (H.P. 1036) (L.D. 1510) (S "A" S-251)

An Act to Extend the Boundaries of the Gray Water District to Include the Entire Town (H.P. 1113) (L.D. 1623) (H "A" H-366)

Which were **PASSED TO BE ENACTED** and having been signed by the President, were presented by the Secretary to the Governor for his approval.

An Act to Appropriate Funds for Emergency Medical Services in Maine (H.P. 692) (L.D. 987) (C "A" H-349)

On motion by Senator **PEARSON** of Penobscot, placed on the **SPECIAL APPROPRIATIONS TABLE**, pending **ENACTMENT**.

Resolve

Resolve, Authorizing the Exchange or Sale of Certain Public Reserved Lands (H.P. 1060) (L.D. 1546) (C "A" H-334)

Which was **FINALLY PASSED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Emergency

An Act to Make Supplemental Allocations from the Highway Fund and Exchange Certain Provisions of the Law Necessary for the Proper Operation of State Government for the Fiscal Years Ending June 30, 1986, and June 30, 1987 (H.P. 673) (L.D. 956) (C "A" H-353)

On motion by Senator **ERWIN** of Oxford, placed on the **SPECIAL HIGHWAY APPROPRIATIONS TABLE**, pending **ENACTMENT**.

Out of order and under suspension of the Rules, the Senate considered the following inclusively:

ENACTORS

The Committee on **Engrossed Bills** reported as truly and strictly engrossed the following:

Emergency

An Act to Regulate Membership Camping (H.P. 773) (L.D. 1094) (C "A" H-356)

Emergency

An Act Relating to a Grievance Procedure Concerning Discrimination on the Basis of Handicap (H.P. 925) (L.D. 1327) (C "A" H-354)

Emergency

An Act to Clarify Taxpayer Information on Local Property Tax Bills (H.P. 1070) (L.D. 1551) (H "B" H-270)

Emergency

An Act to Amend the Charter of the Winthrop Water District (H.P. 1114) (L.D. 1624) (H "A" H-364)

Emergency

An Act Increasing the Authorized Indebtedness of Veazie Sewer District (H.P. 1115) (L.D. 1625) (H "A" H-365)

These being Emergency Measures and having received the affirmative vote of 28 Members of the Senate, with No Senators having voted in the negative were **PASSED TO BE ENACTED** and having been signed by the President, were presented by the Secretary to the Governor for his approval.

Emergency Resolve

Resolve, Creating a Joint Select Committee on Economic Development (H.P. 74) (L.D. 95) (C "A" H-344)

On motion by Senator **VIOLETTE** of

Aroostook, Tabled 1 Legislative Day, pending **FINAL PASSAGE.**

Out of order and under suspension of the Rules, the Senate considered the following:

COMMITTEE REPORTS

House

Leave to Withdraw

The following **Leave to Withdraw** reports shall be placed in the Legislative Files without further action pursuant to Rule 15 of the Joint Rules:

Bill "An Act to Provide Police Officers with Copies of Certain Laws" (H.P. 759) (L.D. 1079)
 Bill "An Act Concerning Murder Cases and Cases of Sexual Abuse of Minors" (H.P. 965) (L.D. 1400)

Bill "An Act to Require Certain Tax Classification Information to be Filed at the Registry of Deeds" (H.P. 1076) (L.D. 1565)

Out of order and under suspension of the Rules, the Senate considered the following:

PAPERS FROM THE HOUSE

Non-concurrent Matter

Bill "An Act to Increase Fees for Licensed Issued by the Department of Marine Resources" (H.P. 761) (L.D. 1081) (H "B" H-294 to C "A" H-237)

In Senate June 4, 1985, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-237) AS AMENDED BY HOUSE AMENDMENT "B" (H-294)**, thereto, in concurrence.

Comes from the House **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-237) AS AMENDED BY HOUSE AMENDMENTS "B" (H-294) and "C" (H-360)** thereto in **NON-CONCURRENCE.**

The Senate **RECEDED** and **CONCURRED.**

COMMITTEE REPORTS

House

Committee of Conference

The **Committee of Conference** on the disagreeing action between the two branches of the Legislature, on Resolve, to Establish a Commission to Prepare a Revision of the State's Motor Vehicle Laws (Emergency) (S.P. 321) (L.D. 810)

Have had the same under consideration and ask leave to report that the House **RECEDE** from its former action whereby the Resolve and Accompanying Papers were **Indefinitely Postponed; ACCEPT** the Majority **Ought to Pass** Report of the Committee on Transportation; **READ** the Resolve once; Under suspension of the Rules, **READ** the Resolve a **Second Time; Read and Adopt** Committee of Conference Amendment "A" (H-370) and **Pass the Resolve to be Engrossed as Amended by Committee Amendment "A" (H-370) in NON-CONCURRENCE.**

That the Senate **RECEDE** from **PASSAGE TO BE ENGROSSED; READ** and **ADOPT** Committee of Conference Amendment "A" (H-370) and **Pass the Resolve to be Engrossed as Amended by Committee Amendment "A" (H-370) in concurrence.**

Signed on the part of the House:

Representative CARTER of Winslow
 Representative KANE of South Portland
 Representative McPHERSON of Eliot

Signed on the part of the Senate:

Senator DANTON of York
 Senator ERWIN of Oxford
 Senator SHUTE of Waldo

Comes from the House with the Conference Report **READ** and **ACCEPTED** and the Resolved **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE OF CONFERENCE AMENDMENT "A" (H-370) in NON-CONCURRENCE.**

Which Report was **READ** and **ACCEPTED**, in concurrence.

The Senate **RECEDED** and **CONCURRED.**

Off Record Remarks

Out of order and under suspension of the Rules, the Senate considered the following:

PAPERS FROM THE HOUSE

Non-concurrent Matter

Bill "An Act Converting Caswell Plantation into the Town of Caswell" (Emergency) (S.P. 636) (L.D. 1650)

In Senate June 10, 1985, Referred to the Committee on **LOCAL AND COUNTY GOVERNMENT** and **ORDERED PRINTED.**

Comes from the House under suspension of the Rules, **PASSED TO BE ENGROSSED** without Reference to a Committee in **NON-CONCURRENCE.**

On motion by Senator **STOVER** of Sagadahoc, Tabled until Later in Today's session, pending **FURTHER CONSIDERATION.**

Senate At Ease

Senate called to Order by the President.

ORDERS OF THE DAY

The Chair laid before the Senate the Tabled and Later Today Assigned matter:

Bill "An Act Converting Caswell Plantation into the Town of Caswell" (Emergency) (S.P. 636) (L.D. 1650)

Tabled—June 11, 1985 by Senator **STOVER** of Sagadahoc.

Pending—**FURTHER CONSIDERATION.**

(In Senate June 10, 1985, Referred to the Committee on **LOCAL AND COUNTY GOVERNMENT** and **ORDERED PRINTED.**)

(In House June 11, 1985 under suspension of the Rules, **PASSED TO BE ENGROSSED** without Reference to a Committee in **NON-CONCURRENCE.**)

The Senate **RECEDED** and **CONCURRED.**

Off Record Remarks

Under suspension of the Rules, there being no objections all matters previously acted upon, with the exception of those items previously held, were ordered sent down forthwith for concurrence.

On motion by Senator **PEARSON** of Penobscot, **RECEDED** until 4 o'clock this afternoon.

After Recess

Senate called to Order by the President.

ORDERS OF THE DAY

On motion by Senator **PEARSON** of Penobscot, the Senate removed from the **SPECIAL APPROPRIATIONS TABLE:**

An Act to Establish the Maine Vocational-technical Institutes Administration (H.P. 1132) (L.D. 1639) (S "A" S-206; S "B" S-220)

Tabled—June 10, 1985, by Senator **DOW** of Kennebec

Pending—**ENACTMENT**

(In House June 7, 1985, **PASSED TO BE ENACTED.**)

(In Senate June 5, 1985, **PASSED TO BE ENGROSSED AS AMENDED.**)

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Pearson.

Senator **PEARSON:** Mr. President, this particular Bill deals with the Vocational Technical Institutes creation of a new department for the Vocational Technical Institutes.

I would move that this Bill be Enacted.

On motion by Senator **PEARSON** of Penobscot, **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

(See Action Later Today)

On motion by Senator **VIOLETTE** of Aroostook, the Senate removed from the Unassigned Table:

Bill "An Act to Allow the Department of Human Services to Investigate and Provide In-

formation on Community Health Issues" (S.P. 535) (L.D. 1436)

Tabled—May 28, 1985, by Senator **VIOLETTE** of Aroostook.

Pending—**PASSAGE TO BE ENGROSSED.** (In Senate May 28, 1985, **READ A SECOND TIME.**)

Which was **PASSED TO BE ENGROSSED.** Sent down for concurrence.

Senator **BALDACCI** of Penobscot moved that the Senate **RECONSIDER** its action whereby it **PASSED TO BE ENACTED:**

An Act to Establish the Maine Vocational-technical Institutes Administration (H.P. 1132) (L.D. 1639) (S "A" S-206; S "B" S-220)

(In Senate June 11, 1985, **PASSED TO BE ENACTED**, in concurrence.)

(In House June 10, 1985, **PASSED TO BE ENACTED.**)

Senate At Ease

Senate called to Order by the President.

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Baldacci.

Senator **BALDACCI:** Mr. President, I request Leave of the Senate to Withdraw my motion.

THE PRESIDENT: The Senator from Penobscot, Senator Baldacci, now requests Leave of the Senate to Withdraw his motion that the Senate Reconsider its action whereby L.D. 1639 was Passed to be Engrossed.

Is it the pleasure of the Senate to grant this Leave?

It is a vote.

Under suspension of the Rules, all matters previously acted upon were ordered sent down forthwith.

Out of order and under suspension of the Rules, the Senate considered the following:

PAPERS FROM THE HOUSE

Non-concurrent Matter

Bill "An Act Relating to Alcohol-related Birth Defects" (S.P. 431) (L.D. 1198)

In Senate June 11, 1985, Bill and Accompanying Papers **INDEFINITELY POSTPONED.**

Comes from the House **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-244) in NON-CONCURRENCE.**

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Bustin.

Senator **BUSTIN:** Mr. President, I move the Senate Recede and Concur.

THE PRESIDENT: The Senator from Kennebec, Senator **BUSTIN**, moves that the Senate **RECEDE** and **CONCUR.**

The Chair recognizes the Senator from Lincoln, Senator Sewall.

Senator **SEWALL:** Mr. President, I request a Roll Call.

THE PRESIDENT: The Senator from Lincoln, Senator Sewall, has requested a Roll Call. Under the Constitution, in order for the Chair to order a Roll Call it requires the affirmative vote of at least one-fifth of those Senators present and voting.

Will all those Senators in favor of order a Roll Call, please rise and remain standing until counted.

Obviously more than one-fifth having arisen, a Roll Call is in order.

The pending question before the Senate is the motion of the Senator from Kennebec, Senator **BUSTIN**, that the Senate **RECEDE** and **CONCUR.**

A Yes vote will be in favor of the motion to **RECEDE** and **CONCUR.**

The Chair recognizes the Senator from Kennebec, Senator Kany.

Senator **KANY:** Mr. President, I request Leave of the Senate to Pair my vote with the Senator from York, Senator Danton. If he were here, he would be voting Nay and I would be voting Yea.

THE PRESIDENT: The Senator from Ken-

nebec, Senator Kany requests Leave of the Senate to Pair her vote with the Senator from York, Senator Danton. If he were here, he would be voting Nay and the Senator from Kennebec, Senator Kany would be voting Yea.

Senator **KANY**: Mr. President, I wish to Withdraw my request if I may.

THE PRESIDENT: The Chair would answer that she may do so since the Leave had not been granted.

Senator **CLARK** of Cumberland who would have voted Nay requested and received permission to Pair her vote with Senator **CARPENTER** of Aroostook who would have voted Yea.

Senator **VIOLETTE** of Aroostook who would have voted Yea requested and received permission to Pair his vote with Senator **DANTON** of York who would have voted Nay.

THE PRESIDENT: The pending question before the Senate is the motion of the Senator from Kennebec, Senator **BUSTIN**, that the Senate **RECEDE** and **CONCUR**.

A Yes vote will be in favor of the motion to **RECEDE** and **CONCUR**.

A No vote will be opposed.

The Doorkeepers will secure the Chamber The Secretary will call the Roll.

ROLL CALL

YEAS:—Senators, Andrews, Bustin, Chalmers, Diamond, Gill, Kany, Matthews, McBreairty, Pearson, Stover, Trafton, Tuttle, The President — Charles P. Pray

NAYS:—Senators, Baldacci, Berube, Black, Brown, Dutremble, Emerson, Erwin, Gauvreau, Maybury, Najarian, Perkins, Sewall, Shute, Twitchell, Usher, Webster

ABSENT:—Senators, Dow, Hichens

13 Senators having voted in the affirmative and 16 Senators having voted in the negative, with 4 Senators Pairing their votes and 2 Senators being absent, the motion of the Senator from Kennebec, Senator **BUSTIN**, to **RECEDE** and **CONCUR**, **FAILS**.

On motion by Senator **SEWALL** of Lincoln, the Senate **ADHERED**.

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Baldacci.

Senator **BALDACCI**: Mr. President, having voted on the prevailing side, I now move reconsideration and I would urge you to vote against me.

THE PRESIDENT: The Senator from Penobscot, Senator **BALDACCI**, now moves that the Senate **RECONSIDER** its action whereby it **ADHERED**.

Is this the pleasure of the Senate?

It is a vote.

The Chair recognizes the Senator from Kennebec, Senator Bustin.

Senator **BUSTIN**: I move that we tabled this item for one Legislative Day.

THE PRESIDENT: The Senator from Kennebec, Senator **BUSTIN** moved that this matter be **TABLED 1 LEGISLATIVE DAY**.

The Chair recognizes the Senator from Cumberland, Senator Clark.

Senator **CLARK**: I request a Division.

THE PRESIDENT: The Senator from Cumberland, Senator Clark, requests a Division.

Will all those Senators in favor of the motion of the Senator from Kennebec, Senator **BUSTIN**, that this matter be **TABLED FOR 1 LEGISLATIVE DAY**, please rise in their places until counted.

Will all those Senators opposed, please rise in their places until counted.

11 Senators having voted in the affirmative, and 20 Senators having voted in the negative, the motion of the Senator from Kennebec, Senator **BUSTIN** to **TABLE 1 LEGISLATIVE DAY**, **FAILS**.

The Chair recognizes the Senator from Penobscot, Senator Baldacci.

Senator **BALDACCI**: Mr. President, a parliamentary inquiry as to what position is this Bill now in?

THE PRESIDENT: The Chair would answer that the pending question is the motion of the Senator from Lincoln, Senator **SEWALL** that the Senate **ADHERE**.

Senator **BALDACCI**: Mr. President, a parliamentary inquiry. I was under the impression that we voted to Adhere and that I moved reconsideration, having voted on the prevailing side and hoped that you would vote against that motion.

THE PRESIDENT: The Chair would answer in the affirmative. There was no division requested and the motion to Reconsider went under the gravel.

On motion by Senator **SEWALL** of Lincoln, the Senate **ADHERED**.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator **CLARK**.

Senator **CLARK**: Thank you, Mr. President. I move that the Senate Reconsider its action whereby it Adhered on L.D. 1189 and hope that the Members of the Senate will vote against my motion and request a Division.

THE PRESIDENT: The Chair would inform the Senator since the motion to Reconsider had already take place that the motion to Reconsider a second time is not proper. The Bill is no longer in a position to Reconsider or before the Body.

COMMITTEE REPORTS

Senate

Ought to Pass As Amended

Senator **TRAFTON** for the Committee on **LEGAL AFFAIRS** on Bill "An Act to Amend the Offenses of Operating under the Influence" (S.P. 562) (L.D. 1491)

Reported that the same **Ought to Pass as Amended by Committee Amendment "A"** (S-260)

Which Report was **READ** and **ACCEPTED**. The Bill **READ ONCE**.

Committee Amendment "A" (S-260) **READ** and **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED as Amended**.

Sent down for concurrence.

Under suspension of the rules, all matters previously acted upon were ordered sent down forthwith.

Out of order and under suspension of the Rules, the Senate considered the following:

COMMITTEE REPORTS

Senate

Divided Report

The Majority of the Committee on **LEGAL AFFAIRS** on Bill "An Act Concerning Liability for Injuries Caused by Drunken Persons" (S.P. 598) (L.D. 1568)

Reported that the same **Ought to Pass as Amended by Committee Amendment "A"** (S-263).

Signed;

Senators:

TRAFTON of Androscoggin
STOVER of Sagadahoc

Representatives:

NICKERSON of Turner
DILLENBACK of Cumberland
PERRY of Mexico
MASTERMAN of Milo
MURPHY of Berwick
PAUL of Sanford
REEVES of Pittston
RIOUX of Biddeford

The Minority of the same Committee on the same subject reported that the same **Ought Not to Pass**.

Signed:

Senator:

NAJARIAN of Cumberland

Representative:

WARREN of Scarborough

(Representative **BOTT** of Orono **ABSTAINED**.)

Which Reports were **READ**.

The Majority **OUGHT TO PASS AS AMENDED** Report was **ACCEPTED**.

The Bill **READ ONCE**.

Committee Amendment "A" (S-263) **READ** and **ADOPTED**.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Najarian.

Senator **NAJARIAN**: Mr. President, I am uncertain if I can speak on this after it's been given its First Reading.

THE PRESIDENT: The Chair would answer in the affirmative, the Bill is still before the Body.

Senator **NAJARIAN**: Mr. President and Members of the Senate. I would just like to explain why I voted against this Bill.

The Bill originally came in with a cap on the liability of dram shop owners at \$100,000. The reason being that they could not get insurance coverage for above that amount. But the Committee unanimously did not like that approach because they thought that would be unfair to the plaintiff whose damages, say a pedestrian was hit by a drunk driver, whose damages might be far in excess of \$100,000.

So, the compromise, or the amendment, introduces the concept of comparative negligence. Instead of the dram shop owner or alcohol server being 100% liable and no negligence attributed to the person who had been drinking, this would set up a comparative negligence kind of liability, so that if it was determined by a jury that the driver who was drunk and hits a pedestrian was 40% responsible for the accident then that driver would be responsible for paying that amount and the dram shop owner 60%.

But, the problem is that if the drunk driver is uninsured the person who was injured is out that much amount of money and perhaps then the State is going to have to pick up the remainder. It is my understanding that this amendment does nothing to address the initial concerns of the dram shop owners which was their inability to acquire insurance or at an enormous cost, it doesn't address that and I just think it is a very new concept to introduce this late in the Session and a very serious one and that the Legislature ought to take more time to think about it before they enact this into law.

I am not saying that it might not be a good thing to do, but, I think we ought to take the time to consider all the ramifications of this and that's why I oppose this Bill and would move its Indefinite Postponement and all accompanying papers. Thank you.

THE PRESIDENT: The Senator from Cumberland, Senator **NAJARIAN**, moves that this Bill and all accompanying papers be **INDEFINITELY POSTPONED**.

The Chair recognizes the Senator from Androscoggin, Senator Trafton.

Senator **TRAFTON**: Thank you, Mr. President. Mr. President and Members of the Senate, L.D. 1568 as amended has been the subject of consideration of the Joint Standing Committee on Legal Affairs for the last week and one half. In fact, it has been the only bill which our Committee has been working on over that period of time.

The Bill was presented on behalf of the Innkeepers and Restaurant Association in the State of Maine due to a problem in availability of dram shop liquor liability insurance in the State of Maine. In the past, servers of alcohol have been able to purchase insurance which would protect them against suits from those who have been served alcohol in their establishment and then cause damage either by means of an automobile accident or otherwise to other persons or property.

The Dram Shop Act in the State of Maine, which has been on the books for 102 years provides that if a server, or actually anybody, serves or gives liquor to somebody against the law then that person is responsible for any damages that follow as a result of that person

causing an injury to either person or property.

The unavailability of insurance in the State of Maine is not unique to this State. This problem exists nation-wide it appears. The problem is one of economics. We, before the Committee, had several representatives from the insurance industry indicate that this particular line of insurance is a surplus line. It is one that has not shown much profitability of late and, frankly, insurance companies are reluctant to offer it due to the economics. Consequently, those people in the tourist business who serve alcohol have a great deal of exposure in the State of Maine.

The example that the good Senator from Cumberland, Senator Najarian, posed to you today of limited liability for the server is, in fact, accurate. What this Bill would do is two things. First, it would require that the server be given notice within two years of the date of the accident caused by somebody who had been served on their premises.

Second, the liability of that server would be limited to the degree or percentage of damage which the serving of alcohol related to. For example, if a bar served somebody a beer and that person then left the bar and was involved in an automobile accident, yes, that bar may be partially responsible for any damage that was caused as a result of the accident. But, most likely the driver of that automobile was also, to some degree, responsible for the damage. Currently, regardless of the degree of fault of the server, the person who has been hurt can look to the server for 100% recovery for any damages.

What this Bill does is it limits the exposure or reduces the exposure of the server only to that degree of fault which the judge or jury determines that server to be. I suggest that that is a fair approach. Why should a restaurant, and inn or a bar be 100% responsible for damages caused, when, in fact, the server in one of those establishments was not the only party to cause this particular damage or harm.

This issue isn't an easy one to resolve. The Joint Standing Committee on Legal Affairs has undertaken to study this issue over the summer and will report back a more comprehensive approach to this particular Legislature in January. I suggest that this is a first step to address the unavailability of insurance.

There are no guarantees that this particular Bill will make insurance available to servers in the State of Maine, but, I think it does fairly reduce the exposure of these servers, but it does not remove them from liability. It simply says they are responsible for that portion of harm or damage which they caused. What is wrong with that?

I think they theory that inns, restaurants and bars have deep pockets and therefore they should be the ones to pay regardless of their degree of fault perhaps is an unfair approach and that's what this Bill is aimed at. So, that the majority of the Joint Standing Committee on Legal Affairs posed this as an interim measure to address this particular problem and I can assure you that further recommendations will be coming from the Committee after the first of the year.

So, I ask you to oppose the motion of the good Senator from Cumberland, Senator Najarian, her motion for Indefinite Postponement and accept this interim measure as a step in the right direction. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Najarian.

Senator NAJARIAN: Mr. President, I would like to pose a question through the Chair to the Chairman of the Legal Affairs Committee and the question is does this amendment have a sunset on it to terminate at the end of the year or sometime next year?

THE PRESIDENT: The Senator from Cumberland, Senator Najarian, has posed a question through the Chair, to any Senator who may respond if they so desire.

The Chair recognizes the Senator from Androscoggin, Senator Trafton.

Senator TRAFTON: Thank you, Mr. President and Members of the Senate. I know that the good Senator from Cumberland, Senator Najarian, can read as well as I can and I know she has been very busy of late with other responsibilities.

However, it is clear that the Bill, as amended, does not have a sunset provision but I can assure you that this is a subject of further study, that all members of the Committee are devoted to studying this issue further and I suggest that there will be changes coming forth in the next Session.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Najarian.

Senator NAJARIAN: Mr. President, I would like to thank the good Senator from Androscoggin, Senator Trafton for his answer. I truly did not know. As he said, I have been very busy and I didn't want to jump in with both feet until I was sure there wasn't a sunset on it.

If the Committee is going to study this next year then I think that we should wait and not pass anything until we do since this is not going to address the insurance problem anyway, because there is always the possibility that the Legislature won't be able to agree on what comes out of our committees or the committee itself won't be able to agree on a solution to this problem.

What's wrong with this concept is that although it may be fair, and that seems very simple, it's very difficult for a jury to assess a percentage against someone's fault. Someone is 46% at fault, 48% at fault, 42% at fault, that could be hard to do. It has its bond in other areas I know, but we like workers' comp, there's no comparative liability in other areas of the law, it is not only this.

Again, I just am taking a more conservative, cautious approach and I think that the plaintiff is the person who could really get hurt in this kind of arrangement.

THE PRESIDENT: The pending motion is the motion of the Senator from Cumberland, Senator NAJARIAN, that this Bill and all accompanying papers by **INDEFINITELY POSTPONED**.

The Chair recognizes the Senator from Cumberland, Senator Clark.

Senator CLARK: I request a Division on the pending motion and would speak briefly to the issue.

Thank you, Mr. President. Mr. President, Men and Women of the Senate. L.D. 1568 in its original form in its Committee Amendment form, is still my Bill, and while I'm hesitant to speak on some issues before us because sometimes it is perceived that I'm speaking for my caucus, I assure you that I'm speaking as the prime sponsor of this Measure this afternoon.

Obviously I hope you do not vote to Indefinitely Postpone this Bill and all accompanying papers. The original Bill consisted of a single page, and as is the tactic among us toward the ends of every Legislative Session, the issue of those who oppose bills is to heed the lateness of the hour regarding the introduction of the measure and the difficulty of a committee to address the measure with appropriate deliberation. Let me assure you, Members of this Chamber, that the Committee on Legal Affairs is to be commended for the time that it devoted to this single Bill for indeed it was the remaining issue and indeed they have, in fact, completed the task before them until this Bill came trickling in.

The issue was raised back in January, January 9th to be precise, and the interim time was devoted by the organizations representing interest in this measure to conduct a survey among membership to gauge the need for something that would promote availability of insurance liability insurance for restaurants and innkeepers, inns and taverns, and that seg-

ment of what we call Maine's tourism industry, if you will, but I'm referring to tourism as a four season a year activity.

The amended version of the Bill is something to which I cannot address with great expertise, for I hold no degrees in law, but I do subscribe to the Committee remedy to an issue which was brought before it. Again, I express my gratitude to that Committee for they spend day after day after day and hour after hour after hour, not only in the formal public hearing on this measure but on four hour and more marathon work session. And, they didn't approach glibly nor irresponsibly, but, I believe investigated all aspects of the area that is addressed by the issue of non-availability of insurance, the plight of those who are injured by people who have been consuming liquor to a great extent and by the plight of citizens of this State who may be deprived of services of innkeepers' inns and restaurants and taverns and so forth, because those taverns can no longer operate without liability insurance.

I was convinced during the work sessions that I attended and representatives of interest attended, that the remedy that is embodied in the Committee Amendment is a remedy that is acceptable as an interim and I can assure you that the Legislative Council has approved at its meeting this week the hold over of this topic area.

I would ask this afternoon that you do not support the pending motion of Indefinite Postponement and, indeed, after we reject that pending motion, accept the grandly Majority Ought to Pass Report which we already have and give it its appropriate Second Reading.

Thank you, Mr. President.

THE PRESIDENT: The Chair recognizes the Senator from Waldo, Senator Shute.

Senator SHUTE: Mr. President and Ladies and Gentlemen of the Senate. This is, I think, a difficult Bill to vote on without knowing a bit more about it and what I would like to know is the injured person 100% covered regardless of whether this Bill passes or not?

If a person has four drinks at home and they have one drink in a bar and the person doesn't have any automobile liability insurance, would the bar be liable for 20% of the injured person and the person that doesn't have any insurance would they be liable for 80%? Or how would this work?

I want to make sure. I don't care about the drunk driver, but I do care about the injured person and I want to make sure that that person that is injured is 100% covered because if the drunk driver doesn't have any insurance, who is going to pick up the tab that the court might say he's liable for.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Najarian.

Senator NAJARIAN: The Chair recognizes the Senator from Cumberland, Senator Najarian.

Senator NAJARIAN: Mr. President and Members of the Senate. I'll attempt to answer the hypothetical that the good Senator from Waldo, Senator Shute, has posed.

You know, in that case, if a person had four drinks at home and one at the bar, the dram shop owner might not be liable at all. But, if it were the other way around, you know, and he were found liable and the driver who caused the injury, the person doing the drinking causing the injury, had no insurance and to the extent that he was responsible, that percentage, then the person injured would lose that amount of money and to the extent that he was hospitalized and so forth, then, the State would cover those expenses in the hospital. Because of the new cost-containment, all hospitals are assured payment for even all those who cannot pay, so it would be the taxpayers, I presume, that would be picking up the difference.

THE PRESIDENT: The pending question is the motion of the Senator from Cumberland,

Senator NAJARIAN, that this Bill and all accompanying papers be **INDEFINITELY POSTPONED**. A Division has been requested.

Will all those Senators in favor of **INDEFINITE POSTPONEMENT**, please rise in their places until counted.

Will all those Senators opposed, please rise in their places to until counted.

1 Senator having voted in the affirmative, and 23 Senators having voted in the negative, the motion of the Senator from Cumberland, Senator NAJARIAN, that this Bill and all accompanying papers be **INDEFINITELY POSTPONED, FAILS**.

The Bill as **Amended TOMORROW ASSIGNED FOR SECOND READING**.

Out of order and under suspension of the Rules, the Senate considered the following:

COMMUNICATIONS

The Following Communication:

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
AUGUSTA 04333**

June 11, 1985

Honorable Joy J. O'Brien
Secretary of the Senate
112th Legislature
Augusta, Maine 04333
Dear Madam Secretary:

The Speaker appointed the following conferees to the Second Committee of Conference on the disagreeing action of the two branches of the Legislature on Bill "An Act to Authorize an Award System to Aid in Coyote Control" (H.P. 858) (L.D. 1217):

Representative SMITH of Island Falls
Representative DUFFY of Bangor
Representative CONNERS of Franklin

Sincerely,
S/ EDWIN H. PERT
Clerk of the House

Which was **READ** and **ORDERED PLACED ON FILE**.

COMMITTEE REPORTS

House

Ought Not To Pass

The following **Ought Not to Pass** reports shall be placed in the Legislative Files without further action pursuant to Rule 15 of the Joint Rules:

Bill "An Act to Increase the Tax Exemption for Parsonages" (H.P. 29) (L.D. 30)

Bill "An Act to Exempt State Agencies from the State Gasoline Excise Tax" (H.P. 786) (L.D. 1119)

Bill "An Act to Amend the Definition of Income under the Elderly Householders Tax and Rent Refund Act and the Elderly Low Cost Drug Program" (H.P. 847) (L.D. 1196)

Bill "an Act to Exclude Certain Disability Benefits from State Income Tax" (H.P. 1030) (L.D. 1482)

Out of order and under suspension of the Rules, the Senate considered the following:

COMMITTEE REPORTS

Senate

Ought Not To Pass

The following **Ought Not To Pass** reports shall be placed in the Legislative Files without further action pursuant to Rule 15 of the Joint Rules:

Bill "An Act Concerning Property Tax Exemption for Veterans and Widows of Certain Veterans" (S.P. 362) (L.D. 983)

Bill "An Act to Provide a Corporate Tax Credit for Donations of Technological Equipment to Educational Institutions" (S.P. 209) (L.D. 567)

Out of order and under suspension of the Rules, the Senate considered the following:

COMMITTEE REPORTS

Senate

Ought To Pass

Senator TWITCHELL for the Committee on

TAXATION on Bill "An Act to Reform the Law Relating to Farm Equipment Sales Tax Exemption" (S.P. 187) (L.D. 505)

Reported that the same **Ought to Pass**.

Which Report was **READ** and **ACCEPTED**. The Bill **READ ONCE**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED**.

Under further suspension of the Rules, ordered sent down forthwith for concurrence.

ORDERS OF THE DAY

The President laid before the Senate the Tabled and Later Today Assigned matter:

Resolve, Authorizing Colwell Construction Company, Incorporated, to Bring a Civil Action Against the State of Maine, (S.P. 550) (L.D. 1467) (C "A" S-242)

Tabled — June 11, 1985, by Senator VIOLETTE of Aroostook.

Pending — **PASSAGE TO BE ENGROSSED AS AMENDED**

(In Senate June 10, 1985, **READ A SECOND TIME**.)

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Najarian.

Senator NAJARIAN: Mr. President, I'll try again. I move the Indefinite Postponement of this Bill and all accompanying papers and would speak to my motion.

L.D. 11469, as it was originally proposed to our Committee, would have allowed the Colwell Construction Company to sue the State. Further, it provided that the Attorney General would be denied the right to use any defenses in defending the State against Mr. Colwell's claim.

Obviously, when the Committee, after the hearing, decided that they were united in that this Bill ought to have a unanimous Ought to Pass Report or at least a Leave to Withdraw. However, Mr. Colwell's attorney lobbied for what is now the amendment on the Bill and this amendment, if it passed, which is the Bill, would require the State and Mr. Colwell to settle their disagreement through binding arbitration.

But, before I point out the specific objections to forcing the State into binding arbitration with Mr. Colwell, or Colwell Construction Company, there is some background on why the Bill came before the Legislature in the first place that I think is essential to understanding the issue.

The State owns property at Bangor International Airport called the Pine Tree Inn and it's under the supervision of the Bureau of Military Affairs. There was a fire at the Pine Tree Inn I think in about March of 1983 which resulted in damage to one room and some smoke damage in the hallway. The damage to the one room did not go through the ceiling and it cracked some pipes so there was some water damage.

The Bureau of Military Affairs requested on the Inn's restoration, the Bureau of Military Affairs just asked Mr. Colwell to come do the restoration, they did not put it out to bid as is the normal procedure. The normal procedure is to put these projects out to bid through the Bureau of Public Improvements, especially, and they are all advertised if it's over \$25,000, but that didn't happen in this case.

The Bureau of Military Affairs called Mr. Colwell, who is in Augusta contractor, by the way, the site is in Bangor, to do the work. So, Mr. Colwell went to view the site along with a representative of the Insurance Advisory Board, which has since been abolished, and the Bureau of Military Affairs inspected the site and the Insurance Advisory Board estimated the damage at \$100,000. All three, the Bureau, Mr. Colwell and the Insurance Advisory Board representative, went back a few days later and Mr. Colwell said it would cost \$188,000, so the \$100,000 was whited out and \$188,000 was inserted with no explanation for the additional

cost of \$88,000 other than a clerical error.

Then, the Bureau of Military Services sent the Letter of Intent and told Mr. Colwell to go ahead. He did not have a contract, I'll point out that Mr. Colwell is an experienced contractor with the State of Maine and knows that official Letters of Intent, etc., are to come through the Department of Financial Administration, but, this Letter of Intent went out for him to go ahead, start the work at \$188,000. He commenced the work for approximately one month and then the Bureau of Military Affairs sent BPI a request for a contract.

At this point, the Department of Financial Administration asked why it didn't go out to bid and received no explanation. The Commissioner of Financial Administration sent out two engineers to Bangor to assess the damage and they spent a long time trying to find it. They thought that \$188,000 worth of damage to a structure would be readily apparent. Well, they came back and said it didn't look like that much damage at all since it didn't go through the roof and the Commissioner, when he learned that, issued instructions to shut the job down.

The Military Bureau hand delivered the instructions to Mr. Colwell and told him that to stop the work was the Commissioner's intent, not theirs, so Mr. Colwell didn't stop. The next week, the Commissioner managed to get the work finally stopped by telling Mr. Colwell that if he didn't he wouldn't get paid for the work already done and so they did stop.

The same two engineers went back to measure the work done and the work still unaccepted, the Commissioner figured there'd be a dispute about this, and they priced the work done as 56% complete, and the total cost of the whole project \$70,000.

A month later the Commissioner sent two other engineers and they estimated the total cost at \$80,000 and 56% of this was completed was to be around \$40,000 and for the first estimate around \$35,000, leaving a similar amount remaining to be done. That fall, it went out to bid submitted, Mr. Colwell was the best bidder at \$34,000, although he said he bid at a loss, this was close to the engineers' estimate and close to two other bids at \$36,000 and \$38,000.

At the hearing, Mr. Colwell claimed \$106,000 just for the work done to date, just to the date of shut down. The State has made him an offer of \$34,000 but has received no response and no counter offer.

I would just point out to you that we're talking about one room that's like a motel room and some damage to a hallway and compare that cost to a nursing home, a brand new nursing home facility today. York County has one submitted, top of the line facility, at only \$62,000 for two beds and that includes its fully equipped plumbing, heating, kitchen costs, all support, land preparation of site, building, engineers costs, laundry and equipment, architect's fees and the whole works at a top facility nursing home.

Anyway, the Committee amendment now provides that the State go to binding arbitration. Well, the problem with that is that in binding arbitration it's just on reasonable cost of the work, and that sounds reasonable except that in binding arbitration the State would be bound to whatever the arbitrator said the reasonable costs were and the State could not subpoena witnesses and put on their case. The State is willing to go to mediation where they can expose the whole picture before the disinterested person who would be the mediator.

Just to give you some examples, Mr. Colwell is claiming \$35,000 for a painting job. From the State's point of view, from all the credible sources they have, even using what they call the "Little Blue Book", sort of like used car dealers use, that \$19,000 is in the upper range for that job and that would be if it were brush painted and not done with spray paint. They

had a dump truck which they charged the State for a month and one half when they work did they couldn't have needed for more than one month. They had three weeks for the use of a chain saw which they couldn't have used for more than a couple of hours.

So, I just don't think that the State should be put into the position, especially when they are willing to pay for the cost done, a reasonable price, that they should be put into a position of having to go before an arbitrator, which would be binding on the State. That's why I made the motion to Indefinitely Postpone the Bill. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Trafton.

Senator **TRFTON:** Thank you, Mr. President. Mr. President and Members of the Senate, I rise to oppose the good Senator from Cumberland, Senator Najarian's motion to Indefinitely Postpone this Bill.

As you know, I have a great deal of respect and admiration for the good Senator from Cumberland, Senator Najarian, but I must support this substantial Majority Ought to Pass Report of the Committee on Legal Affairs because I think it is a very solid Committee Report that makes a great deal of sense.

First, I think it is important to understand that Colwell Construction Company is a reputable Maine construction company that has done work for the State of Maine in the past and continues to do work for the State of Maine to date, and in fact, the Commissioner of Finance, Mr. Scribner, assured the Committee on Legal Affairs that most likely Colwell Construction Company would continue to do work for the State because they do quality work.

The Bill that was presented to the Committee requested permission for Colwell Construction Company to sue the State of Maine and to bar the State of Maine from raising two legal defenses. One of those defenses, perhaps the most important legal defense, was that this particular job should have gone to competitive bidding. The Committee felt that the original bill was too far reaching, but after hearing the issue presented by both the State and Colwell Construction Company, we realized there was a legitimate issue of fact to be determined.

We, as a Legislature, are not a jury. We are not fact finders to determine what the reasonable cost of the work done by Colwell Construction Company actually is. As an attorney, I'm aware that one of the most difficult things to do in law is prove item by item damage in a construction scenario trying to prove how much work, time and materials went into a particular construction job. It takes a great deal of time. In court there are rules of evidence that require a lot of detail and a lot of time, so that in fact, what happens in this type of construction case takes a great deal of court time and preparation.

At my request, the representatives of the Attorney General's Office and Colwell Construction Company were instructed to consider the idea of arbitration as a more realistic route outside of court to determine what the fair or reasonable costs of the work done by Colwell Construction Company actually was. It is a question of fact. My point was, in making that request, that it would be simpler for the State, simpler for Colwell Construction Company to do this outside of court in an arbitration form, hopefully to avoid the cumbersome rules of evidence and the formalities of a court room setting.

This Bill, as it has been amended, requires binding arbitration on one issue alone and that issue is what is the reasonable value of the work done by Colwell Construction Company. Binding arbitration would not in any way limit the review of the legal issue involved in this case. For instance, was this matter an appropriate matter for competitive bidding? I suggest to you that if the State doesn't like the ar-

bitration award as to reasonable cost of the work done, or the reasonable value of the work done, the State can then go to court and say . . . "This was a subject for competitive bidding, Colwell Construction Company was not awarded this job through competitive bidding, therefore, the State owes Colwell Construction Company nothing." That avenue is still available to the State of Maine if it disagrees with the arbitration award.

My point and the point of the Majority of the Committee on Legal Affairs was that arbitration is a more expeditious manner in determining what the just value of the work was by Colwell Construction Company.

I think the good Senator from Cumberland, Senator Najarian, relatively accurately pointed out the facts involved in this case. There was some question as to how much work was actually done on the job site, but, there are also questions about problems within the Military Bureau and the Bureau of Finance as to how this particular project was administered. I walked away for the public hearing and the work session on this Bill feeling that, yes, perhaps there was a mistake or a misjudgment on the part of Colwell Construction Company but equally, there were mistakes and misjudgments made on the part of the State.

The Bill is still outstanding, mediation may be a possibility. I suggest that mediation has little impact because it is not binding, it would simply delay this matter further. Colwell Construction Company did this work several years ago, it has been unable to reach an agreement with the State of Maine as to what the just value of the work actually was. A courtroom to decide this particular issue would be a further delay of maybe two to three years and longer if there was an appeal. I suggest that that's unfair to a private contractor in the State of Maine and that arbitration is fair to that contractor and it's also fair to the State of Maine.

The State of Maine, through the Attorney General's office, Commissioner Scribner's office, can bring forth all the facts that the good Senator from Cumberland, Senator Najarian, brought forth today and more, and, I assure you they will. But, I respectfully urge you to support this Committee Report and adopt the motion that binding arbitration on the issue of just value, and just value alone, is an appropriate way to deal with this problem.

Because if this Bill is defeated, I can assure you that the State of Maine will be embroiled in continuing litigation on this issue. In court it will be expensive, the Attorney General's offices time will be used extensively over the next two to three years and I suggest that there are other issues in the State of Maine we would rather have the Attorney General's office and the Commissioner of Finance devote their attentions to. Let's go on with the business today and let an arbitrator determine what the just value of this work actually was.

So please, oppose the good Senator from Cumberland, Senator Najarian's motion for Indefinite Postponement.

THE PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Stover.

Senator **STOVER:** Thank you, Mr. President. Mr. President and Members of the Senate. I was one of those that signed out on this Bill Ought Not to Pass and I support the Senator from Cumberland, Senator Najarian's position in this matter.

I listened to the testimony very closely and I oppose this Bill for the, or some of the reasons why I oppose this, are as follows: Number one, they went against all good business practices. They called in just one man and they said to him . . . "What'll you do it for?" In effect, they were writing him a blank check and he came up with this figure of somewhere around \$185,000 that he'd do it for. Finally, when the Commissioner of Finance got in on the act and stopped him from working, he estimated that he'd already incurred \$116,000 worth of work,

or he had done that much, and that included 25% overhead that he estimated that he should get for profit. In other words, that's what the State owed him, \$116,000. These are my notes and they may be off a dollar or two here and there.

So, then they put the rest of it out to bid. He agreed to do it and bid in at \$35,000. So, that added up to \$151,759.91. His original figure was \$185,000. By his own admission he is ripping off the State for \$38,000, by his own admission he was doing that. Meanwhile, the Commissioner of Finance is willing to go to mediation, he has offered to go to mediation and the man will not talk to him. What they are willing to do is bring in a disinterested party who has experience in the field and if the Commissioner of Finance is wrong, which he might or might not be, they will be willing to listen to that.

The reason they don't want to go to binding arbitration, among other reasons as I understand it, is they can ask questions in just plain mediation of sub-contractors and the like and they can't do under the compulsory or binding arbitration. So, to me, in listening to the evidence it seemed to me that the city boy defied all good business practice that certainly I would never follow. My little business experience I've had in my life, even on a lot smaller jobs than this, you give at least two figures to get some idea if they're in the ballpark.

One other thing I might mention is that what he wants to do, he wants to sue the State for \$300,000 on a job that he already admits is worth \$150,000, so to my mind the man is going for broke and we're here to defend the interest of the taxpayers of this State and I can't, in all good conscience, sign out this Bill Ought to Pass just for that very reason.

So, I urge you to support the motion before the Senate.

THE PRESIDENT: The pending question is the motion of the Senator from Cumberland, Senator **NAJARIAN**, that this Bill and all accompanying papers be **INDEFINITELY POSTPONED**. A Division has been requested.

Will all those Senators in favor of **INDEFINITE POSTPONEMENT**, please rise in their places until counted.

Will all those Senators opposed, please rise in their places to until counted.

12 Senators having voted in the affirmative, and 12 Senators having voted in the negative, the motion of the Senator from Cumberland, Senator **NAJARIAN**, to **INDEFINITELY POSTPONE** this Bill and all accompanying papers, **FAILS**.

THE PRESIDENT: Is it now the pleasure of the Senate that this Bill be **PASSED TO BE ENGROSSED AS AMENDED**?

The Chair recognizes the Senator from Cumberland, Senator Najarian.

Senator **NAJARIAN:** I request a Roll Call.

THE PRESIDENT: A Roll Call has been requested. Under the Constitution, in order for the Chair to order a Roll Call it requires the affirmative vote of at least one-fifth of those Senators present and voting.

Will All those Senators in favor of ordering a Roll Call, please rise and remain standing until counted.

Obviously more than one-fifth having arisen, a Roll Call is in order.

The pending question before the Senate is **PASSAGE TO BE ENGROSSED AS AMENDED**.

A Yes vote will be in favor of **PASSAGE TO BE ENGROSSED AS AMENDED**.

A No vote will be opposed.

The Doorkeepers will secure the Chamber.

The Chair recognizes the Senator from Cumberland, Senator Najarian.

Senator **NAJARIAN:** I just urge the members of the Senate to please vote against Passage to be Engrossed.

This Bill would require the State to go to

binding arbitration on a contract that is just riddled with suspicion of wrong doing and the State should not be put into that position.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Trafton.

Senator **TRAFTON:** Thank you, Mr. President, Members of the Senate. I do not want to put this Body into the roll of being a jury and listening to all the facts and figures. But suffice it to say that there were employees of the Military Bureau, no longer with the State, they have since retired, that appear to have conducted themselves improperly in this particular contract or this particular job that relates to the Bill that was before you today

That is why that I indicated in my earlier testimony here today that I am not comfortable with the accusations that have been leveled against Colwell Construction Company saying that all the fault lies on that particular contractor. I am firmly convinced that there were mistakes and misjudgments that were made on both sides of this contract.

If that is, in fact, the case, if both Colwell Construction Company and the State looking back with rosy hindsight can say . . . "Yes, we wish we had handled this matter differently," then I suggest to you that the advisory position in court where this matter will definitely end up, is not the best way or the cheapest way for the State of Maine to resolve a legitimate question — what is the least expensive, quickest resolution to a problem that we have. I suggest that binding arbitration on the issue of just value of the work done is the most expeditious, least expensive method for resolving this issue.

I urge you to vote in favor of Engrossment of this Bill.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Najarian.

Senator **NAJARIAN:** Mr. President and Members of the Senate. I will just say that there is no guarantee that if this Bill passes this is going to end up in court. It could very well be mediated.

The Colwell Construction Company may not like the expense of going to court themselves so there is no guarantee that that is what is going to happen. It could be that a mediation would resolve this dispute and even though some State employees were culpable or had something to do with this sad state of affairs, Mr. Colwell, being an experienced contractor should have realized that \$188,000 for restoring a motel room from not excessive fire damage and smoke in a hallway would not cost that amount of money.

THE PRESIDENT: The pending question is the motion to be **PASSED TO BE ENGROSSED AS AMENDED**. A Roll Call has been ordered.

The Secretary will call the Roll.

ROLL CALL

YEAS:—Senators, Berube, Brown, Bustin, Chalmers, Clark, Diamond, Gauvreau, Gill, Kany, Perkins, Shute, Trafton, The President — Charles P. Pray

NAYS:—Senators, Andrews, Baldacci, Black, Emerson, Erwin, Matthews, Maybury, McBreaarty, Najarian, Pearson, Sewall, Stover, Tuttle, Twitchell, Webster

ABSENT:—Senators, Carpenter, Danton, Dow, Dutremble, Hichens, Usher, Violette

13 Senators having voted in the affirmative and 15 Senators having voted in the negative, with 7 Senators being absent, the motion that the Bill be **PASSED TO BE ENGROSSED AS AMENDED, FAILS**.

Senator **BLACK** of Cumberland was granted permission to change his vote from **YEA** to **NAY** (before vote announced.)

Senator **GAUVREAU** of Androscoggin was granted permission to change his vote from **NAY** to **YEA** (before vote announced.)

See action later today

Off Record Remarks

Out or order and under suspension of the Rules, the Senate considered the following:

PAPERS FROM THE HOUSE

Non-concurrent Matter

Bill "An Act Making Authorizations and Allocations Relating to Federal Block Grants for the Expenditures of State Government for the Fiscal Years Ending June 30, 1985, June 30, 1986, and June 30, 1987" (Emergency) (S.P. 222) (L.D. 585) (C "A" S-250)

In Senate June 11, 1985, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-250)**.

Comes from the House **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-250) AS AMENDED BY HOUSE AMENDMENT "A" (H-378)**, thereto in **NON-CONCURRENCE**.

Senate At Ease

Senate called to Order by the President

The Senate **RECEDED** and **CONCURRED**.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator **NAJARIAN**.

Senator **NAJARIAN:** Mr. President, is the Senate in possession of Resolve, Authorizing Colwell Construction Company, Incorporated, to Bring a Civil Action Against the State of Maine (S.P. 550) (L.D. 1467)?

THE PRESIDENT: The Chair would answer in the affirmative.

Senator **NAJARIAN** of Cumberland moved that the **RULES BE SUSPENDED** for the purpose of sending this paper forthwith to the House.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Trafton.

Senator **TRAFTON:** Mr. President, I request a Division.

THE PRESIDENT: The Senator from Androscoggin, Senator Trafton, has requested a Division.

Will all those Senators in favor of **SUSPENDING THE RULES** for the purpose of sending this Bill **FORTHWITH TO THE HOUSE**, please rise in their places until counted.

Will all those Senators opposed, please rise in their places to until counted.

11 Senators having voted in the affirmative, and 12 Senators having voted in the negative, the motion to **SUSPEND THE RULES** for the purpose of sending this Bill **FORTHWITH TO THE HOUSE, FAILS**.

COMMITTEE REPORTS

Senate

Divided Report

The Majority of the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** on Bill "An Act to Authorize a Bond Issue in the Amount of \$5,000,000 for Constructing and Equipping Centers for Advanced Technology that Service the Economic Development Needs of Maine" (S.P. 412) (L.D. 1142)

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-265)**.

Signed:

Senators:

PEARSON of Penobscot
DOW of Kennebec
McBREAIRTY of Aroostook

Representatives:

McGOWAN of Canaan
NADEAU of Lewiston
LISNIK of Presque Isle
SMITH of Mars Hill
CONNOLLY of Portland
FOSTER of Ellsworth
CHONKO of Topsham
CARTER of Winslow

The Minority of the same Committee on the

same subject reported that the same **Ought Not to Pass**.

Signed:

Representatives:

HIGGINS of Scarborough
BELL of Paris

Which Reports were **READ**.

The Majority **OULD TO PASS AS AMENDED** Report was **ACCEPTED**.

The Bill **READ ONCE**.

Committee Amendment "A" (S-265) **READ** and **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED**.

Sent down for concurrence.

Under suspension of the Rules, all matters previously acted upon, except those matters previously held, were ordered sent down forthwith for concurrence.

Senator **PEARSON** of Penobscot was granted unanimous consent to address the Senate On the Record.

Senator **PEARSON:** Mr. President and Members of the Senate. All of northern and eastern Maine were saddened and mourned the loss of Peter Eric McDowell.

Peter was a senior at Brewer High School was passed away in an auto accident in his driveway two days before he was to graduate this last Sunday. Peter was found pinned beneath his car in the morning by his father.

His two closest friends, Jeff Feyette and Daryll Longstreet, received Peter's diploma at graduation as per the request of Peter's brother and Peter's parents. The Senior class of Orono and Bangor High School were particularly kind in their expressions of sentiment as were hundreds and hundreds of those who reflected upon reading the news the following morning of the tragedy which was, it seems, even more poignant during graduation when one is about to enter a new life.

Mr. President, I request that when the Senate adjourns they do so in memory of Peter.

Senate At Ease

Senate called to Order by the President

On motion by Senator **PEARSON** of Penobscot,

ADJOURNED in remembrance of **PETER McDOWELL** until 9:00 o'clock tomorrow morning.