

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred and Twelfth

Legislature

OF THE

STATE OF MAINE

VOLUME II

SECOND REGULAR SESSION

April 3 - April 16, 1986

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PAPERS FROM THE HOUSE

Non-concurrent Matter

STATE OF MAINE
ONE HUNDRED AND TWELFTH LEGISLATURE
SECOND REGULAR SESSION
JOURNAL OF THE SENATE

Bill "An Act to Prohibit a Doe Permit System
until June 1, 1987"

H.P. 1470 L.D. 2073

In Senate Chamber
Tuesday
April 8, 1986

In House, April 3, 1986, the Majority OUGHT TO
PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-630)
Report READ and ACCEPTED and the Bill PASSED TO
BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A"
(H-630).

Senate called to Order by the President.

In Senate, April 3, 1986, the Minority OUGHT NOT
TO PASS Report READ and ACCEPTED in
NON-CONCURRENCE.

Comes from the House, that Body ADHERED in
NON-CONCURRENCE.

Prayer by the Honorable Jean Chalmers of Knox.

On motion by Senator VIOLETTE of Aroostook,
Tabled until Later in Today's Session, pending
FURTHER CONSIDERATION.

SENATOR CHALMERS: Thank you. Because the Senate
is not going to be in Session during the days of the
Holocaust, let me read for you, the Kaddish.
Normally, this is said in Hebrew. "Yis-gad-dal
v'yis-kad-dash sh'meh rab-bo, b'ol-mo di'v-ro
kir'-u-seh v'yam-lich mal-chu-seh, b'cha-ye-chon
u-v'yo-me-chon u-v'cha-yeh d'chol bes yis-ro-el,
ba-a-go-lo u-viz-man ko-riv, v'im-ru O-men."

Non-concurrent Matter

Bill "An Act to Modify and Update Certain Laws
Pertaining to Inland Fisheries and Wildlife"

S.P. 916 L.D. 2286

(H "A" H-634)

Let me share with you, the English from the Union
Prayer Book. "Extolled and hallowed by the name of
God throughout the world which He has created
according to His will. And may He speedily establish
His kingdom of righteousness on earth. Praised be
His glorious name unto all eternity. Praised and
glorified be the name of the Holy One, though He be
above all the praises which we can utter. Our guide
is He in life and our redeemer through all eternity.
Our help cometh from Him, the creator of heaven and
earth. The departed whom we now remember have
entered into the peace of life eternal. They still
live on earth in the acts of goodness they performed
and in the hearts of those who cherish their memory.
May the beauty of their life abide among us as a
loving benediction. May the Father of peace send
peace to all who mourn, and comfort all the bereaved
among us. Amen."

In Senate, April 2, 1986, PASSED TO BE ENGROSSED
AS AMENDED BY HOUSE AMENDMENT "A" (H-634), in
concurrence.

Comes from the House PASSED TO BE ENGROSSED AS
AMENDED BY HOUSE AMENDMENTS "B" (H-652) AND "C"
(H-654) in NON-CONCURRENCE.

The Senate RECEDED and CONCURRED.

Non-concurrent Matter

Reading of the Journal of Yesterday.

Resolve, to Establish a Commission to Examine
Problems of Tort Litigation and Liability Insurance
in Maine (Emergency)

H.P. 1624 L.D. 2289

In House, April 1, 1986, PASSED TO BE ENGROSSED
AS AMENDED BY HOUSE AMENDMENT "A" (H-622).

In Senate, April 3, 1986, PASSED TO BE
ENGROSSED in NON-CONCURRENCE.

Comes from the House PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "B" (H-655) in NON-CONCURRENCE.

The Senate RECEDED and CONCURRED.

COMMITTEE REPORTS

House

Ought Not to Pass

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

Bill "An Act to Establish a Fluctuating Credit Card Charge Relative to the Prime Rate" H.P. 1606 L.D. 2264

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 Reform High-speed Pursuit Policies for Law Enforcement Personnel" H.P. 1471 L.D. 2074

Bill "An Act to Improve Legislative Oversight of the Bureau of Public Lands and to Create the Maine Conservation Heritage Trust Fund" H.P. 1570 L.D. 2220

Ought to Pass As Amended

The Committee on LOCAL AND COUNTY GOVERNMENT on Resolve, Ratifying Washington County's Use of Unappropriated Surplus to Pay Deficits (Emergency) H.P. 1572 L.D. 2222

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-647).

Comes from the House, with the Report READ and ACCEPTED and the Resolve PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-647).

Which Report was READ and ACCEPTED, in concurrence.

The Resolve READ ONCE.

Committee Amendment "A" (H-647) READ and ADOPTED, in concurrence.

The Resolve as Amended, LATER TODAY ASSIGNED FOR SECOND READING.

Ought to Pass in New Draft

The Committee on AGING, RETIREMENT AND VETERANS on Bill "An Act to Insure the Rights of the Staff of the Projects Serving Preschool Handicapped Children and Other Preschool Teachers Employed by Public Schools to Receive Maine State Retirement" H.P. 1513 L.D. 2135

Reported that the same Ought to Pass in New Draft under same title (Emergency). H.P. 1662 L.D. 2340

Comes from the House, with the Report READ and ACCEPTED and the Bill in NEW DRAFT PASSED TO BE ENGROSSED.

Which Report was READ and ACCEPTED, in concurrence.

The Bill in NEW DRAFT READ ONCE.

The Bill in NEW DRAFT LATER TODAY ASSIGNED FOR SECOND READING.

The Committee on APPROPRIATIONS AND FINANCIAL AFFAIRS on Bill "An Act Authorizing the Acceptance of Federal Block Grants and Making Allocations from the Federal Block Grants for the Expenditures of State Government" (Emergency) H.P. 1482 L.D. 2094

Reported that the same Ought to Pass in New Draft under same title (Emergency). H.P. 1659 L.D. 2337

Comes from the House, with the Report READ and ACCEPTED and the Bill in NEW DRAFT PASSED TO BE ENGROSSED.

Which Report was READ and ACCEPTED, in concurrence.

The Bill in NEW DRAFT READ ONCE.

The Bill in NEW DRAFT LATER TODAY ASSIGNED FOR SECOND READING.

The Committee on TRANSPORTATION on Bill "An Act Making Allocations from the Highway Fund and Other Funds for the Expenditures of State Government and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 1986, and June 30, 1987" (Emergency)

H.P. 1512 L.D. 2132

Reported that the same Ought to Pass in New Draft under same title (Emergency).

H.P. 1666 L.D. 2346

Comes from the House, with the Report READ and ACCEPTED and the Bill in NEW DRAFT PASSED TO BE ENGROSSED.

Which Report was READ and ACCEPTED, in concurrence.

The Bill in NEW DRAFT READ ONCE.

The Bill in NEW DRAFT LATER TODAY ASSIGNED FOR SECOND READING.

Ought to Pass in New Draft under New Title

The Committee on STATE GOVERNMENT on Bill "An Act to Amend the Rule-making Procedures of Certain Agencies"

H.P. 1543 L.D. 2180

Reported that the same Ought to Pass in New Draft under New Title Bill "An Act to Amend Rule-making Provisions in the Maine Administrative Procedure Act"

H.P. 1663 L.D. 2341

Comes from the House, with the Report READ and ACCEPTED and the Bill in NEW DRAFT under NEW TITLE, PASSED TO BE ENGROSSED.

Which Report was READ and ACCEPTED, in concurrence.

The Bill in NEW DRAFT under NEW TITLE READ ONCE.

The Bill in NEW DRAFT under NEW TITLE LATER TODAY ASSIGNED FOR SECOND READING.

Senate

Ought to Pass in New Draft under New Title

Senator GILL for the Committee on HUMAN RESOURCES on Bill "An Act to Require the Department of Human Services to Calculate Nursing Staff Ratios Taking into Account Both Nursing Assistants and Certified Nursing Assistants, Reimburse Nursing Homes for Entry Level Personnel, to Encourage Consistent Regulatory Policies Governing such Personnel and for Other Purposes"

S.P. 723 L.D. 1846

Reported that the same Ought to Pass in New Draft under New Title Bill "An Act Concerning Nursing Staffs in Nursing Homes, Staff Ratios, Reimbursement, Policies and Delegation of Duties"

S.P. 937 L.D. 2350

Which Report was READ and ACCEPTED.

The Bill in NEW DRAFT under NEW TITLE READ ONCE.

The Bill in NEW DRAFT under NEW TITLE LATER TODAY ASSIGNED FOR SECOND READING.

Senator GAUVREAU for the Committee on HUMAN RESOURCES on Bill "An Act to Repeal the Annual Review of Fee Schedules for Providers under the Medical Assistance Program"

S.P. 850 L.D. 2151

Reported that the same Ought to Pass in New Draft under New Title Bill "An Act to Incorporate the Annual Review of Fee Schedules for Providers under the Medical Assistance Program into the Annual Medicaid Report"

S.P. 938 L.D. 2351

Which Report was READ and ACCEPTED.

The Bill in NEW DRAFT under NEW TITLE READ ONCE.

The Bill in NEW DRAFT under NEW TITLE LATER TODAY ASSIGNED FOR SECOND READING.

Divided Report

The Majority of the Committee on AGRICULTURE on Bill "An Act to Improve the Marketing of Milk in Maine"

S.P. 856 L.D. 2168

Reported that the same Ought Not to Pass.

Signed:

Senator: CARPENTER of Aroostook

Representatives: TARDY of Palmyra, LORD of Waterboro, WHITCOMB of Waldo, DAGGETT of Manchester, PARENT of Benton, SHERBURNE of Dexter, AYER of Caribou, BRAGG of Sidney, MICHAEL of Auburn

The Minority of the same Committee on the same subject reported that the same Ought to Pass in New Draft under same title.

S.P. 939 L.D. 2352

Signed:

Senators: ERWIN of Oxford, BLACK of Cumberland

Representative: MCCOLLISTER of Canton

Which Reports were READ.

Senator ERWIN of Oxford moved that the Senate ACCEPT the Minority OUGHT TO PASS IN NEW DRAFT Report.

On motion by Senator VIOLETTE of Aroostook, Tabled until Later in Today's Session, pending the motion of Senator ERWIN of Oxford to ACCEPT the Minority OUGHT TO PASS IN NEW DRAFT Report.

Divided Report

The Majority of the Committee on JUDICIARY on Bill "An Act to Establish Policies Governing Medical Malpractice Claims"

S.P. 773 L.D. 1945

Reported that the same Ought Not to Pass.

Signed:

Senators: CARPENTER of Aroostook, CHALMERS of Knox

Representatives: PARADIS of Augusta, PRIEST of Brunswick, KANE of South Portland, DRINKWATER of Belfast, COOPER of Windham

The Minority of the same Committee on the same subject reported that the same Ought to Pass in New Draft under same title.

S.P. 940 L.D. 2354

Signed:

Senator: SEWALL of Lincoln

Representatives: MACBRIDE of Presque Isle, LEBOWITZ of Bangor, ALLEN of Washington, STETSON of Damariscotta, CARRIER of Westbrook

Which Reports were READ.

Senator CARPENTER of Aroostook moved that the Senate ACCEPT the Majority OUGHT NOT TO PASS Report.

On motion by Senator VIOLETTE of Aroostook, Tabled until Later in Today's Session, pending the motion of Senator CARPENTER of Aroostook to ACCEPT the Majority OUGHT NOT TO PASS Report.

SECOND READERS

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

House

Bill "An Act Relating to Place of Payment of Motor Vehicle Excise Tax on Leased Vehicles" H.P. 1647 L.D. 2324

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

ENACTORS

ORDERS OF THE DAY

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

An Act to Ensure the Implementation of a Single Audit

S.P. 924 L.D. 2304

On motion by Senator VIOLETTE of Aroostook, placed on the SPECIAL APPROPRIATIONS TABLE, pending ENACTMENT.

RECALLED FROM THE GOVERNOR'S DESK

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

Senator VIOLETTE: Is the Senate in possession of L.D. 2139?

THE PRESIDENT: The Chair would answer in the affirmative, the Bill having been recalled from the Governor's desk.

An Act to Strip Crime of its Profit
S.P. 847 L.D. 2139
(H "B" H-591)

(In Senate, March 26, 1986, PASSED TO BE ENACTED, in concurrence.)

(RECALLED from the Governor's Desk, pursuant to Joint Order S.P. 941.)

On motion by Senator VIOLETTE of Aroostook the Senate SUSPENDED THE RULES.

On further motion by same Senator the Senate RECONSIDER its action whereby the Bill was PASSED TO BE ENACTED.

On further motion by same Senator, Tabled Unassigned, pending ENACTMENT.

Senate at Ease

Senate called to order by the President.

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

Bill "An Act to Prohibit a Doe Permit System until June 1, 1987"

H.P. 1470 L.D. 2073

Tabled - April 8, 1986, by Senator VIOLETTE of Aroostook.

Pending - FURTHER CONSIDERATION

(In House, April 3, 1986, the Majority OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-630) Report READ and ACCEPTED and the Bill PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-630).)

(In Senate, April 3, 1986, the Minority OUGHT NOT TO PASS Report READ and ACCEPTED in NON-CONCURRENCE.)

(In House, April 7, 1986, that Body ADHERED in NON-CONCURRENCE.)

Senator USHER of Cumberland moved that the Senate ADHERE.

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

Senator MATTHEWS: I request a Division and move that the Senate Recede and Concur. I would like to speak to my motion. I will be very brief, I think we have gone over this issue quite a bit over the last few days. I do know a large lobbying effort has been done by, it seems a coalition made in heaven. The Department of Fisheries and Wildlife and the Sportsman's Alliance working together on an issue, usually the two are in opposition, this time they are together. I want to challenge that coalition, however, and ask all of you to really think about whether or not this issue and the doe permit system, again, has to be initiated this November. As I mentioned the other day, we are very close to the deer season and this is putting together a lottery system to take doe deer, and I want to emphasize to anyone here that may think that this lottery system will some how be a maneuver to lessen the amount of doe deer taken. I would just urge you to look at the states that now have the doe permit system. If you are concerned as a person that doesn't particularly like hunting at all and you think voting for this Bill will assure that less deer are taken, I think that you are sadly mistaken. Those States that have had doe permit systems in existence for a few years now, have taken an awful lot of doe deer. If you are coming from that advantage point I would ask you to re-think your position.

During the first week of the deer season, if the Legislator decides to allow the Department to go forward with this doe permit system. I want you to understand that as a hunter, and I have hunted for quite a few years now, the first week of the season and the first few days of the season, doe deer and fawn deer are going to be very, very vulnerable and that is an understatement. If you are talking about a fawn deer, they are six months old, that a hunter is going to be out there with a permit ready to shoot, on the first day of the deer season. Under the system that we have now, which allows for bucks only, until the last week of the season in the central zone and then both sexes can be shot, those doe deer and those fawn deer have an opportunity to learn a little bit about being able to outwit a hunter. I can tell you that is true, first-hand. I was out there last year, as an example, with my father hunting on the first day of the deer season. My dad saw seven deer, seven does, and they paraded under my father's deer stand, and he was very excited just to see that happen, to show you how the does have made a good come back. I saw four doe deer and we couldn't shoot them at that time, and believe me those does didn't know what was going on on the first day of the deer season. Three weeks later, you couldn't find those does, they were down in the heaviest swamp cover and you had to do some trudging to find those young deer, because they had learned that the hunting season had started and they had better listen very closely to their buck and be wary. I would emphasize to all of you that if you are at the vantage point of being concerned about the protection of deer, I am not so sure that the doe permit season is going to protect any deer. There will be a lot of young does and fawns that will be shot that first part of the season.

I know we have gone over a lot of facts and figures, the interesting thing to remember, with respect to the present system, the bucks only system with buck and does being shot in the last week in the Central Zone. Is it bucks only has worked in the State of Maine, up in the Northern Zone they have only had it one year, now you want to change it do away with it. I guess I question the urgency of doing this at this point in time where the deer population has made a good, solid come back. I don't even have to cite the figures which are overwhelming from the Department themselves, as to the improvement of the deer herd. I can tell you I have hunted for the last five years. Five years ago you could barely find a deer anywhere, there was no question that the deer population needed some help. The Department stepped in and put in a bucks only season and it has worked. It really has worked, the Department, themselves, will tell you that it has worked. I think this is really a rash, foolish decision to go into it at this point in time. I can tell you, and this is my personal feeling as the Chairman of the Committee, last year the Department of Fisheries and Wildlife came to the Committee and said, give us the statutory authority to implement a doe permit season. All we want to do for future reference is have that authority to implement a doe season.

We said fine, providing the Commissioner will come to our Committee and you will give us a report and you will work with the Committee that has a lot of concerns, both partisan sides of the Committee, we worked together on the Fisheries and Wildlife Committee, the concerns of all the Members of that Committee and you work with us on it. That was not done by the Department.

The second criteria that, this is my own personal viewpoint, I am not speaking for the other Members of the Committee. The Department, in my estimation, and the Commissioner, I felt was an unwritten rule, that we would not be before this Legislature this year implementing a doe permit season in the last year of his time in office. That is the feeling that I came away with and I won't stand up for other Members of the Committee, that may not have gotten that perception, but I did. I am very surprised that we are talking about implementing a doe season this year. I am not going to reemphasize that people in the Central Zone have some real concerns about this doe permit season. We have had the opportunity to hunt both sexes the last week of the season and hunters have had, without any kind of permit or lottery system, have had a chance to go out there and hunt for a doe. Fathers, sons, daughters, and wives have had that chance and yet the doe kill has been well within limits, no excessive doe kill at all. Well within the limits within the amount of the resource out there. I appreciate you listening to my concerns one more time. Thank you.

Senator MATTHEWS of Kennebec moved that the Senate RECEDE and CONCUR.

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

Senator USHER: Thank you Mr. President and Members of the Senate. The issue here is not whether we like the doe permit, the issue has already been accepted by the Committee. The issue is whether we vote on it this year for this years' season or next years' season. The season has not been set for this year, it is not going to jeopardize any deer season for this year. The Department is all ready to put this into operation. The permit system will be a good system, because last years' season, everybody congregated in the central part of the State of Maine. There is a big safety factor when everyone comes from all over the State of Maine and goes into the central portion of the State just to shoot both sexes of deer. This is a controlled method, it is a good method, it has worked great in other states to rebuild the herds. It is a conservative measure, and I think we are all concerned about having a conservative measure in this State. I ask for a Division of this motion.

Senator USHER of Cumberland requested a Division.

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

Senator WEBSTER: Mr. President, I request a Roll Call and would like to speak to my motion. I just want to reiterate what has been said before in our other debate, and to me that is a very simple question that I want to ask you. What harm will it do to wait six months before we implement this season?

The Deputy Commissioner, Skip Trask, came to the Committee and said to us, he would like to be able to implement it this year, but it really wouldn't do any harm if we waited another year. That is the position that I have. I think that it may be a great idea to have a doe permit season, but many people in this State feel this process has gone on too fast. I would say let us wait until February of 1987, before a season is implemented and everybody will have a better chance of being better informed and know more about this issue. Thank you.

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

Senator MCBREAIRTY: Mr. President and Honorable Members of the Senate. During the time that I have been here, I have been a strong supporter of Fisheries and Wildlife. I went to bat for them the other day in Appropriations to save some funding. I am also a member of SAM and a supporter of the Sportsman Alliance of Maine, but I am not a supporter of either Fisheries and Wildlife or Sportsman Alliance on this issue. Last year was the first year we had a buck season in northern Maine. When you first start a change, such as a buck season, you lose some does because people will shoot them and leave them. It takes a while to adjust to that new method of control. It took us ten years to convince the Department that a buck season might work, they argued with me that hunters were just a small factor, that it was the coyotes and the weather and this sort of thing that controlled the herd. Hunter's were just a small drop in the bucket, in the arguments that they used against a buck season. Finally, they gave in and agreed to it.

When we talk about other states having doe permit, they don't tell it all. Many of the states you get your doe permit and you also have to get a permit from the land owner before you can even go hunting. It is completely controlled. I hunt with friends from Connecticut, that have to get a special permit to hunt on a special piece of ground, and if they should happen to wound a deer and they go across the line one hundred feet, they can't go after it, because it is illegal to go across the line. We haven't run into that here. Land owners have been very, very generous with their land, but some of them are already saying that if you have this doe permit then I can't hunt on my land, no one else will. Eventually if we continue to use this type of system, we are going to lose a lot of this land, that is going to put more pressure on other land. Eventually we will lose that land.

All that we are asking with this Bill is that you delay it, gives us a chance to think about it. Maybe we can think up a better system. I hope you would go along with Senator Matthews and Recede and Concur. Give us a chance to think about it, give us a chance to use the buck season another year in northern zones. Maybe we can think up a better system. Maybe we will come back and support this, but we can't do it at this time.

They go out with public hearings, they encourage a few people to come, the ordinary person doesn't attend public hearings, they don't even know that you have them. They are advertised in fine print on the back page some where and people don't usually read that page. The majority of the people that I talked to say "Wait, lets think about it", so I would hope you would go along with the motion to Recede and Concur. Thank you.

THE PRESIDENT: The Senator from Franklin. Senator WEBSTER 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 in their places and remain standing until counted.

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

The Chair recognizes the Senator from Cumberland, Senator Usher.

Senator USHER: Thank you Mr. President. In response to the good Senator from Aroostook, Senator McBreairty, that owner of the land will be able to hunt on his land. The buck law is in effect, state-wide. This permit system is for the ones that will be drawn in the permit system will also have a chance, an opportunity to take a doe, but the buck law is in effect for every hunter, 230,000 or what ever they sell. The permit system is to control the amount of does harvested. Last year, in the first part of the session we gave the Commissioner authority to implement a doe permit system. He did so with the help of all the professional people in the Department. He came back to the Committee in January and presented his whole program. The Committee accepted it. The next procedure was to have public hearings. He held public hearings state-wide, he just finished them the other night at Machias, that was the final one. The majority of the people who attended were in favor of the doe permit system, after they heard the presentation. It is just like any new program that is going to be implemented in any part of this state. People resent going into something new, they resented the buck law as I remember when they presented it to our Committee, when I was on it, but now they think the buck law is the best thing that ever hit the State.

We had to take a chance and it worked good. We have to rely on the professional knowledge down at the Department too, they need a good management tool and this is a good management tool.

Off Record Remarks

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

Senator MATTHEWS: Mr. President, there are two things that I want to rebut of the good Senator from Cumberland, Senator Usher. The point that the good Senator from Aroostook, Senator McBreairty, was making with respect to those that have concerns that own property that they will not be able to hunt, is a good one. Senator McBreairty hit the nail right on the head. The concern by the land owners is not that they will be able to hunt bucks, but they will not be able to hunt does. That has been the concern and the good Senator from Cumberland knows that is the concern and he is aware of that. We had many land owners come to the Committee and say that if this doe permit goes through and somebody gets a permit, and I will tell you some specifics. If we give an out-of-stater, and I hate to use that word, but if the good Gentlemen would like to quote the doe permit season one of the examples is always quoting from New Jersey and how it works down in New Jersey. We have had some land owners come to the Committee on Fisheries and Wildlife and say that if a guy from New Jersey gets a doe permit and comes up on his land and shoots a doe behind his house, he is going to be very upset and that is the kind of concern that we heard about from land owners.

The other concern I want to make before this debate is through is that the statics show from the Departments itself, the statics overwhelmingly show that doe days could be had in every different zone in the existing deer zone in the State of Maine, but by doe days, I mean when ever the Department would like to implement it during the bucks only season, probably toward the latter part of the season, that a limited one week or three day doe season, does and bucks, could be taken in every part of the State right now. At least the statics overwhelmingly show that doe population has made a good enough comeback to allow for doe days to be utilized and that has not come out in this debate and it is something that I think the Members of this Body should realize. I wanted to refute that concern that they can't shoot a buck. Yes, they can go and hunt a buck, but they can't hunt a doe and somebody else can come onto their land and shoot a doe, then they are going to post their land, that is what they told the Members of the Fisheries and Wildlife Committee.

THE PRESIDENT: The pending question before the Senate is the motion of Senator MATTHEWS of Kennebec that the Senate RECEDE and CONCUR.

A vote of Yes will be in favor of the motion to Recede and Concur.

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

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

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators, ANDREWS, BALDACCI, BLACK, BUSTIN, CARPENTER, DOW, EMERSON, GILL, HICHENS, KANY, MATTHEWS, MCBREAIRTY, PERKINS, SEWALL, SHUTE, STOVER, TUTTLE, WEBSTER

NAYS: Senators, BERUBE, BROWN, CHALMERS, CLARK, GAUVREAU, KERRY, MAYBURY, PEARSON, TRAFTON, TWITCHELL, USHER, VIOLETTE, THE PRESIDENT - CHARLES P. PRAY

ABSENT: Senator DIAMOND

EXCUSED: Senator DUTREMBLE

18 Senators having voted in the affirmative and 13 Senators having voted in the negative, with 1 Senator being absent and 1 Senator being excused, the motion by Senator MATTHEWS of Kennebec to RECEDE and CONCUR, PREVAILS.

On motion by Senator CLARK of Cumberland RECESSED until 5 o'clock in the afternoon.

After Recess

Senate called to order by the President.

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

Ought to Pass As Amended

The Committee on AGRICULTURE on Bill "An Act to Provide Appropriate Penalties for Violations of Milk Commission Statutes and to Provide for Administrative Enforcement"

H.P. 1585 L.D. 2232

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-648).

Comes from the House, with the Report READ and ACCEPTED and the Bill PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-648).

Which Report was READ and ACCEPTED, in concurrence.

The Bill READ ONCE.

Committee Amendment "A" (H-648) READ and ADOPTED, in concurrence.

The Bill as Amended, TOMORROW ASSIGNED FOR SECOND READING.

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

COMMITTEE REPORTS

House

Ought to Pass

The Committee on JUDICIARY on Bill "An Act to Exempt the Town of Hope from Liability for Certain Tax-acquired Property" (Emergency)

H.P. 1479 L.D. 2081

Reported that the same Ought to Pass.

Comes from the House with the Report READ and ACCEPTED and the Bill PASSED TO BE ENGROSSED.

Which Report was READ and ACCEPTED, in concurrence.

The Bill READ ONCE.

Senator VIOLETTE of Aroostook moved to Table 1 Legislative Day, pending ASSIGNMENT FOR SECOND READING.

The Committee on AUDIT AND PROGRAM REVIEW on Bill "An Act to Improve Child Welfare Services in Maine"

H.P. 1588 L.D. 2233

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-653).

Comes from the House, with the Report READ and ACCEPTED and the Bill PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-653).

Which Report was READ and ACCEPTED, in concurrence.

The Bill READ ONCE.

On motion by Senator VIOLETTE of Aroostook, Tabled 1 Legislative Day, pending the READING of Committee Amendment "A" (H-653).

Senate at Ease

Senate called to order by the President.

Senator VIOLETTE of Aroostook requested and received Leave of the Senate to withdraw his motion to Table 1 Legislative Day, pending ASSIGNMENT FOR SECOND READING.

The Bill TOMORROW ASSIGNED FOR SECOND READING.

The Committee on HUMAN RESOURCES on Bill "An Act to Amend the Annual Operating-under-the-influence Report and to Establish a State-operated Evaluation Program within the Driver Education Program of the Department of Human Services"

H.P. 1571 L.D. 2221

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-651).

Comes from the House, with the Report READ and ACCEPTED and the Bill PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-651).

Which Report was READ and ACCEPTED, in concurrence.

The Bill READ ONCE.

Committee Amendment "A" (H-651) READ and ADOPTED, in concurrence.

The Bill as Amended, TOMORROW ASSIGNED FOR SECOND READING.

The Committee on TAXATION on Bill "An Act to Amend Watercraft Excise Tax Laws"
H.P. 1431 L.D. 2022

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-649).

Comes from the House, with the Report READ and ACCEPTED and the Bill PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-649).

Which Report was READ and ACCEPTED, in concurrence.

The Bill READ ONCE.

Committee Amendment "A" (H-649) READ and ADOPTED, in concurrence.

The Bill as Amended, TOMORROW ASSIGNED FOR SECOND READING.

Divided Report

Eight Members on the Committee on EDUCATION on Bill "An Act to Provide Funds for the Teacher of the Year Program"
H.P. 1517 L.D. 2146

Reported in Report A that the same Ought to Pass as Amended by Committee Amendment "A" (H-646).

Signed:

Senator: BROWN of Washington

Representatives: MATTHEWS of Caribou
LAWRENCE of Parsonsfield
FOSS of Yarmouth
BROWN of Gorham
SMALL of Bath
O'GARA of Westbrook
ROBERTS of Farmington

Four Members of the Same Committee on the same subject reported in Report B that the same Ought Not to Pass.

Signed:

Senator: HICHENS of York

Representatives: BOST of Orono
SOUCY of Kittery
HANDY of Lewiston

One Member of the Same Committee on the same subject reported in Report C that the same Ought to Pass in New Draft under same title.

H.P. 1661 L.D. 2339

Signed:

Senator: GAUVREAU of Androscoggin

Comes from the House with Report A, OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-646), READ and ACCEPTED and the Bill PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-646).

Which Reports were READ.

Senator BROWN of Washington moved that the Senate ACCEPT Report A, OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-646), in concurrence.

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

Senator GAUVREAU: I would ask for a Division and speak to my motion. Thank you, Mr. President, Men and Women of the Senate. I think it is a fair statement that L. D. 2146 was not the most momentous bill which found its way to the 1st floor, before the Committee on Education, this year. I have an obligation to explain why I departed company from the good Senator from Washington, Senator Brown, my colleague and Chairman of the Committee. The Teacher of the Year has been a program which has been in effect for several years in this State. It has been funded, totally through private funds. The purpose, of course, being to commemorate and recognize amongst the teachers in the State of Maine, an outstanding individual, who could serve as a symbol to educational excellence for all teachers in the State of Maine.

The problem I have with Report A, is not so much in its' goals, which would be to provide a mechanism to allow the Teacher of the Year to travel about the State, and make presentations to various teachers and schools on his or her particular teaching methodologies. I think there is a lot of value in that, and we ought to encourage that. The problem I have is in the funding mechanism which was adopted by the majority in Report A. This Report would tap into the Innovative Educational Grant Fund to finance the travel of the Teacher of the Year.

As you may recall, 2 years ago, in the 1984 Educational Reform Act, we set up, as one major component of the Reform Act, the Innovative Educational Grant Program. The grants were to be earmarked to promote and encourage improvement in schools throughout the State, to foster creative and innovative educational practices. Our intent was to encourage teachers, as well as administrators, to seek out new and better teaching modalities, and to provide also, sufficient funding to allow those ideas to bear fruition. I think it clearly is an inappropriate use of the Fund, to tap into it to transport a teacher throughout the State.

My Report, Report C, would differ from Report A, in that I would call for a \$2,000 General Fund appropriation annually, which I think would be sufficient to provide for the travel expenses of the Teacher of the Year. Beyond that, I also make allowance in my report, for the Teacher of the Year to apply to the Commissioner of Education for use of Innovative Grant Fund, if it can be demonstrated that the particular project proposed would conform with the overall program guidelines, purposes and objectives of the Innovative Grant Program. I think by doing that, we are consistent with the original legislative intent, when we set up the Innovative Grant Program. That is the only difference that I have with the Report A, the funding mechanism. I fully support the program, and I certainly endorse the notion that we ought to make teacher available to districts throughout the State, to provide guidance on his or her particular educational practices.

So, for these reasons, I would respectfully dissent on this occasion from my esteemed Committee Chair, and would urge you to vote against the pending motion, which is to Accept Report A, so that we can go on and accept Report C.

Senator GAUVREAU of Androscoggin requested a Division.

THE PRESIDENT: The Chair recognizes the Senator from Washington, Senator Brown.

Senator BROWN: Thank you, Mr. President. Ladies and Gentlemen of the Senate. It is not often that I am on the other side of the Senator from Androscoggin, Senator Gauvreau, on an issue, and in some ways I feel like a failure here this afternoon, as a Committee Chair, having a 3 way split on a bill of this magnitude. The good Senator has indicated this is not the biggest issue which we have dealt with this year. As a matter of fact, we have spent less time on a 35 page bill, this afternoon, to make corrections to laws of education, which are far more substantive than the one we are dealing with here.

Let me ask you, if you would, to just look briefly at this particular bill, L. D. 2146. Let me just read it to you. It is only 2 sentences. "Teacher of the Year. The Commissioner may award up to \$5,000 to the Teacher of the Year for travel and other expenses related to the appearances and other duties he may perform as Teacher of the Year." That is sponsored by myself and the good Senator Clark, who is in this Chamber, also. Now, the Committee chose to make a change in that, and that is the amendment that is listed there under House Amendment 646, which simply says that if other funds become available, than those which the good Senator has previously indicated, the Commissioner may use those funds before using the Innovative Education Grant Fund.

This all came about as a result of Charles Seymour, as the Teacher of the Year, currently, from the Rockland - Camden area. The Commissioner of Education happened to be in the area that a presentation was being given on a particular day. This gentleman is an art teacher. During the course of conversation, the Commissioner suggested that because the provision for the Educational Reform Act dealing with mandating art in schools, might be a hard one to sell in some areas of the State, and to help people understand that.

Since this gentleman has been identified by the Department in this selection process as Teacher of the Year, it might be appropriate for him to work on a video to go around in other school districts and help sell the idea of art in the schools.

Well, this gentlemen, being an outstanding teacher that he is, took the challenge on. You know, if someone came to me with the provisions that the Teacher of the Year selected, and they were going to make me Legislator of the Year, I would say "No thanks," because, it means money out of my own pocket for all of my travel, anytime somebody invites me, and I think this gentleman told me that he had 8 different appearances over the next couple of months, to speak to teacher groups and various workshops around the State. All out of his own pocket. So, I would think that with the amount of money the teachers make in this State, that it is very difficult sometimes, to come up with these extra funds. So, the Commissioner over here suggested to this Teacher of the Year, that it might be appropriate for him to make this film, to help sell the art in the schools, and then suggested that perhaps the Department could come out of one of the title programs, and come up with some dollars, which was done.

Well, during the course of conversation, the Commissioner spoke to a couple of different legislators along the way and talked about what a good idea it was. This was all prior to his leaving the State. The Commissioner, you see, made a couple of different promises, to 2 different legislators, and we wound up with some hurt feelings, as a result of what happened to this particular bill.

There is nothing wrong with this bill. We are talking peanuts here. The Department can come up with and with no problem whatsoever. It is almost shameful for us to have to debate in this fashion. I have not been around to a single one of you, in this issue, or on any other issue, and asked please vote with me on this. I have never asked one of you to do that, nor would I. That is not my style. Nevertheless, I think it is a good bill. The Department can come up with this money pretty easily. It is no problem for them to come up with the money. The Commissioners said that. The Department said it. The Maine School Management Association, the Maine Teachers Association. Every other educational entity in the State was down there supporting the idea. There was no one there who opposed the idea. But, again we got a couple people with some hurt feelings. I would hope we would pass the Report A, here and send it on its' way, and not have to put it down on the Appropriations Table, where we have 4 or 5 times as many requests than we have money for, and have to have this little bill to help an example Teacher of the Year to travel around the State. We wouldn't have to put it down and we wouldn't have to compete. It really is just peanuts. Thank you, Mr. President.

THE PRESIDENT: The pending question before the Senate is the motion of Senator BROWN of Washington to ACCEPT Report A, OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-646).

A Division has been requested.

Will all those Senators in favor of the motion of Senator BROWN of Washington to ACCEPT Report "A" OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-646), please rise in their places and remain standing until counted.

Will all those opposed please rise in their places and remain standing until counted.

21 Senators having voted in the affirmative and 9 Senators having voted in the negative, the motion by Senator BROWN of Washington to ACCEPT Report A, OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-646), in concurrence, PREVAILS.

The Bill READ ONCE.

Committee Amendment "A" (H-646) READ and ADOPTED, in concurrence.

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

Off Record Remarks

SECOND READERS

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

House

Bill "An Act Authorizing the Acceptance of Federal Block Grants and Making Allocations from the Federal Block Grants for the Expenditures of State Government" (Emergency)

H.P. 1659 L.D. 2337

Bill "An Act to Insure the Rights of the Staff of the Projects Serving Preschool Handicapped Children and Other Preschool Teachers Employed by Public Schools to Receive Maine State Retirement" (Emergency)

H.P. 1662 L.D. 2340

Bill "An Act Making Allocations from the Highway Fund and Other Funds for the Expenditures of State Government and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 1986, and June 30, 1987" (Emergency)

H.P. 1666 L.D. 2346

Bill "An Act to Amend Rule-making Provisions in the Maine Administrative Procedure Act"

H.P. 1663 L.D. 2341

Which were READ A SECOND TIME and PASSED TO BE ENGROSSED, in concurrence.

House As Amended

Resolve, Ratifying Washington County's Use of Unappropriated Surplus to Pay Deficits (Emergency)

H.P. 1572 L.D. 2222
(C "A" H-647)

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

Senate

Bill "An Act Concerning Nursing Staffs in Nursing Homes, Staff Ratios, Reimbursement, Policies and Delegation of Duties"

S.P. 937 L.D. 2350

Bill "An Act to Incorporate the Annual Review of Fee Schedules for Providers under the Medical Assistance Program into the Annual Medicaid Report"
S.P. 938 L.D. 2351

Which were READ A SECOND TIME and PASSED TO BE ENGROSSED.

Sent down for concurrence.

ORDERS OF THE DAY

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

SENATE REPORTS - from the Committee on AGRICULTURE on Bill "An Act to Improve the Marketing of Milk in Maine"
S.P. 856 L.D. 2168

Majority Report - Ought Not to Pass.

Minority Report - Ought to Pass in New Draft under same title.
S.P. 939 L.D. 2352

Tabled - April 8, 1986, by Senator VIOLETTE of Aroostook.

Pending - Motion of Senator ERWIN of Oxford to ACCEPT the Minority OUGHT TO PASS IN NEW DRAFT Report

(In Senate, April 8, 1986, Reports READ.)

On motion by Senator HICHENS of York, supported by a Division of at least one-fifth of the Members present and voting a Roll Call was ordered.

THE PRESIDENT: The Chair recognizes the Senator from Oxford, Senator Erwin.

Senator ERWIN: Mr. President, Ladies and Gentlemen of the Senate. Over the years, the life of our dairy farmer has not been easy. The road which they have had to travel, has been extremely rough. I am sure you must recall that in 1985, the Agriculture Committee opened up a major problem, in the very first week of our Session. I, as Chairman, didn't really have time to get to know my Committee before we tackled a very large issue, concerning our milk problem.

During the course of working on this, for approximately 2 months, January and February, there were many, many problems that were discussed. We wondered what was going to happen to our dairy industry. Were we going to be able to save the Maine Milk Commission? And if we don't, what happens to the livelihood of our dairy farmers? Everyone seems to be concerned with the dealers. I am not. I am concerned, primarily with our dairy farmers.

Out of our problems in January and February of 1985, we came up with a sturdy milk study proposal, which you Members were generous enough to support. It was a very good study. There were some capable people, not only on the study panel, but on the legislative group that worked with them. Out of that milk study came a bill.

A bill that was well attended at the hearing. During the course of the hearing I did something that ordinarily I do not do. I was requested by one member of the Agricultural Committee to have a show of hands on the feelings of the dairy farmers, and I stress dairy farmers, present on how they felt about the bill. My first request was would the people in the audience, who were dairy farmers, and dairy farmers only, please raise their hand. There were a very large portion of the people present who raised their hand, indicating they were dairy farmers. Then I requested, out of the group, and I repeated the words dairy farmers again, would the people who were opposed to the bill, please raise their hand. I made an estimate of approximately 30% of the people who had raised their hand, first indicating they were dairy farmers, raised their hand in opposition to the bill.

I would like to point out 2 things. That at the first show of hands, from the second row back, they were dairy farmers. Many, scattered all through the audience. At the second show of hands on opposition to the bill, there wasn't any in the front half of the room that were opposed to it. I was told later on that some of the hands that were raised, that opposed the bill, or at least said they were opposed to the bill, really was the hand that belonged to a lobbyist.

So, even at 30%, I had people tell me, that was a very conservative estimate. The majority of the dairy farmers there did not express opposition to the bill. If someone had told me 6 years ago, that in my 3 and a half years down here, I would have fought as hard as I have, to defend the Milk Commission, I would have told them that they were wrong. Because, before I came down here, I was really opposed to the Milk Commission. But getting to know some of the people in the farming community, and you notice I keep stressing farming community, I was impressed with the opponents of trying to preserve the Milk Commission, and what it meant to their livelihood.

Some of the people that I value their opinions very highly, in my district, have stressed to me the importance of trying to get this bill passed. The importance of this piece of legislation to preserve the Maine Milk Commission.

A lot of people shake their head and say "We don't need this bill, nothing is going to happen to the Milk Commission." I hope I am never in a position to say "I told you so." I ask you, when you consider your vote, to take a close look at where the pressure has come from. Is it from the dealers? Is it from the people who work for the dealers? Or has it been for the people who milk the cows? Thank you, Mr. President.

THE PRESIDENT: The Chair recognizes the Senator from York, Senator Hichens.

Senator HICHENS: Mr. President and Members of the Senate. I have not been on the Agriculture Committee for the past 3 years, but I did serve on that Committee for 13 years, and I have gone through Milk Commission hearings, gone through many, many bills regarding producers rights, dairy rights and other rights of the dairymen, and of the consumer in our State.

I cannot help but wonder, as the good Senator has stated, so many people are in favor of this bill, why the Maine Farm Bureau opposed it. The Maine Milk Producers opposed it, and several dairy farmers have come to me, and said that they opposed it. This legislation was drafted by the Department of Agriculture, as opposed by several members of the Select Study Commission, that the good Senator has referred to, as well as 10 Members of the Agricultural Committee, most of them dairy farmers.

This legislation repeals the prohibition on volume discount, the price in the Legislature which was overwhelmingly passed in the last Session. There is no question that this bill would again lead to volume discount pricing. Opponents of this legislation argue that large grocers could buy out of state milk, if this legislation doesn't pass. Large grocers could, at any time, in the past have gone out of State to buy milk, and they have chosen not to.

The price of milk in Maine, is on an average with the rest of the Country. The Maine Milk Commission has been lowering the price of milk in Maine, for over a year, and will continue to drop. The market can adjust to this gradual decline. There is no need to go to a radical change, such as presumptive pricing would bring.

Mark Anderson, of the University of Maine, was a member of the study panel. His comment was that rural consumers could pay as much as \$1 per gallon more than they presently are, if this sort of legislation passes. That bothers me, especially when many of the people on the Committee are rural people. Our dairy industry is suffering enough, right now. I don't think we ought to add to their problem, by the passage of this Bill.

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

Senator EMERSON: Mr. President. Ladies and Gentlemen. I ask you to support the motion of the good Senator from Oxford, Senator Erwin. I believe this a good bill. A good bill for farmers and a good bill for consumers. I expect you have been lobbied quite hard, against this bill, and I would like to tell you who you have been lobbied by, I think. I think you have been lobbied by people representing the Maine Dealers Association.

I would like to ask you a couple of questions. Do you think that these people representing the Maine Dealers Association are lobbying for the benefit of farmers or consumers? Or do you think they might be lobbying for the benefit of Maine milk dealers? I think, perhaps, you have been told, that this would destroy the Maine Milk Commission. I believe it will help the Maine Milk Commission to stay in existence.

The Maine Milk Commission has served the people of Maine well. It has insured Maine consumers of an adequate supply of fresh milk, produced on Maine farms, processed in Maine plants, delivered and sold from Maine stores by Maine people.

However, pressures of the times demand changes. One occurred recently. A couple of years ago, with the advent of the Maine Milk Pool, whereby at one time the premium enjoyed only by those producers shipping to Maine dairies, is now shared by all of Maine dairy producers.

L. D. 2168, is one of two bills. One has been passed already, proposing additional changes, which are needed to protect the integrity of the Milk Pool and the eventual existence of the Maine Milk Commission. In my opinion, it is important to protect the existence of the Maine Milk Commission from the farmers' stand point, if for no other reason, and its' activities for the premium of about \$3 million, into the pockets of Maine dairy farmers, and not at the expense of Maine consumers, but because of the intricate pricing system for milk at the producer level, this premium comes about at the expense of other New England dairy farmers.

Basically, the bill does 2 things. It continues the authority of the Maine Milk Commission, to set minimum producer prices, just like it does now. No different. And it would move the processing and marketing of milk closer to the free market system. Producers would continue to enjoy the benefits they now enjoy, and the great majority of consumers could buy milk at a somewhat lower price.

Although prices at small scattered markets, probably would have to be higher, the bill would direct the Maine Milk Commission to set the minimum wholesale price at the level at which the most efficient processing plant could procure, and deliver milk to high volume stores. This would be known as a based cost price. This differs from the present system in that the present system uses average State-wide processing and delivering cost, in setting minimum wholesale and retail prices. The present system allows large handlers to make excess profits, from large volume deliveries, and use those profits to subsidize smaller markets, and also gives them a competitive advantage over smaller local handlers.

The danger to the Maine Milk Pool and to farmers in continuing the present system, is that it provides an invitation for supermarket chains to seek bids for the purchase of their private label milk, from large efficient out-of-state dairies. Out-of-state purchase of milk would not be in the best interest of the Maine dairy farmers. The first Session of this Legislature authorized the Commission of Agriculture to engage a panel of experts, study and analyze the situation of the Maine dairy industry. An option for insuring us long stability.

Although this panel made no specific recommendation for legislative action, it spoke quite clearly of the possible dangers in keeping the present status quo. I would like to read you a couple of paragraphs from a letter that I received from one member of this panel. I was questioning, regarding some things in this, and he wrote this letter back to me. He said "I think I speak for all members of the Milk Study Panel, when I say that our primary concern, while researching and writing milk pricing alternatives for Maine, was the viability of Maine dairy producers.

We concluded that simple amendments of the status quo, would be at best, a disservice to the dairy industry, and at worst a serious blow to its' continued viability. Therefore, if members of the Maine Legislature feel that the strength of Maine's dairy farming community is important, some changes in the relevant Milk Commission statutes is necessary." This came from the Mark Anderson that was quoted a little while ago.

I won't bore you with the whole letter, but I would like to read another paragraph: "Specifically, what we have tried to do as economists, was point out areas in the current regulatory structure, where the price regulation ignored economic reality. Such a situation may be allowed to exist in the short run, but it is only a matter of time before the market forces react to produce sociability undesirable results. It allows a large Southern Maine dairy processor to compete unfairly, against small processors, and all processors in Central and Northern and Eastern Maine. Second, and more significantly, for Maine dairy farmers, it provides a strong incentive for chain stores to seek Southern New England sources for their private label milk supplies. All farmers receiving payments from the Milk Pool will suffer under this, eventually." His last paragraph says: "We have no axe to grind in this matter, and we concluded to a man, that there are potentially major problems for the Maine dairy industry, if the status quo is maintained. I am sure that your Committee recognizes that such a change from the status quo will require short run adjustments, from participants in the market. Particularly the large Southern Maine dairy processors, and rural grocery stores. The question is: Do we wish to protect these participants, while threatening the viability of Maine's most significant agricultural sector of dairy farming?" I think it would be not wise for us to completely ignore these people who have studied this situation, and like they say, they have no axe to grind. So I hope you will support the Senator from Oxford, Senator Erwin.

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

Senator BLACK: Thank you, Mr. President. Fellow Senators. I guess I am the one person, perhaps one of the few in the Legislature, that is a commercial farmer. I have milked a few cows. About 100, when I go home on weekends to get my sanity back. It is really quite refreshing. You get a little of the real stuff on you.

I am not going to come in here and speak about pricing on milk that is done Federally, basically, and confuse you with zone differentials, weighted averages and simple averages, and a few other things I could throw in. Basically, the dairy farmers have lost \$2 a hundred in the past 3 years. When the margins were not that great, efficiency wasn't there, and that is why so many of them are going out of business. With our present milk regulations here, the Milk Commission has responded to that decrease to some degree. Approximately 3 years ago, the margins for dealers wasn't that great. It wasn't that great on on retailers, but the drop to the farmers has been more than has been reflected to the consumer.

I am not that concerned because the price of milk isn't that bad in Maine. It isn't that critical. You can't get drunk on it, so a lot of people don't want to drink it anyway. All joking aside, this is not a farmer bill. There is concern. Basically a big percentage of the milk sold in this State, is sold through the supermarket. There is nothing to prevent them from going South and purchasing milk, where there is plenty of availability of milk, and where the bottling capacity is in excess. Hannaford Brothers has had a representative here at these hearings for about 3 weeks. They haven't gone South and bought milk previously, and they may not. I am not saying this bill has got to pass. I am not asking you to vote for it. But, I do know this. If they do go South and buy milk, Shaws will go and Associated Grocers will go, and they are supporting this bill.

If they do, the milk is going to go South to be bottled. There is that chance and we have known this. You spent money on a study last year, and the results of that study, and not all people agreed on it, and in the milk business not everybody does agree. I think standing in the position that I do, as a director of a co-op, I have been in as a retail business and I have certainly been in the farming side of it. I think there is that danger. If you don't want to recognize it, that is all right. We can go another year or two. If they haven't gone, that is fine, the dealers will do well. But, definitely when a dealer can sell milk here in Portland, and compete in Bangor, I think he is adequately compensated for it.

I just want to point out that there is a problem with our legislation here. In Virginia, they had a similar law, and brought the price down to cost. They had written New Jersey, they brought the price down to cost, and it was not disaster. And it won't be here.

All this bill does, although it is quite a number of pages, and I'm sure all of you have not read it, it is quite a lot of reading, but it really is a simply bill. All it does is bring the price from up here where its' head high with a profit, down to cost.

If dealer wants to sell below it, he can pull his books and prove it. They don't have to go down there. So many cases, they are above the set price, today. I don't know what is wrong with people competing. That is a good old tradition.

I sure would like to go out with a business with a guaranteed profit in it. There are a few other things which this bill does. It takes the monkey off the Commission's back, and puts it on the dealer, so he can't be sued every fifteen minutes, that you set a price.

I wish I had my glasses, but I took those to the repair man this afternoon, so I will spare you a little time. It isn't a joking matter, but I can't see to read the figures out of this. I really think the consideration for this bill is that there is a danger that the supermarkets will go out and purchase milk and leave the dealers dry.

If they want to take that risk, you go ahead and vote anyway you want. I am not going to ask you how to vote. Senator Erwin and I put our names on the side of this, and we thought it was the proper state for the long term interests for the dairy industry of the State.

THE PRESIDENT: The Chair recognizes the Senator from Oxford, Senator Erwin.

Senator ERWIN: Mr. President. Ladies and Gentlemen of the Senate. I didn't know from which direction the stone was coming, but I felt sure it would. I am referring to the Farm Bureau opposition to this bill. The Executive Secretary, John Olsen and I are very good friends, and I value his friendship highly and respect his opinion. I would like to first point out that the Farm Bureau opposition was to the original bill. If you notice, we do have a new draft. Second, it was not the members of all the farmers that belong to the Farm Bureau, whether they are in the dairy business section, or Farm Bureau members, it was the Executive Committee that took a vote on it. If I remember what John told the Committee, that vote was not unanimous.

One of the major objections that I have heard since I came down here, has been the theoretical model dairy, that was used to plug figures into, and come up with a price. We made a major effort and have eliminated that. I did want to point those two things out to you. Actually, three things. That the Farm Bureau vote was on the original bill, not on the new draft. That the vote was not by the farmers, themselves, it was the Executive Committee. It was not an unanimous vote. And third, that one of the major objections that has been, as far as my knowledge, the Milk Commission has this theoretical model. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from York, Senator Hichens.

Senator HICHENS: Mr. President. In response, I would like to draw your attention to the fact that 5 members of the Committee who signed the Ought Not To Pass Report, are dairy farmers. If this bill were so good, why are they opposed to it? Then the good Senator Erwin just stated that the Farm Bureau had not voted on the redraft, and I have been given to understand that the redraft was not ever discussed in Committee, or that the Farm Bureau ever saw it. Now, ask the good Senator if that is the truth, that the redraft was never discussed in Committee.

THE PRESIDENT: The Senator from York, Senator Hichens has posed a question through the Chair to any Senator who may care to respond.

The Chair recognizes the Senator from Oxford, Senator Erwin.

Senator ERWIN: Mr. President, Ladies and Gentlemen of the Senate. I ask you, is it unusual for a second report to be formed by people who are not in agreement with other members of that committee?

Is that unusual, for some portion of the committee to form a second report, and have a Report B? And when we did have the draft, I think again, I am unique, in which I had the Clerk of the Agriculture Committee make 13 copies, and I requested that she give a copy to each and every member of the Agriculture Committee. How many of you would have given people that you knew opposed your views, a copy of what you are proposing to do? I ask you that question.

THE PRESIDENT: A Roll Call has been ordered.

The pending question before the Senate is the motion of Senator ERWIN of Oxford to ACCEPT the Minority OUGHT TO PASS IN NEW DRAFT Report.

A vote of Yes will be in favor of the motion to Accept the Minority Ought to Pass in New Draft Report.

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

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

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

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators, ANDREWS, BALDACCI, BLACK, BROWN, DOW, EMERSON, ERWIN, GAUVREAU, GILL, KERRY, MAYBURY, NAJARIAN, STOVER, TWITCHELL, THE PRESIDENT - CHARLES P. PRAY

NAYS: Senators, BERUBE, BUSTIN, CARPENTER, HICHENS, MATTHEWS, MCBREAIRTY, PEARSON, PERKINS, SEWALL, SHUTE, TUTTLE, USHER, VIOLETTE, WEBSTER

ABSENT: Senator DIAMOND

EXCUSED: Senator DUTREMBLE

15 Senators having voted in the affirmative and 14 Senators having voted in the negative, with 4 Senators having paired their votes, and 1 Senator being absent, and 1 Senator being excused, the motion by Senator ERWIN of Oxford to ACCEPT the Minority OUGHT TO PASS IN NEW DRAFT Report PREVAILS.

The Bill in NEW DRAFT READ ONCE.

The Bill in NEW DRAFT TOMORROW ASSIGNED FOR SECOND READING.

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

SENATE REPORTS - from the Committee on JUDICIARY on Bill "An Act to Establish Policies Governing Medical Malpractice Claims" S.P. 773 L.D. 1945

Majority Report - Ought Not to Pass.

Minority Report - Ought to Pass in New Draft under same title. S.P. 940 L.D. 2354

Tabled - April 8, 1986, by Senator VIOLETTE of Aroostook.

Pending - Motion of Senator CARPENTER of Aroostook to ACCEPT the Majority OUGHT NOT TO PASS Report

(In Senate, April 8, 1986, Reports READ.)

THE PRESIDENT: The Chair recognizes the Senator from Oxford, Senator Twitchell.

Senator TWITCHELL: Thank you, Mr. President and Members of the Senate. As you probably all know, this is my Bill. I have worked all summer, all spring and all fall on it. I worked with my hospital administrator, who is sitting right behind me. We worked very faithfully on this Bill, we believed in this Bill, and I was hoping we could pass the Bill

As you know, L. D. 1945 is now in a new draft and is now L. D. 2354. On television, last night, the State of Maryland passed a bill similar to this, with a cap on it. California has passed a bill with a cap on it. Illinois has passed a bill with a cap on it, and 9 other States are following suit, the same as this one.

We had a hearing on this Bill some time ago. There were 3 other bills in. The work group had a bill in. I had a bill in, and 2 of the Legislators in the other Body, had their bills in.

The work group bill received a 2 and one half hour hearing. I received 8 minutes. I may not pass this Bill tonight, or I may not pass it tomorrow, but I am going to have my say tonight.

If you ever wanted to represent your people, then this is the bill that you should support. If you live in a rural area, all of your people are for this Bill, and they want us to do something to help them, they want us to do something to keep the doctors in the hospitals, and the hospitals want us to help them. This would be the Bill that you should support.

My bill intends to introduce malpractice claim reforms, or to respond to the impact of the current availability and cost of that coverage. The cost of coverage has increased two-fold and three-fold for hospitals and physicians, in the last 12 to 18 months. This increase in cost is a direct response to a rise in amounts of claims. The impact of these increases has placed a huge burden on premium paying hospitals and physicians of this State. For many established physicians, it would cause early retirement, relocation or limit the scope of services offered.

The health care system can never afford these trends. The flood of malpractice suits will influence a doctor's decision making and cost the consumers thousands of dollars in unnecessary tests. Suit-happy patients don't realize that medicine relies on doctor's instincts, as well as their instruments. As one lawyer put it, malpractice insurance is just a cost of doing business. It is just an attempt by physicians to defeat their own enemies and justice and accountability.

Doctors feel the trial lawyers are driving the doctors out of business, and they won't accept reasonable limits on what they sue for. Many doctors deeply resent fellow professionals, turning what they have given their lives to, into what they regard as a ambulance case for money.

Sometime ago, there was a cartoon, maybe you have seen it, which showed an ambulance full of lawyers. "One of you lawyers will have to get out", said the driver, "so we can make room for the patient."

The insurance companies can be held liable for a variety of things that they never meant to insure. The insurance industry, at one time, earned so much money that they forgot some sound business principles.

Our civil court system has been looked on as a means of social reform, rather than a means of determining liability. The courts tend to find coverage in insurance policies where none was intended by the underwriter. Some of the blame points at doctors who often blame the patients and the lawyers' greed. Some of the blame points at the patients who often say that a doctor's hurried and careless care shows greed. And then we have the lawyers who say there is no malpractice prices, just doctors who want to be, and often are set above the law.

The lawyers will tell you that the real crisis is the mistrust that has developed between doctors and patients. Medical malpractice is a complicated issue. It is one that I am concerned about, because I am interested in American society achieving the highest standards of medical care, possible. Unfortunately, sometimes the human side of the story, the doctors side, gets lost. I will give you an example. I have a doctor in my hospital that just got sued. He is one of the best physicians I know. He cares about his patients, he talks to them, he comforts them, he is extremely bright, conscientious, and keeps up to date in his field.

He was asked some time ago, to treat a young man in the hospital. My friend spent several hours with the patient, the family and the specialist whom he called in. He did every conceivable test that should have been done, and then repeated them several times over. Despite his efforts, and his loving care, they turned around and sued him. My friend was devastated. He began practicing defensive medicine. He was ordering tests for the sake of the chart, not the patient. He thought seriously about giving up the medical business altogether. The patient got \$58,000. After the court costs and lawyers' fees, he ended up with \$11,000. I ask you, is that the kind of system that we should be proud of?

Malpractice suits are supposed to compensate patients for the wrong doings of a physician, not scare away the best and brightest from the practice of medicine. You know, when you go into a doctor's office, you will see his diploma and his degree on the wall. He says that he has earned the right to practice medicine. It does not say that he is God, and heals everything that he touches.

There is a too high expectation by the patients for perfect results all of the time. With all the new breakthroughs and amazing results in advanced medicine, a patient expects 100% success 100% of the time.

Big awards in malpractice cases make big news. The public is tuned into this if anything goes wrong with them. Then you will see some of the lawyers who advertise such ads that say "We can help you to determine your rights, and your rights to collect." The question is, can doctors be blamed because they cannot play God and heal everything they touch? It is the society in which we live, not the doctors that should shoulder the blame.

It is not the doctors fault if he can't patch up all of your broken bones, and put them all back together. It is not the doctors fault if he can't save a lung because of your heavy smoking. It is not the doctors fault if he can't mend your damaged heart because you are overweight. It is not the doctors fault that the expectant mother expected a perfect baby, then goes out and drinks and takes drugs. It is difficult to assess a doctor's performance when his patients do not heed to his advice. Yet, you expect him to heal, and when he doesn't, you feel that there is no other recourse but to sue.

Malpractice does not mean the patient died, nor does it mean "I thought I would feel, walk, look much better after the operation." It does mean that someone made a major mistake, and that happens. After all, doctors are made of the same stuff that their patients are.

The demands on practicing physicians are intense. They must offer their patients comfort as well as technology. Run their office, keep up with the latest medical advances, and still provide time for their families and themselves. And, to be sure, they are well paid for that effort. But the stress is difficult to imagine if you are not a doctor. On one side, physicians have the Federal Government, the hospital administrators and their local health organizations telling them to economize. If they don't stop ordering so many tests, they are in big trouble. On the other side of the partition, the patients family is pleading for them to find out what is wrong and to spare no expense, because they want the best money can buy. Also, when malpractice occurs, patients or their families have the right to fully compensated for those mistakes. Lawyers also have the right to be fairly compensated for their work, but that should not mean a percentage of the take.

In the surveys and research which I have done, lawyers can and often will take up to 40% of the awards. Most doctors and most lawyers are very honorable men and women, and they are not out to milk the public. People seldom sue a trusted friend, but they have no qualms but suing a stranger.

In Maine, we have 53 malpractice claims filed in 1979. Now it has climbed to 291, in 1984. Seven years ago, fewer than 5 suits per 100 doctors, in Maine were filed. Now that figure is up 300%. The extra costs are added to our medical bills. The American Medical Association estimates patients across United States pay \$10 billion extra, in their doctors and hospital bills. But, that \$10 billion is not buying better medical care. It is paying the price of the impossible malpractice law suits.

I come from Norway, and I have one of the finest hospitals in the State. That is Stevens Memorial Hospital. I represent Bridgeton, and that is one of the finest small hospitals in the State. It is the best in the State because of the state inspectors have told us time and time again. My constituents get the best medical care in the State, and they get it in their home town, a rural area. That is the way it should be. There are good hospitals in Farmington, in Caribou and Skowhegan, also giving equally good medical care to people in rural Maine. That is what we all want for our constituents.

The malpractice prices threaten rural health care in our small towns. Maine is a rural State. Litigation is up, awards are up, court costs are up, insurance premiums are up. The whole liability problem has gotten way out of hand. Specialized medical service won't be available for my constituents, and for the rural areas like mine, anymore.

Towns and villages can't afford liability insurance. Small businesses are going under because of workmens' comp. Rural health care, especially in the high risk speciality, in small towns, is in trouble. It has to stop. How are we going to stop it? We stop it the same way they did in California, in Maryland, Illinois and 9 other States. That is by putting a limit on the cost of the process. By making justice less expensive. Not by passing some back room compromise, which just keeps alive the motion of the blank check.

My bill puts a limit on awards for pain and suffering. I want to limit the fees to reasonable amounts. If we have a crisis because of spending, then we limit spending. That is just common sense. My bill limits spending. If we have a crisis because the medical profession doesn't police itself, then we should spell out who polices whom, and when, and how.

My bill spells this out in detail. If we got into this mess because of the insurance companies, let's bring premiums down by setting a limit in the cost and awards. My bill does this. Nobody else seems to want to touch that issue. L. D. 2354 addresses some of the problems of a liability crazy State. It is an excellent way to start limiting claims with excessive awards. There is no way to reduce medical costs, unless we can first reduce insurance fees. And, no way to reduce insurance fees unless we can reduce the unnecessary awards to claimants. This bill attempts to face these issues fairly, and I would hope you will give it your full support. Let me close by saying that medical malpractice problems are serious. The people of this State, your constituents and mine, cannot solve the problems themselves. They are looking to us to take a leadership role on their behalf, and to do half a job just does not cut the mustard. I ask you, with all of my heart, to join me on behalf of the people you represent, in support of my legislation that will help solve the problem. Thank you.

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

Senator CARPENTER: Mr. President, Ladies and Gentlemen of the Senate. It is an unusual position and not a very comfortable position, for myself to be up here, debating my friend, the Senator from Oxford, Senator Twitchell. I first want to commend him for the work, effort and thought he has put into what results in L. D. 2354. However, I think 2354 is a simplistic approach to what is recognized by, at least the Members of my Committee, and the Members of the Legislature in general, is a real problem.

There were a number of malpractice bills submitted to this Legislature, in an attempt to deal with a real problem in the field of professional liability insurance. These bills were all presented to my Committee, they were all heard on the same day, and they have all gone the way of the high buckle shoe, if you will, except for Senator Twitchell's bill. In L. D. 2065, which is the so-called work group bill. Now, what was the work group? Work group were professionals on both sides of this issue.

If you will, the people who were suing and the people who were being sued. Whether you want to bash lawyers or not, without lawyers, the injured persons don't recover for real harms. Real malpractice.

So the lawyers, in this instance, were providing a very needed service, and they were protecting the interests of the clients, and arguably protecting their own interests, but at least the interest of the people who were harmed.

They have worked, and they have worked hard, for almost 2 years, to review this whole area of malpractice, professional liability and professional liability insurance. They have come out with a bill, which if you look in your book, is L. D. 2065, although it has been changed significantly. It was a compromise bill, and you are going to hear, I think in a few minutes, there were too many deals struck between the various groups. That may be so, but any deal that was struck out there in the corridor, or wherever the meetings took place, went by the boards, as far as the Committee is concerned, when that bill was brought to the Committee.

If you had been with me all day today and most of the Members of the Committee, you would see us unraveling some of the so-called deals. We have a bill in Committee, L. D. 2065, which I believe, with all my heart, although I don't like every single part of it, is going to come out of the Committee with a large majority, representing all spectrums of the Legislative community, representing all spectrums, I think, of the professional community out there. This may, and I stress the word, may, have a significant impact on this whole problem. I will submit to you, that if you were to pass this Bill, of the good Senator from Oxford, Senator Twitchell, it might not have a positive impact, and most likely would not have a positive impact on insurance rates, but arguably it could go the other way. I will point out why to you in just a second.

Sort of a good news - bad news scenario, if you will. If you are in a position of Senator Twitchell, the good news is that it does limit contingency fees, it does limit pain and suffering to \$250,000. I would argue that in probably 99% of the cases, that will ever be brought in Maine, that probably is sufficient. But, there may be a case somewhere, where a small child is damaged, and is harmed for 50 or 60 years into his or her life. I think that is not the danger in this bill. Those are kind of catchy items to think about. The danger in the bill, if you will ask your doctors, or ask your lawyer friends, if you have any of them, what the definition of malpractice is. The definition of malpractice for time and memorial is: "a deviation from the applicable standard of care by a professional, which proximately causes damage." That is a shortened version, but it is a law school version. It is, I think, what almost every State in the Nation uses, if not every State. It is what we have used in this Country for 200 years.

It is a deviation from the applicable standard of care. In other words, malpractice doesn't occur because somebody operates on you and the result is bad. That is not malpractice. That was never meant to be malpractice.

Doctors are not insured for that under the malpractice policies. Malpractice, in the classic sense, and as it should be, is a deviation from what is the accepted norm for doctors, in this situation, in this Country. Look at the definition of malpractice in the bill which we have before us today. It is any tort or breach of contract based upon health care services rendered, or which should have been rendered by a health care practitioner, his agents, or employees, the health care provider, his agents, or employees. I would argue that by using the word, any tort or breach of contract, is not a threshold of up here. I mean, you just don't bring a malpractice case because a result of your operation is bad. You have to jump over some pretty high hurdles, if you are the injured plaintiff or claimant, or the claimant's attorney.

The threshold is significantly lowered, I would argue, in Senator Twitchell's bill, in that any tort or breach of contract, suffer at the hands of that health care practitioner or provider. It is now, quote, malpractice, unquote. A radical, radical departure from the normal malpractice. Again, I think that the bill, while very well intentioned, is too simplistic to have real impact. We asked the insurance industry, if we do this, you know this whole area is sort of like a water bed, you push one place and it comes out someplace else, so we wanted to know if we pushed in this area of contingency fees, if we pushed in this area of caps, would it reduce the insurance premiums of our doctors. The answer was almost universally most probably not. They wouldn't say no, but the Maine experience is so small, in the whole scheme of things. Chances are it would have no positive impact on the insurance rates. Whereas the other bill is a comprehensive, and I do mean comprehensive, thorough reworking of this whole area. The other bill runs 20 pages. This bill runs 2. It gives you an idea of how comprehensive the other one is, as opposed to this one.

I am standing here putting my credibility, not only as a Senator, as a Chair of that Committee, but as an attorney, on the line, that the bill that is due to follow, hopefully we can finish it up tonight, and we hope it will be out on the Floor by Thursday, is a better bill. I am not saying that this a bad bill, if there were nothing else, but this bill is just too simplistic to work, in my opinion, and the other bill that is due to come along, will better achieve the kinds of ends that your people want. I think, if you were to call your practitioners back home, your doctors, and ask them, I think, and I won't say unanimously, but overwhelmingly they would support the bill that is to follow our of the Committee.

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

Senator SEWALL: Thank you, Mr. President. Members of the Senate. I would like to suggest to you a third alternative of action, and that is that you could support both bills, and do the whole package.

I have looked at both bills in the Committee, and the doctors at home have talked to me, and my conversations went something like this: "We have been told that you should probably vote against the bill that has a cap, the one we all voted for before in my particular hospital, because if you don't, then nothing will pass, because the other bill will not pass." I would suggest to you that both of these bills could pass, and then we would really be handling the problem. Too simplistic? Perhaps, but if the other one is 20 odd pages, maybe pretty confluent, and by the time we figured it out, it may be a little difficult to understand, too. I don't think there is anything wrong with those people who want to do more than what the Omnibus Bill does. That is the position I find myself in. I am supporting both bills. I think all of the measures are good ideas and I am ready to try about anything, because in rural Maine, health care is critical. If we don't have it, we are a lot worse off than we would be if we had a law that was a little too tight.

THE PRESIDENT: The Chair recognizes the Senator from Knox, Senator Chalmers.

Senator CHALMERS: Thank you, Mr. President. After working all day on L. D. 2065, coming down and looking at this bill, I understand what the good Senator from Oxford, Senator Twitchell is trying to do. We do have a crisis in malpractice costs. The Business and Commerce Committee has been studying it. We've studied it. There is a study to L. D. 2289, which is to study Tort Reform, which is to look into all of this. It seems to me, that we need to take a very cautious, very thoughtful approach on this whole problem. Let me point out one problem. The cost of malpractice insurance for the medical profession, is not dependent upon the contingency fee paid to lawyers. Contingency fees paid to lawyers is something that is arranged with the client when they come in through the door, something that is usually supervised by the courts.

Certainly, ultimately supervised by the Fee Arbitration Commission of the Bar Association, and certainly worked out within the Bar. It is paid to a lawyer after the jury, and only after the jury finds that the person is entitled to something. It is the way a person with no money, the little guy, gets into court. The little guy who can't possibly fund enough money up front, that covers the cost of expert witnesses and extensive litigation. It is the only way the little guy gets into court.

After the little guy has been awarded a verdict by the jury, then and only then, does the attorney get paid. It isn't going to help medical malpractice costs one bit. I submit that if the issue is to be studied, it should be studied in L. D. 2289, which is a study of Tort Reform. The bill which we're working on in the Judiciary Committee, is coming down, I hope tomorrow, and you will find that it is much more a well rounded approach, and not well meaning, but not a piece meal approach.

THE PRESIDENT: The Chair recognizes the Senator from Washington, Senator Brown.

Senator BROWN: Thank you, Mr. President. I would like to pose a question through the Chair. The question is, has there ever been a case in this State, that awarded non-economic damages for pain and suffering, at this cap. If there has not been, what affect will this particular bill have in the long run?

THE PRESIDENT: The Senator from Washington, Senator Brown has posed a question through the Chair to any Senator who may care to respond.

The Chair recognizes the Senator from Aroostook, Senator Carpenter.

Senator CARPENTER: Mr. President. In response to the Senator from Washington, Senator Brown. It is my understanding that no award in the State of Maine for pain and suffering has exceeded the cap. Therefore, I think the argument is that we're trying to shoot a mosquito with an elephant gun, and the mosquito isn't even in the same room with us, I guess. This is something that is attractive, but has no real impact in the State of Maine. It is going to have no impact on your malpractice rates. In response to the Senator from Lincoln, Senator Sewall. Most of this bill, not all, and it could be affected by amendments, but most of this bill is inconsistent with what is in 2065. The lawyers fees are not, and the cap is not. The rest of the thing such as definitions and what not, are not consistent with what is in that bill. We worked on that bill all day today. It would not fit with this bill, as it presently stands.

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

Senator SEWALL: Thank you, Mr. President. Members of the Senate. Again, you can't have it both ways. You can't say no matter what we do won't affect the State of Maine, because we're in a pool, and then on the other hand, if you put a cap on this, and the other places in the pool put a cap on, obviously, actuarially, your exposure is less. So, you can't have that both ways. You can't say that nothing will affect Maine, because we're in a great big pool. And also, if the cap doesn't affect anything and doesn't hurt anyone, why is everyone fighting it so hard?

THE PRESIDENT: The Chair recognizes the Senator from Oxford, Senator Twitchell.

Senator TWITCHELL: Thank you, Mr. President. Members of the Senate. You know, I haven't seen this 2065 bill. I haven't seen what they are doing with it, I haven't seen how they have tinkered with it. They were told not to tinker with it, but evidently they are tinkering with it. I haven't seen it. I have a newspaper clipping here from Jack Simmons, who is a very respected lawyer in my area, and he helped this bill, L. D. 2065. That bill was a compromise, and he said it would probably do nothing to bring malpractice rates down. The Director of the Medical Mutual Insurance Company also agreed with him. The Saint Paul Insurance Company also said that the rates would probably not be affected.

I haven't seen L. D. 2065, after it has been tinkered with. I would like to see it. I would suggest that maybe someone Table this bill until we can get a look at L. D. 2065.

THE PRESIDENT: The pending question before the Senate is the motion of Senator CARPENTER of Aroostook to ACCEPT the Majority OUGHT NOT TO PASS Report.

On motion by Senator TWITCHELL of Oxford, supported by a Division of at least one-fifth of the Membership present and voting, a Roll Call was ordered.

Senator BALDACCI of Penobscot moved to Table 1 Legislative Day, pending the motion of Senator CARPENTER of Aroostook to ACCEPT the Minority OUGHT NOT TO PASS Report. (Roll Call Ordered.)

On motion by Senator VIOLETTE of Aroostook, Tabled until Later in Today's Session, pending the motion of Senator CARPENTER of Aroostook to ACCEPT the Majority OUGHT NOT TO PASS Report. (Roll Call ordered)

The Chair laid before the Senate the Tabled and specially assigned matter:

An Act Concerning State Contribution to Pollution Abatement

H.P. 1469 L.D. 2071
(H "B" H-614 to H "A"
H-540; S "A" S-389)

Tabled - April 7, 1986, by Senator VIOLETTE of Aroostook.

Pending - ENACTMENT

(In House, April 4, 1986, PASSED TO BE ENACTED.)

(In Senate, April 2, 1986, PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-540) AS AMENDED BY HOUSE AMENDMENT "B" (H-614) thereto AND SENATE AMENDMENT "A" (S-389), in concurrence.)

On motion by Senator MCBREAIRTY of Aroostook, the Senate SUSPENDED THE RULES.

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

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

On further motion by same Senator, the Senate RECONSIDERED its action whereby Senate Amendment "A" (S-389) was ADOPTED.

On further motion by same Senator, Senate Amendment "A" (S-463) to Senate Amendment "A" (S-389) READ and ADOPTED.

Senate Amendment "A" (S-389) as Amended by Senate Amendment "A" (S-463) thereto ADOPTED, in NON-CONCURRENCE.

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

Sent down for concurrence.

Senate at Ease

Senate called to order by the President.

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

SENATE REPORTS - from the Committee on JUDICIARY on Bill "An Act to Establish Policies Governing Medical Malpractice Claims"
S.P. 773 L.D. 1945

Majority Report - Ought Not to Pass.

Minority Report - Ought to Pass in New Draft under same title.

S.P. 940 L.D. 2354

Tabled - April 8, 1986, by Senator VIOLETTE of Aroostook.

Pending - Motion of Senator CARPENTER of Aroostook to ACCEPT the Majority OUGHT NOT TO PASS Report. (Roll Call ordered)

(In Senate, April 8, 1986, Reports READ.)

THE PRESIDENT: A Roll Call has been ordered.

The pending question before the Senate is the motion of Senator CARPENTER of Aroostook to ACCEPT the Majority OUGHT NOT TO PASS Report.

A vote of Yes will be in favor of ACCEPTANCE.

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators, ANDREWS, BALDACCI, BERUBE, BROWN, BUSTIN, CARPENTER, CHALMERS, CLARK, GAUVREAU, GILL, HICHENS, KERRY, MATTHEWS, MAYBURY, NAJARIAN, STOVER, TUTTLE, USHER, VIOLETTE, WEBSTER, THE PRESIDENT - CHARLES P. PRAY

NAYS: Senators, BLACK, DOW, EMERSON, ERWIN, MCBREAIRTY, PEARSON, PERKINS, SEWALL, SHUTE, TWITCHELL

ABSENT: Senators, DIAMOND, KANY, TRAFTON

EXCUSED: Senator DUTREMBLE

21 Senators having voted in the affirmative and 10 Senators having voted in the negative, with 3 Senators being absent, and 1 Senator being excused, the motion by Senator CARPENTER of Aroostook to ACCEPT the Majority OUGHT NOT TO PASS Report, PREVAILS.

Sent down for concurrence.

Off Record Remarks

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

Emergency

An Act to Expand the Maine Conservation Corps
H.P. 1251 L.D. 1761
(C "A" H-524)

Tabled - March 3, 1986, by Senator PEARSON of Penobscot.

Pending - ENACTMENT

(In House, February 28, 1986, PASSED TO BE ENACTED.)

(In Senate, February 26, 1986, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-524), in concurrence.)

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

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

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

On further motion by same Senate, the Senate RECONSIDERED its action whereby Committee Amendment "A" (H-524) was ADOPTED.

On further motion by same Senator, Senate Amendment "A" (S-460) to Committee Amendment "A" (H-524) READ and ADOPTED.

The Chair recognizes that same Senator.

Senator PEARSON: This is an amendment to the Maine Conservation Corp. What it does is, in the original bill, we required that the State pay liability insurance for everybody. However, this bill says that if you already have it, we won't have to pay for it. You can go with what you already have. It was an omission, and we wanted to clean that up, send it through the process again, and set it back on the Table. Thank you.

Committee Amendment "A" (H-524) as Amended by Senate Amendment "A" (S-460), thereto ADOPTED in NON-CONCURRENCE.

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

Sent down for concurrence.

Senator Matthews of Kennebec was granted unanimous consent to address the Senate On the Record.

Senator MATTHEWS: Mr. President and Members of the Senate. I will be very brief. I just wanted to remind the Members of this distinguished Body that there are many maintenance employees of the Railroad, Union Employees, that are still manning picket lines, still striking, and fighting a company which is still refusing to bargain. These picketers are out there, have been out there in the rain, and still very strongly fighting their cause. I also rise tonight, to go On Record to again, I think, stress what has been stated many times before. The numerous safety problems that are occurring on the rail lines today, in the State of Maine, with non-union and unreasonably skilled people tending our rail lines.

I was called, the other day, by an employee of Scott Paper Company, whose name shall remain anonymous, who is the head of a group of workers down there, to tell me about a near miss, where some employees could have been seriously injured, because the rail line was being run by some people who didn't know how to back that train up. There was an accident, and Scott Paper Company OSHA was called in. They are still investigating that accident. Thank the good Lord above, no one was injured, but that is the kinds of deficiencies, and inefficiency we have on our rail lines today, with GTI. I wanted that to go on the Record to remind all of us, in this Body, that those kinds of safety problems are occurring across the State of Maine. I was asked to mention this, and I will continue to keep you informed. Thank you.

Off Record Remarks

On motion by Senator CLARK of Cumberland, ADJOURNED until Wednesday, April 9, 1986, at 8:30 in the morning.