

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

**LEGISLATIVE RECORD**

OF THE

***One Hundred and Twelfth***

***Legislature***

OF THE

STATE OF MAINE

**VOLUME II**

**SECOND REGULAR SESSION**

April 3 - April 16, 1986

Index

**SECOND SPECIAL SESSION**

May 28 - May 30, 1986

Index

**THIRD CONFIRMATION SESSION**

July 15, 1986

Index

**FOURTH CONFIRMATION SESSION**

August 29, 1986

Index

**THIRD SPECIAL SESSION**

October 17, 1986

Index

**FIFTH CONFIRMATION SESSION**

November 24, 1986

Index

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

In Senate Chamber  
Monday  
April 14, 1986

The following Joint Order: H.P. 1699

ORDERED, the Senate concurring, that the Joint Standing Committee on Appropriations and Financial Affairs be authorized to carry over "AN ACT to Fund and Implement a Certain Collective Bargaining Agreement," H.P. 1684, L.D. 2373, to the Second Special Session of the 112th Legislature.

Comes from the House READ and PASSED.

Which was READ and PASSED, in concurrence.

Senate called to Order by the President.

ENACTORS

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

Prayer by Father Marcel Dumoulin of St. Augustine's Catholic Church in Augusta.

An Act to Reorganize the Delivery of Vocational Education in Northern Aroostook County  
H.P. 1692 L.D. 2383

FATHER DUMOULIN: Let us pray. Lord most of us are tired this morning, but we thank You for the beauty and the joy of this day, that gives us new hope. We need to hear over and over again that You love us, so that we can heal the wounds of us that have accumulated over the years. You said, come to Me all of you who suffer and labor, and I will give you rest. Here we are Lord, with the weight of our woes, the burden of our pain, and the yoke of our sins. Tell us again that You love us and never abandon us so that we may bring freshness to live. Amen.

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

Resolve

Resolve, to Compensate John P. Taylor of Augusta as Personal Representative of the Estate of Sharon Taylor, also of Augusta  
S.P. 949 L.D. 2376

Reading of the Journal of Saturday, April 12, 1986.

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

Off Record Remarks

Emergency

PAPERS FROM THE HOUSE

An Act to Establish Municipal Cost Components for Services to be Rendered in Fiscal Year 1986-87  
H.P. 1691 L.D. 2382

Joint Order

This being an Emergency Measure and having received the affirmative vote of 26 Members of the Senate, with No Senators having voted in negative, and 26 being more than two-thirds of the entire elected Membership of the Senate, was PASSED TO BE ENACTED and having been signed by the President, was presented by the Secretary to the Governor for his approval.

ORDERS OF THE DAY

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

SENATE REPORTS - from the Committee on JUDICIARY on Bill "An Act to Clarify Public Rights to Use the Intertidal Zone"

S.P. 758 L.D. 1922

Majority - Ought to Pass in New Draft under New Title Bill "An Act to Confirm and Recognize Public Trust Rights in Intertidal Land"

S.P. 950 L.D. 2380

Minority - Ought Not to Pass.

Tabled - April 12, 1986, by Senator VIOLETTE of Aroostook.

Pending - ACCEPTANCE OF EITHER REPORT

(In Senate, April 12, 1986, Reports READ.)

Senator CARPENTER of Aroostook moved that the Senate ACCEPT the Majority OUGHT TO PASS in NEW DRAFT under NEW TITLE Report.

Senator SEWALL of Lincoln moved the INDEFINITE POSTPONEMENT of the Bill and Accompanying Papers.

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

Senator NAJARIAN: Mr. President and Members of the Senate. I rise to oppose the motion to Indefinitely Postpone and I would ask for a Roll Call on that motion. It is important to remember that this Bill applies only to recreational rights within the intertidal zone between the high water mark and the low water mark. It merely confirms and recognizes a right that already exists. This is a view taken by the Attorney General's office and by all attorneys who specialize in coastal law. Just a little bit of background on the Bill. Fishing, fowling and navigation were the historical purposes of the public use within the intertidal zone, but as the Supreme Court said in 1981, others have grown up as well, and their judicial decisions over the last three hundred years have interpreted this colonial ordinance in Massachusetts very liberally, and have said that the public has the right to walk in this zone. They have the right to skate on it when it is frozen, and they have the right to rest their boats on it and so forth when they are going about their business or pleasure. For that reason I hope that you will oppose the motion to Indefinitely Postpone.

On motion by Senator NAJARIAN of Cumberland 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 Lincoln, Senator Sewall.

Senator SEWALL: Thank you Mr. President and Members of the Senate. The Bill sounds like a simple, easy to solve, piece of legislation and I would, I guess, have to rename it the greatest land taking bill of the century. The changing to recreation is totally unprecedented. It means in essence, that the State is taking away property that owners believe that they did own. Maine and Massachusetts, when they were one and then when they were several, have a unique provision in their law which says that owners own to the low water mark, unless it specifically says that they don't in the deed. This isn't usual in most states, but it is in Massachusetts and Maine. Under both the common law and the United States and the State Constitution, you cannot take private land without compensation. In the State Constitution that is in Article 1, the Declaration of Rights, Section 21. Under the Great Pond Ordinance of Massachusetts, when land was sold from the sovereign to private ownerships, private rights were reserved for fishing, fowling and navigation, in both the salt water and the great ponds.

Today, to think that you are only dealing with the salt water in this Bill, when you are doing such a great precedent as this, you must also think that you will be dealing with the Great Ponds, make no mistake about it, you are getting into an area where these rights are going to be held both for lakes and for salt water. The questions come up about people who live on the coast, and also let me remind you this doesn't have to do just with beaches nor does it just have to do with the coast of Maine. It has to do with all the river property and salt water embankments. The question has come up that people are not taxed for this land, therefore it is totally in the public domain. I maintain this is not true. If the tax is, by implication, it is for access to the water, that was the greatest form of transportation at the time when we broke away from Massachusetts and formed our own State. Access to the water is considered a very valuable right, although some rights were left for fishing, fowling and navigation for other householders at the time and for other people to get to their property.

This access to water was important and no one can say that people on the shore are not taxed more than people who live further back from the shore. This is because of that right to access. That also shows true, for instance on Route 1, you can't say that a business located on Route 1 isn't perhaps taxed more than one that is five miles off of the road, that's because there is that access. For the purpose of taxation, of course, that access is taken into consideration. To take this land, therefore, which people believe they own, have the access but gave up certain rights to take this for recreation, undefined recreation, to take that, constitutes an absolute taking of property without compensation.

While I believe, and voted for the bond issue that came through here late Saturday night, that the State should have money to buy access for people to go to the shore, I support that. I think there is a need for more access to the shore for our public. I don't believe that you have to take away a person's private property, which they own and which they have from historical time zone, in order to do it. This whole Bill came about because of a Moody Beach problem in a very small amount of shore property of a beach which had been used publicly. There were some 67 lawsuits. I would recommend to you that with the great length of the coast, and the length of the rivers, you might be passing a lawyers' relief act, should you pass this Bill.

All and all, I think it is probably a very dangerous piece of legislation to have before us. We have heard that the courts have said that this is a right already maintained. The Attorney General, by the way, came and opposed this Bill. I would like to read you an opinion of the Justices. The Supreme Judicial Court of Massachusetts, June 27, 1974, "A question was propounded by the House of Representatives to the Justices of the Supreme Judicial Court relating to the Constitutionality of a Bill, creating a public on foot free right of passage", then I just mentioned to you that this Bill is not only walking, but full recreation rights, the one that we are discussing. Along the shore of the coastline between the mean high water and the extreme water lines subject to certain restrictions, the Justices of the Supreme Judicial Court have the opinion, that if we enacted the Bill, it would violate the provisions of the Constitution of the Commonwealth and of the United States, which prohibit the taking of private property for public purposes without due compensation.

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

Senator NAJARIAN: Mr. President and Members of the Senate. I would like to respond to the points that the good Senator from Lincoln, Senator Sewall, made. First of all, this is not a taking. We are not taking away any access of the private land owner who abutts the shore, they still have that same access. The private land owner has never had the right to exclude the public from the intertidal zone. They have always been allowed to be there for certain purposes since Maine became a State. That is a nonissue. She is talking about the historical purposes of fishing, fowling and navigation. The only reason that the private land owners were granted title to the low water mark, except for certain public uses, was so that they would build wharfs and commerce in the colony would be developed. If the private land owners today are certainly not building wharfs, they are therefore their own recreational use and trying to exclude the public from having that same benefit. I am sure most of them, today, would be very upset if their neighbors began to build wharfs out so cargo could load and unload.

Secondly, this is not a lawyers relief act. In fact, I believe that it will have the opposite affect it this Bill becomes law, Its' Constitutionality will be challenged in one court suit, and the court can decide its' constitutionality at one time, rather than to have a serial litigation all up and down the coast, which is what will happen if we don't pass this Bill, and that may happen anyway on the dry sand area, where the land above the high water mark. We believe that this is the least costly, most efficient way to address the confusion that exists. Many people who are buying land along the shore in Massachusetts believe that the law in Maine is the same as the law in Massachusetts, which it is not. Therefore, some of them have put up fences trying to exclude the public and we believe this will clarify quickly the public's right and the private right in this intertidal zone.

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

Senator TRAFTON: Thank you, Mr. President and Members of the Senate. I rise as a proud cosponsor of this Bill, L.D. 1922. In considering L.D. 1922 it is important to note what it does and what it does not do. In particular, this Bill does not create new rights. Rather this Bill confirms and recognizes the traditional rights of the people of Maine to walk upon and enjoy the intertidal areas along the coast. The Colonial Ordinance has never been enacted in Maine, but it has become a part of Maine's Common Law, to the extent that the traditions in Maine found it suitable. The ordinances did not intend, by its' letter or its' spirit, to limit the public to fishing, fowling and navigating in the intertidal area. The public trust rights in the intertidal lands, including recreational rights, are based upon long tradition and usage in this State. These rights are so well known as to be presumed, they are bound up in the heritage of Maine people, and in voting in favor of this Bill you will be confirming this heritage. This Bill does not attempt to affect the rights that may have arisen in upland areas along the coast, the reason for this is simple. In some upland areas, there are public rights while in others there are not. The existence of public rights in the upland areas along the coast depend upon the particular circumstances in each case. The application of custom, acquiescence implied, dedication prescription in the Public Trust Doctrine, to particular upland areas, will depend on the facts in each case, which cannot be dealt with by this Legislature. The intertidal areas along the coast of Maine have been used by generations of Mainers, for relaxation and enjoyment, for strolling, walking, sunbathing, swimming and even windsurfing. The intertidal areas along the coast of Maine have never been off limits to its people. This Bill quite simply is a recognition by this Legislature, of the rights of people to exercise, for as long as anyone can remember. I urge you to oppose the Senators motion to Indefinitely Postpone this Bill.

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

Senator SEWALL: Thank you, Mr. President and Members of the Senate. I hope you remember that last sentence that I read, that no one seems to pay any attention to in the Massachusetts Court, that they found that it was a taking of land, and why is it a taking of land? Let me try to give you another example. If I owned a piece of land and I reserved a right, which is what has happened here, I sell that piece of land to somebody reserving the right for me to go across that land and use the well. That means the owner has given up that right, in other words, when I sold it, I kept the right to cross there and use the well. What this Bill would do in that same situation, is say that everyone in the State of Maine can draw their water out of that well, because one person had a right reserved. There was a right reserved for one person to cross there and draw from that well. Obviously, the person who bought the property and gave a right, a small right, to me to cross to take water from the well. That was one thing, it would be another thing if the whole town started taking that water. That person could then feel that they had something taken away from them. This is what this Bill does, the property belonged, as everyone admitted, to the low water mark belonged, was given the tradition was that property was given reserving a few rights; fishing, fowling and navigation. Those rights were reserved. Just like the well. If you say that those rights now are open to recreation, great big term, as a land owner, I feel like you, all of a sudden, said everybody can come drain my well. That is why it is a taking, and it is a taking of private property. There has never been any, in Massachusetts, they said, that even walking was a taking of property. I just can't imagine how anyone can think that this is anything separate of that.

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

Senator NAJARIAN: Mr. President and Members of the Senate. I just will remind Senator Sewall that we are talking about Maine and not Massachusetts. The law in Massachusetts is quite different, they have literally restricted public use in the intertidal zone of the fishing, fowling and navigation, but our court has not. Our court has said that the public can do many other things in this zone. On the cases that have come before it, although recreation has not come directly before the court it has said that when the Governor before he signs the Submerge Lands Bill in 1981, where the State gave up the public's right in Land Submerged in intertidal land that had been filled, the court in its answer to the Governor saying that it was constitutional because it would benefit the public in quiet title the general public would be benefited. They also said that while fishing, fowling and navigation were the historical purposes for which the public trust principle was developed in the Common Law those public uses in the intertidal and the Submerge land remain important but others have grown up as well. The press of an increasing population has led to heavy demands upon Maine's great ponds and sea coast for recreational uses.

I would further point out, that the analogy that the good Senator uses on the well and the private property and giving one right to a person to draw water does not extend to the general public, that is absolutely correct, but it is inappropriate to compare that with the intertidal zone. The private land owner abutting the shore has never been treated the same in the law, as a person owning property upland or inland, there they have the right to give rights and to exclude people from their property, that has not ever been the case of the proprietor abutting the shore. Since Roman times the intertidal zone and submerged lands have been considered to be owned in common by everybody and not subject to private ownership. The only reason that the colonists in Massachusetts were given tidal to the low water mark was in order to encourage commerce and navigation, but at the same time they wanted to make sure that at least fishing, fowling and navigation were reserved to the public because they needed that for their sustenance in those days. It was very important to each inhabitant of that colony, that is no longer the case today. The court has said that the public trust doctrine is in the involving doctrine and what uses the public retain in that zone depend upon the times, on what societies needs are. That is why we have said that it includes recreation, not limited to recreation because we don't know one hundred years from now what the public's needs are going to be in this area. Thank you.

Senator SEWALL of Lincoln requested and received Leave of the Senate to speak a forth time.

Senator SEWALL: Thank you Mr. President and Members of the Senate. I think that the previous speaker just stumbled upon the point that when the needs of society change, when you have to put a highway right through several houses, you don't pass a law and say "now we need a highway there, so too bad people". You pay those people for that land. It is eminent domain that those people are compensated for that land. Yes, things have changed, but that doesn't mean you can take somebody's property away without any compensation.

THE PRESIDENT: The Chair recognizes the Senator from Hancock, Senator Perkins.

Senator PERKINS: Mr. President, Ladies and Gentlemen of the Senate. It has been said that one man's meat is another man's poison, and I guess one man's recreation could be another man's rebel rousing or disturbing, or in general just upsetting of pleasant circumstances. I think this is entirely a possibility within the realm of this Bill. My good friend, the Senator from Androscoggin, my equally good friend, the Senator from Cumberland, has said that these are circumstances that have changed and the upland areas have entirely different circumstances than those of other areas. The coastal area has already encountered this and the uniform property facts have had also addressed it in regards in the areas of school funding. At that time, and I guess this time also, you would call it a geographical accident of birth.

So were your grandparents or your parents left with land that was on the coast and it has gone through your family for years, you are now being told that you don't own, nor do you have the right to exclude those who might want to, they say, walk and if it were only walking I don't think there would be too much objection, but I think in this Legislature we have already dealt with a Bill regarding ATV's and other methods of recreation. So I say to you one man's meat is another man's poison and I suspect that this is entirely true with regard to this Bill. If the Bill is, as they say, not really needed, then we won't bother, because let it be. If there is trouble at Moody Beach, then lets deal with Moody Beach, but lets not entirely take the whole coastline and make us deal with something that should be solved in the courts and putting the burden on some individual along that coastline who must prove that because his family has lived on this land for all of their lives, he must now go to the courts and test the courts in order to protect what he thought and his grandparents and parents thought was already his.

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

Senator CARPENTER: Mr. President, just very briefly to clarify the role of my Committee. We became convinced that this issue did not involve a taking, because we believe that the rights were never the private land owners to begin with and I think that the Senator from Hancock, Senator Perkins, has hit upon one of the key elements of this issue and I think that the Bill clearly deals with that. That is the right of the municipalities and the police departments to police in this area as well as they police every other area under the public domain. We thought it was clear without explicitly saying it. We are convinced that to be absolutely sure we ought to explicitly say it, so the Bill was amended to make it very clear that in terms of the use of these areas, the intertidal zone areas, that it has to be done in accordance with state law, and that goes as to public drinking, disturbing the peace and everything else. I don't think that is a concern that should be such this morning that it would bring out the defeat of this Bill. The Bill is a recognition of the rights, and there is a legitimate disagreement, but it is a recognition in my opinion of the rights that presently exist and nothing more than that. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Hancock, Senator Perkins.

Senator PERKINS: Mr. President, Ladies and Gentlemen of the Senate. The good Senator from Aroostook has said that they have regulated the authority with regard to the beaches and the processing of complaints with regard to the beaches as it should be to the towns. Think for a minute with me on all of the many small coastal towns, of the Swan's Islands of the world, of the Brooklin's and the Jonesport's and the little small towns and think if you will for a minute, how many of those have organized police protection.

In essence, what we are saying with this Bill is yes, you may go in there and you may do as you want and hopefully if there is some form of organized police force, or some organized force, that may help the fellow who thought he really owned it to begin with, then by all means get it. It may take three hours and the day may be over before they get there, but this is indeed a put back on the community. So the community on top of not having an organized police force is now sentenced with trying to help this poor land owner protect it. Not only is he obliged to collect a higher base for taxes for a coastal community, because it is coastal community, but he indeed now has to enlarge his tax base in order to protect the land which they thought was their's all along.

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

Senator CARPENTER: Mr. President, Ladies and Gentlemen of the Senate. In response to the concerns raised by the Senator from Hancock, Senator Perkins, I guess I would just ask what do they do now? If somebody comes on their intertidal zone. Apparently they don't call upon the police force of the sheriff's Department, the good Senator from Hancock has indicated that in many towns those don't exist, they just go out and shoot the people. Nothing changes, we are not creating any new areas here. All we are doing here is recognizes the public's right in that area. I suspect that today that if somebody goes down and is on an intertidal zone which is controverted by the land owner abutting that intertidal zone, that land owner calls either the Hancock County Sheriff or the Blue Hill police department, or whatever, we are not creating any new zones here. What would happen here is they would do exactly as they do today. They would call the local police and the local police would come and take care of the problem.

THE PRESIDENT: The Chair recognizes the Senator from Hancock, Senator Perkins.

Senator PERKINS: Mr. President, Ladies and Gentlemen of the Senate. The Senator from Aroostook is partial correct. What we would do today is indeed call the Hancock County Sheriffs Department, because the Blue Hill police Department doesn't exists. If it were the Brooklin Police Department, no such thing, and if it were in the middle of the day and they were to call the constable, because it is a part time position, he is out laying brick or doing some other job that is his regular job. Today, frankly, we have very little problem because we do offer public access and about every small community that I am aware of, has what they call a public landing. The public landing is for precisely for this purpose. In these areas with this creation, it will then be advertised that the public's right is to access in any spot. So what is a town to do with the constable gone and we have advertised that this public lot, which he thought was his own and we address it now and say that we must protect it, but the towns have got to protect it.

The town constable who is already otherwise employed is not even there. I say to you that I don't think that any of these people are going to object very strongly if it is merely for the process of taking some clams, or for walking, but I think there will be strenuous objection if it is your beach, or your lawn if it is an ATV or an organized group of motorcyclists who have decided that it is their right to access somewhere along the coast.

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

Senator SHUTE: Mr. President, Ladies and Gentlemen of the Senate. As I understood the Bill it excludes motorized vehicles, so I don't think that any ATV's or motorcycles would be on the beach. I have lived on the shore all of my life and I think that I have several hundred miles of shoreline in my district. I have always been under the impression that I had the right to walk on those shores, all the people in my district have always felt that they had the right to walk on those shores. That right was never even questioned as far as I am concerned, until the Moody Beach dispute came up. I think you are making a mountain out of a molehill as far as the land owners, if they feel they are going to be abused. In my town of Stockton and Searsport, the railroad owns over twenty miles of shoreline. Are we to say that the railroad can keep everyone in Waldo County or Aroostook County or where ever, off twenty miles of shoreline? They can't walk on twenty miles of shoreline? If people on the shore had the right and owned this land, as they now claim that they do, why did we have a submerged lands bill here? If they had that right and if they own that land, why do people that own 250 feet of shoreline on a very steep incline into the intertidal zone and maybe where the tide only goes out 20 feet, why are they not taxed less than people that own land like in Stockton Harbor, where the tide goes out 2,500 feet? Actually the person that owns 250 feet of land in Stockton Harbor and being taxed on one half acre claims that he owns fifteen acres of land, if he owns out there 250 feet. He hasn't been taxed on fifteen acres, not by any means. As far as I am concerned and a lot of the people that I represent, as there has been a few calls about this Bill that wanted to consolidate their rights they thought they might have, I am in favor of the Bill, I think 98% of the people in my district are in favor of the Bill and I think this is a right that those people always thought they had and I don't think the Legislature should take it away. Thank you.

---

Off Record Remarks

---

THE PRESIDENT: The pending question before the Senate is the motion of Senator SEWALL of Lincoln that the Bill and Accompanying Papers be INDEFINITELY POSTPONED. A Roll Call has been ordered.

A vote of Yes will be in favor of the motion of Senator SEWALL of Lincoln to Indefinitely Postpone the Bill and Accompanying Papers.

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

Senator BROWN of Washington who would have voted Yea requested and received permission to pair his vote with Senator GAUVREAU of Androscoggin who would have voted Nay.

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

Senator PEARSON of Penobscot who would have voted Yea requested and received permission to pair his vote with Senator DIAMOND of Cumberland who would have voted Nay.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators, EMERSON, GILL, MAYBURY, MCBREAIRTY, PERKINS, SEWALL, WEBSTER

NAYS: Senators, ANDREWS, BERUBE, BLACK, CARPENTER, CHALMERS, DOW, ERWIN, HICHENS, KANY, KERRY, NAJARIAN, SHUTE, STOVER, TRAFTON, TUTTLE, TWITCHELL, USHER, VIOLETTE, THE PRESIDENT - CHARLES P. PRAY

ABSENT: Senators, BUSTIN, MATTHEWS

EXCUSED: Senator DUTREMBLE

7 Senators having voted in the affirmative and 19 Senators having voted in the negative, with 2 Senators being absent and 1 Senator being excused and 6 Senators having paired their votes, the motion of Senator SEWALL of Lincoln to INDEFINITELY POSTPONED the Bill and Accompanying Papers, FAILS.

On motion by Senator CARPENTER of Aroostook, the Majority OUGHT TO PASS in NEW DRAFT under NEW TITLE Report ACCEPTED.

The Bill in NEW DRAFT under NEW TITLE READ ONCE.

Under suspension of the Rules, the Bill in NEW DRAFT under NEW TITLE READ A SECOND TIME.



On motion by Senator SEWALL of Lincoln, Senate Amendment "A" (S-498) READ.

Senator NAJARIAN of Cumberland moved the INDEFINITE POSTPONEMENT of Senate Amendment "A" (S-498).

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

Senator SEWALL: Thank you Mr. President, first I will request a Roll Call on the Indefinite Postponement of the Amendment. What the amendment does, is first it says in the first section, that the public trust right in the intertidal zone includes the right of the intertidal zone for fishing, fowling and navigation. The purposes to which we can all agree that land is now in the public trust. The second part of my amendment if any municipality or plantation may call upon the State Police or other forms of police services to help them regulate problems that they might have, seeing how a small towns where they don't have police forces wouldn't have anyone to call upon if they had problems.

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

THE PRESIDENT: The pending question before the Senate is the motion of Senator NAJARIAN of Cumberland to INDEFINITELY POSTPONE Senate Amendment "A" (S-498).

The Chair recognizes the Senator from Cumberland, Senator Najarian.

Senator NAJARIAN: Mr. President and Members of the Senate. I am asking you to vote against this amendment because what it does essentially is guts the Bill. It puts us back to where we were 340 years ago and would wipe out 340 years of Supreme Court decisions extending the public rights in this zone beyond fishing, fowling and navigation. I would just point out that when the Governor requested an opinion by the Supreme Court, in 1981, on the Constitutionality of giving up the public rights on intertidal land that had been filled, the Supreme Court said that any legislation taking away the public right had to meet an extremely high and demanding standard. This amendment would be taking away the public rights and it would not meet a high and demanding standard of being for the benefit of the people. In fact, it would take away the benefits that the people in Maine currently have. It is for that reason that I urge you to vote against the amendment.

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

Senator SEWALL: The amendment would put in law what exactly is in place today. The Supreme Court has never said, not in the Commonwealth of Massachusetts not in the State of Maine, that recreation rights were appropriate. The Court has never said that, and let me remind you again, what was said in the Massachusetts case because they say what difference does it make in Massachusetts.

The court said, "the Bill would violate provisions of the Constitution of the Commonwealth," and I don't think we can get out of this one, "and of the United State, which prohibit the taking of private property for public reasons without due compensation."

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

Senator CARPENTER: Mr. President. Ladies and Gentlemen of the Senate. Regardless of your position on the Bill, I would strongly urge you to vote against this particular amendment. I think Senator Najarian, from Cumberland, has hit it right on the head that this amendment would freeze us in place back beyond where we arguably are today. That is what the argument is all about and this, in fact, takes us a step backward, so I would strongly urge you to oppose this amendment.

THE PRESIDENT: The pending question before the Senate is the motion of Senator NAJARIAN of Cumberland to INDEFINITELY POSTPONE Senate Amendment "A" (S-498).

A vote of Yes will be in favor of the motion of Senator NAJARIAN of Cumberland to Indefinitely Postpone Senate Amendment "A" (S-498).

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

Senator BROWN of Washington who would have voted Nay requested and received permission to pair his vote with Senator GAUVREAU of Androscoggin who would have voted Yea.

---

Senate at Ease

Senate called to order by the President.

---

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

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators, ANDREWS, BERUBE, BLACK, CARPENTER, CHALMERS, DOW, ERWIN, HICHENS, KERRY, NAJARIAN, PEARSON, SHUTE, STOVER, TRAFTON, TUTTLE, USHER, VIOLETTE, THE PRESIDENT - CHARLES P. PRAY

NAYS: Senators, EMERSON, GILL, MAYBURY, MCBREAIRTY, PERKINS, SEWALL, TWITCHELL, WEBSTER

ABSENT: Senators, BUSTIN, DIAMOND, KANY, MATTHEWS

EXCUSED: Senator DUTREMBLE

18 Senators having voted in the affirmative and 8 Senators having voted in the negative, and 4 Senators being absent and 1 Senator being excused and 4 Senators having paired their votes, the motion by Senator NAJARIAN of Cumberland to INDEFINITELY POSTPONE Senate Amendment "A" (S-498), PREVAILS.

Which was PASSED TO BE ENGROSSED.

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

---

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

Emergency

An Act to Clarify the Authority of Harbor Masters  
S.P. 926 L.D. 2313  
(C "A" S-478)

Tabled - April 12, 1986, by Senator VIOLETTE of Aroostook.

Pending - ENACTMENT

(In House, April 12, 1986, PASSED TO BE ENACTED.)

(In Senate, April 11, 1986, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-478), in concurrence.)

This being an Emergency Measure and having received the affirmative vote of 24 Members of the Senate, with No Senators having voted in the negative, and 24 being two-thirds of the entire elected Membership of the Senate, was PASSED TO BE ENACTED and having been signed by the President, was presented by the Secretary to the Governor for his approval.

---

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

Bill "An Act to Reorganize the Department of Finance and Administration and the Department of Personnel"  
S.P. 954 L.D. 2392

Tabled - April 12, 1986, by Senator VIOLETTE of Aroostook.

Pending - FURTHER CONSIDERATION

(In Senate, April 12, 1986, PASSED TO ENGROSSED.)

(In House, April 12, 1986, PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-721) in NON-CONCURRENCE.)

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

---

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

Bill "An Act to Provide Community Education and Family Health Services"  
S.P. 835 L.D. 2124  
(C "A" S-494)

Tabled - April 12, 1986, by Senator VIOLETTE of Aroostook.

Pending - Motion of Senator PEARSON of Penobscot to RECONSIDER RECEDING and CONCURRING

(In Senate, April 12, 1986, RECEDED and CONCURRED to PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-494).)

(In House, April 12, 1986, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-494) in NON-CONCURRENCE.)

On motion by Senator VIOLETTE of Aroostook, Tabled Later in Today's Session, pending the motion of Senator PEARSON of Penobscot to RECONSIDER RECEDING and CONCURRING.

Senate at Ease

Senate called to order by the President.

HELD BILL

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

Senator VIOLETTE: Is the Senate in possession of L.D. 1921?

THE PRESIDENT: The Chair would answer in the affirmative, having been held at the Senators request.

On motion by Senator VIOLETTE of Aroostook, the Senate RECONSIDERED it's action whereby it RECEDED and CONCURRED on:

Bill "An Act Relating to Staff Retention in Community-based Residential Facilities for Persons with Mental Retardation"

S.P. 757 L.D. 1921  
(H "A" H-705 to C "A" S-472; H "A" H-717)

(In Senate April 12, 1986, RECEDED and CONCURRED to PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-472) AS AMENDED BY HOUSE AMENDMENT "A" (H-705), thereto AND HOUSE AMENDMENT "A" (H-717) in concurrence.)

On further motion by same Senator, the Senate RECEDED from PASSAGE TO BE ENGROSSED AS AMENDED.

House Amendment "A" (H-717) READ.

On further motion by same Senator, House Amendment "A" (H-717) INDEFINITELY POSTPONED in NON-CONCURRENCE.

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

Sent down for concurrence.

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

Bill "An Act Relating to the Social Worker Registration Law"

H.P. 1683 L.D. 2370

Tabled - April 12, 1986, by Senator VIOLETTE of Aroostook.

Pending - FURTHER CONSIDERATION

(In Senate, April 12, 1986, RECEDED and CONCURRED. Subsequently, RECONSIDERED RECEDING and CONCURRING.)

(In House, April 12, 1986, PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-712) in NON-CONCURRENCE.)

(In Senate, April 11, 1986, PASSED TO BE ENGROSSED, in concurrence.)

The Senate RECEDED and CONCURRED.

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

COMMITTEE REPORT

House

Ought to Pass in New Draft

The Committee on JUDICIARY on Bill "An Act to Amend the Insanity Defense and Certain Procedures Relating to Committed Insanity Acquittees"

H.P. 1494 L.D. 2108

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

H.P. 1702 L.D. 2397

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

Which Report was READ.

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

Senator CARPENTER: Mr. President, even though this is a unanimous committee report, I thought it might be of interest to the Membership as, in my opinion, this is the most significant criminal law change this Legislature will see. Over the last couple of years there has been a great deal of controversy about the NGRR, Not Guilty by Reason of Insanity. Last year we had various bills in the Legislature, in my committee, we held them over and conducted our own mini study, if you will, and that was the prosecutors and the mental health professionals all summer by sub-committee and then worked on it again all winter. I think if you will take a look at L.D. 2397, when you have time, you will see that it is a significant tightening. It is not a guilty by insane, but is a significant tightening of the insanity defense in Maine. In Maine today, there are two ways if you envision the two branches coming from a tree, there are two ways that you complete insanity successfully. It is an either/or situation, you don't have to show both, just one. First you have the classic insanity defense, which is that person, and they prove this to the court, they were not able to appreciate the wrongfulness of what they were able to do. In other words, their mental process was such that they thought it was an orange in their hand and in fact it was a gun. The other defense which has come under a great deal of fire in the last few years is what the devil made me do it defense. I am sufficiently well, if you will, mentally to be able to know that this is a gun and that if I pull the trigger that the person in front of me is most likely to die. But I can't stop myself, there were forces that compelled me to do this even though I know that it is wrong. What we have done is that we have eliminated that section of the insanity defense. No longer in Maine will a person be able to plea insanity by saying that I knew what I was doing and I knew it was wrong, but I couldn't stop myself. Now in order to plea successfully the, so called insanity defense, they will have to be able to show that they were unable to appreciate the wrongfulness of what they were doing.

We also have done a couple of other things. One of the major concerns that were raised throughout this whole process was the release of people who have been committed by the court as a result of a not guilty by reason of insanity plea. How are these people released and we determined that there is need to have more people taking a look at these release petitions than just the mental health professionals who have been treating this person in the institution all this time. Now we are adding the prosecutor who put the person in in the first place, by bringing the charges against the person, the Attorney General's office if it is not an Attorney General's case, and other independent psychiatric help that may be essential here.

I think what you can tell your constituents and tell your people back there, who are concerned about the insanity defense, is that this is a significant tightening of the defense, but yet at the same time recognizing the rights of people who are mentally ill and recognizing that for hundreds and hundreds of years in civilized society we have treated insane people differently than people who are sane and thus responsible for their acts.

That fine distinction is maintained while at the same time doing away with the defense which is just too murky, just too nebulous. Even the mental health professionals who have been a part of this defense for years came to us and said there is no body of hard evidence which we can get our teeth into when we have to testify on those so called 'devil made me do it' cases. If this Bill passes we will no longer be available in Maine and I would urge the acceptance of the unanimous committee report. Thank you.

On motion by Senator CARPENTER of Aroostook the OUGHT TO PASS IN NEW DRAFT Report ACCEPTED, in concurrence.

The Bill in NEW DRAFT READ ONCE.

Under suspension of the Rules, the Bill in NEW DRAFT READ A SECOND TIME and the NEW DRAFT PASSED TO BE ENGROSSED, in concurrence.

Under suspension of the Rules, ordered sent forthwith to the Engrossing Department.

---

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

#### COMMITTEE REPORTS

##### House

Ought to Pass in New Draft under New Title

The Committee on JUDICIARY on Bill "An Act to Provide Funding through Fees and Trim Expenses of the Court Mediation Service"

H.P. 1655 L.D. 2332

Reported that the same Ought to Pass in New Draft under New Title Bill "An Act to Provide Funding for the Court Mediation Service through Fees" (Emergency)

H.P. 1703 L.D. 2398

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.

---

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

Off Record Remarks

COMMUNICATIONS

The Following Communication:

On motion by Senator TRAFTON of Androscoggin RECESSED until the sound of the bell.

STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
AUGUSTA, MAINE 04333

After Recess

Senate called to order by the President.

April 14, 1986

Off Record Remarks

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

Senator PERKINS of Hancock was granted unanimous consent to address the Senate Off the Record.

Dear Madam Secretary:

The House voted today to adhere to its former action whereby it indefinitely postponed Bill "An Act to Establish a Universal Telephone Service Program" (S.P. 930) (L.D. 2317).

Off Record Remarks

Sincerely,

S/Edwin H. Pert  
Clerk of the House

Which was READ and ORDERED PLACED ON FILE.

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

COMMITTEE REPORTS

Senate at Ease

Senate

Senate called to order by the President.

Ought to Pass in New Draft

Under suspension of the Rules, all matters thus acted upon were order sent down forthwith for concurrence.

Senator GAUVREAU for the Committee on EDUCATION on Bill "An Act to Amend and Improve the Education Laws of Maine"

S.P. 904 L.D. 2271

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

S.P. 957 L.D. 2399

Senator CARPENTER of Aroostook was granted unanimous consent to address the Senate Off the Record.

Which Report was READ and ACCEPTED.

The Bill in NEW DRAFT READ ONCE.

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

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

COMMITTEE REPORTS

Senate

Ought To Pass in New Draft

Senator GILL for the Committee on HUMAN RESOURCES on Bill "An Act to Protect the Public Health and Safety of Residents in Boarding Care Facilities"

S.P. 875 L.D. 2207

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

S.P. 959 L.D. 2401

Which Report was READ and ACCEPTED.

The Bill in NEW DRAFT READ ONCE.

Under suspension of the Rules, the Bill in NEW DRAFT READ A SECOND TIME and the NEW DRAFT PASSED TO BE ENGROSSED.

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

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

COMMITTEE REPORTS

Senate

Divided Report

The Majority of the Committee on JUDICIARY on Bill "An Act to Expedite the Resolution of Professional Negligence Claims, to Amend Selective Provisions of the Maine Health Security Act and to Abolish the Discovery Rule in Claims Against Health Practitioners, Health Providers and Attorneys"

S.P. 820 L.D. 2065

Reported that the same Ought to Pass in New Draft under New Title Bill "An Act Relating to Medical and Legal Professional Liability"

S.P. 958 L.D. 2400

Signed:

Senators: SEWALL of Lincoln  
CHALMERS of Knox  
CARPENTER of Aroostook

Representatives: DRINKWATER of Belfast  
MACBRIDE of Presque Isle  
PRIEST of Brunswick  
LEBOWITZ of Bangor  
PARADIS of Augusta  
KANE of South Portland  
COOPER of Windham  
ALLEN of Washington

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

Signed:

Representatives: CARRIER of Westbrook  
STETSON of Damariscotta

Which Reports were READ.

The Majority OUGHT TO PASS in NEW DRAFT under NEW TITLE Report ACCEPTED.

The Bill in NEW DRAFT under NEW TITLE READ ONCE.

Under suspension of the Rules, the Bill in NEW DRAFT under NEW TITLE READ A SECOND TIME.

On motion by Senator TRAFTON of Androscoggin, Senate Amendment "A" (S-521) READ.

Senate at Ease

Senate called to order by the President.

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

Senator SEWALL: Thank you Mr. President, I would like to pose a question through the Chair to the Senator from Androscoggin, Senator Trafton, asking what this amendment does to the Bill.

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

The Chair recognizes the Senator from Androscoggin, Senator Trafton.

Senator TRAFTON: Thank you Mr. President and Members of the Senate. I appreciate the opportunity offered by the good Senator from Lincoln, Senator Sewall, to explain this amendment.

In my review of L.D. 2400, particularly the section that creates section 753 A, actions against attorneys, I was concerned about some of the language that was used in that section, so I undertook to redraft that section, not changing the substance contained in that particular section, but simply clarifying the effect of the discovery rule on certain areas dealing with the practice of attorneys. I have reviewed this amendment with the analysis who staffs the Joint Standing Committee on Judiciary and she confirms that there is no substantive change. I have also reviewed this amendment with the Senate Chairman of the Joint Standing Committee on Judiciary and he also concurs that this provides no substantive change. It is with the hope of providing clearer language that I present this amendment and I urge your support.

Senate Amendment "A" (S-521) ADOPTED.

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

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

ENACTORS

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

Emergency

An Act to Extend the Commission to Examine the Availability, Quality and Delivery of Services Provided to Children with Special Needs  
H.P. 1652 L.D. 2330  
(H "B" H-692)

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

Emergency

An Act to Correct Eligibility Requirements for Licensure as a Master Electrician  
H.P. 1673 L.D. 2358  
(H "A" H-716)

This being an Emergency Measure and having received the affirmative vote of 29 Members of the Senate, with No Senators having voted in negative, and 29 being more than two-thirds of the entire elected Membership of the Senate, was PASSED TO BE ENACTED and having been signed by the President, was presented by the Secretary to the Governor for his approval.

The President requested the Assistant Sergeant-At-Arms to escort the Senator from Aroostook, Senator VIOLETTE, to the Rostrum where he assumed the duties as President Pro Tem.

The President then Retired from the Senate Chamber.

Senate called to order by the President Pro Tem.

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

ENACTORS

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

Emergency

An Act Relating to Air Emission Licenses in Nonattainment Areas  
H.P. 1693 L.D. 2384  
(S "A" S-496)

This being an Emergency Measure and having received the affirmative vote of 26 Members of the Senate, with 2 Senators having voted in negative, and 26 being more than two-thirds of the entire elected Membership of the Senate, was PASSED TO BE ENACTED and having been signed by the President Pro Tem, was presented by the Secretary to the Governor for his approval.

Emergency

An Act Relating to Periodic Justification of Departments and Agencies of State Government under the Maine Sunset Laws  
H.P. 1670 L.D. 2355  
(H "A" H-675; H "B" H-718)

This being an Emergency Measure and having received the affirmative vote of 29 Members of the Senate, with No Senators having voted in negative, and 29 being more than two-thirds of the entire elected Membership of the Senate, was PASSED TO BE ENACTED and having been signed by the President Pro Tem, was presented by the Secretary to the Governor for his approval.

An Act Concerning Property Tax Assessment and Appeals

H.P. 1678 L.D. 2364  
(H "A" H-720)

An Act to Strengthen Professional Regulation

S.P. 956 L.D. 2396

An Act Relating to the Passamaquoddy Indian Reservation

H.P. 1210 L.D. 1717  
(S "B" S-500)

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

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

ENACTORS

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

Emergency

An Act Making Appropriations from the General Fund Necessary for the Proper Operation of the Judicial Department for the Fiscal Years Ending June 30, 1986, and June 30, 1987

S.P. 953 L.D. 2390

An Act to Implement Certain Recommendations of the State Compensation Commission

H.P. 1567 L.D. 2217  
(C "A" H-699)

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

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

Emergency

An Act to Implement an Inflation Factor in the School Construction Law

S.P. 955 L.D. 2395

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

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

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

ENACTORS

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

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

An Act Providing for Administrative Changes in Maine Tax Laws

H.P. 1690 L.D. 2381  
(S "A" S-497)

ENACTORS

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

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

An Act to Amend the Laws Relating to and Administered by the Department of Environmental Protection

H.P. 1681 L.D. 2368



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

COMMITTEE REPORTS

House

Divided Report

The Majority of the Committee on JUDICIARY on Bill "An Act to Create the Family Division of the District Court and to Establish Full-time, Appointed Probate Judges"

H.P. 1504 L.D. 2119

Reported that the same Ought to Pass in New Draft under New Title Bill "An Act to Consolidate Family Cases in a Family Court within the District Court and to Establish Full-time, Appointed Probate Judges"

H.P. 1704 L.D. 2402

Signed:

Senators: SEWALL of Lincoln  
CHALMERS of Knox  
CARPENTER of Aroostook

Representatives: COOPER of Windham  
PARADIS of Augusta  
ALLEN of Washington  
PRIEST of Brunswick  
KANE of South Portland

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

Signed:

Representatives: CARRIER of Westbrook  
LEBOWITZ of Bangor  
STETSON of Damariscotta  
MACBRIDE of Presque Isle  
DRINKWATER of Belfast

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

Which Reports were READ.

Senator CHALMERS of Knox moved that the Senate ACCEPT the Majority OUGHT TO PASS IN NEW DRAFT under NEW TITLE Report.

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

Senator WEBSTER: Mr. President, Ladies and Gentlemen of the Senate. I move that this Bill and All Accompanying Papers be Indefinitely Postponed.

This is a very simple Bill. Up until this time in history for many years we have elected Judge of Probates, I think that it is a positive way to run this branch of government. I am concerned, representing a rural part of the State, that we may be losing something by changing the current system. I feel that at this time it is not an appropriate time to change the law. Thank you.

Senator WEBSTER of Franklin moved the INDEFINITE POSTPONEMENT of the Bill and Accompanying Papers.

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

Senator CARPENTER: Mr. President, Ladies and Gentlemen of the Senate. What you have before you is a result of a tremendous amount of work, partly by the Committee that I Chair, largely by the good Senator from Knox, Senator Chalmers. This Bill comes about as a result of extensive study that was undertaken last year and it is the unanimous report of that Committee. It has been painted, some how, as an anti-county government bill. It is not that at all. If it has to take on some glibbed sub-title, I guess it would be an act to promote families. Presently, your family law matters, in this State, are handled basically in two places. The District Court and in the Probate Court. They generally are handled well, I would say, but family law, as any practitioner of the law can attest, unless they are in a specialized area such as workers compensation or medical malpractice, if you are in the general practice of law, family law is becoming almost daily more complex, more involved, and in many ways more difficult. We have made a conscious effort in this term of the Legislature and in the last term of the Legislature to recognize that family law matters are matters which have to be handled maybe just a little differently from the ordinary litigation which an attorney handles and which a judge hears. This Bill is a recognition of that realization, if you will. It is a recognition that family law, all the matters dealing with families, has become a very specialized area. An area where maybe it is not in the best interest of the family or members of that family that the true adversarial process always go to the maximum. We have had mediation for a couple of years and it has worked, in my opinion, well. In cooling some of the flames, if you will, that often come about as a result of family break ups in particular.

The family court bill which you have presently before you today, is a majority Ought to Pass Report. All three Senators are supporting this Bill. It is a good Bill, it is a Bill which came to my committee several months ago and which has been fined tuned down to the last few hours, by the Senator from Knox, Senator Chalmers. It is a good Bill, it is not an anti-county government bill in any sense. I represent as many rural people as the good Senator from Franklin, Senator Webster, and I think that it would be very beneficial to the people in my area. Who would it harm? Well for one thing you are not going to have elected judges in the State of Maine anymore, and I remember about a year ago there was quite a momentum right here in this Chamber to do away with elected judges.

This Bill, through its transitional provisions, brings about a family division of the District Court. What this Bill will do is that you will no longer have on the one hand a District Court Judge saying that this is an OUI case, I will take care of that and then I have the drunken bar room brawl from Friday night with three assault charges and one obstruction of government, administration coming out of that one and now I have got to go and take care of that divorce, or that post-divorce motion. The judge will no longer have to be shifting gears from criminal matters, traffic infractions, over to family law, which does take very special gentleness in many cases. You are going to start to have judges that are specialist in the family law, if you care about families, if you care about children, I think that you should at least give this Bill a very careful look. I request a Roll Call. Thank you.

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

Senator CHALMERS: Thank you Mr. President, I am not going to belabor this, or have as long of a debate in this Body, but let me just point out a few things. The good Senator from Aroostook, Senator Carpenter, has pointed out some of the advantages of having a family court, one of the other things that this Bill addresses is the problem of part-time elected judges, and has he mentioned last year there was a report that came out from President Carter from the Judicial Council that talked about the impossible imagine of propriety of part-time judges who in one morning sit as a part-time judge and the afternoon have to negotiate with the same lawyer that appeared before them. This Bill would amend the Constitution by establishing a different full time Probate Court. People of Maine, back in 1967, passed in a referendum, a provision that the Constitution would be repealed when this Legislature adopts a different full-time probate court. This Bill attempts to do that, I think it does that. This Bill, different from the report of the Carter Commission, does not do away with Probate Courts. Last year L.D. 1250 did away with Probate Court, it had the probate matters decided in the Superior and the District Court, this Bill does not do that it leaves the Probate Court where it is. It says part-time probate judges cannot be made full-time probate judges by the Counties and since the Probate Court now just sits out there and is not under the Judicial Department of the third branch of government, this Bill attempts to bring them in by having them appointed regionally full-time. This Governor would appoint three, and the next Governor would appoint three.

This Bill is revenue neutral, it did not have to go to the Appropriations Table, because in order to provide six new full-time judges that would be paid in the same as the District Court Judges, this Bill suggests you do that by raising probate fees, by raising the fees by which someone has to file to probate in the State. If the Commission, which I was privileged to Chair, had a Probate Judge on it and a Registrar of Probate, a District Court Judge and a District Court Clerk, we all came up with this decision, this proposal, and when the Probate Registrars saw our proposal they said you are raising some too little and you are raising some too much.

We took it back in the four weeks of hearings and work sessions that we had in the Judiciary Committee and we adopted all of their provisions. This Bill raises \$440,000 in its first year and in two years when you need to fund an additional three judges it raises divorce fees \$710,000 a year. The cost of this Bill is for essentially the three judges now and the three judges later, the annual conference, the Advisory Committee to advise the family court judges, some electric equipment and of course providing the bailiff's for the additional court room work. The problem with this Bill, quite frankly, is that Probate Judges are political animals, and there are seven of them whose terms run out this year in January. This Bill would say that this Governor should name the three Probate Judges in the fall to take their term in January and we have checked with the Attorney General's office and we find that having to file for a primary and even taking a primary after a Bill has passed, gives those judges who have filed and are running in the primary, but only effectuates the repeal of the Constitution now and the nine judges that are going to run out their term will continue to run their terms that will be taken care of two years down the way. You have seven Counties who look upon this as 'don't touch counties, we like the way we run our counties, we don't want you messing with our counties.' One of the things that we had when we first started the work sessions, is that the lobbyist who speaks for the County Commissioners came to us and said your Bill is going to hurt the counties. We, in the work session said that we don't want to hurt the counties and we worked out with them a save harmless clause which in this Bill would protect the counties. The counties would continue to get the same amount of money they get now, but the increase in probate fees would be sent on to the State to pay for the three judges. It does not diminish county government, it may interfere with county politics.

It is also a fairly complicated Bill, the third branch of government is the court system, you don't mess around with the court system very much and you certainly don't mess around with it unless you know about it. I don't know everything about it, I am privileged down in my area to practice under Judge Pease who is the Deputy Chief Judge of the District Court and I had occasion to drop in and he has known that I have been interested in the family court now for a couple years. He and I have talked about this, when we first got our drafts, I dropped them off at the court house on my way over here to Augusta, and he would mark them all up and make all of this comments. When the Bill was presented to Committee he did in fact appear with pages and pages, he worked with the Legislative Research Office and he met all of his objections. I don't say this is a perfect Bill, I say this is a Bill that successfully would repeal the Constitution so that we would have appointed full-time Regional Probate Judges. This also creates a Family Court so we can begin to address the problems of the family. The essential goals of these two Bills are to promote Judiciary to allow them practice in an area that is most conducive to them, it gives them six new judges and to protect the family. I ask you to vote against the motion to Indefinitely Postpone.

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

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

Senator WEBSTER: Mr. President, Ladies and Gentlemen of the Senate. We have heard here, this afternoon, that there is an image problem with the judges who are running for office and I would say that I am sure from my experience that the people that serve in that capacity are the people with the highest integrity. For 165 years, the system has worked well. I am not concerned about the image problem out there when it comes to Judges of Probate. I am concerned about the intimidation factor that people have when they go to a judge. It seems to me that in Farmington we have a Judge of Probate, we have had them in the past, and everyone of them for the last few years I have always known. Most people in town know him and most people in the County know him, and they run for office and are out there talking to people and feel that on a one to one basis they can talk to the judge. To me, that is something we should cherish. To me it seems very simple that if we have someone out there running for office, there is nothing wrong with that. I think it is a trying time for people who have to go to the Judge of Probate to begin with.

I think it is a positive thing to have someone that they feel they can talk to. In Farmington we have an individual who lives right in town, and I know in Skowhegan it is the same way, and they go into the office on a regular basis and they are there and go the extra mile for people who need help. If we replace these individuals, these sixteen part-time people, with six judges, I guess I would wonder whether we might be taking away some of that personal contact with the people out there have. I want to know where these judges are going to come from. I can't envision people from my area will be on this. Maybe they will be, but I am concerned about another fee we are going to raise. If the State of Maine, if we in this Legislature, feel that we have to fund six more judges for family problems, and I think this is the problem from what I see, I think there is a back log in the court system and I think many people feel we should add more judges and I am not against that. I am against it by raising probate fees under the guys that are doing it because of probate work. It seems to me that if it isn't broken, we shouldn't be fixing it. I don't hear any human cry from the public asking for this type of legislation, I think there is definite need for additional judges if we have a back log, but this is not the way to go and I would ask you to support my motion. Thank you.

THE PRESIDENT PRO TEM: The pending motion before the Senate is the motion of Senator WEBSTER of Franklin to INDEFINITELY POSTPONE the Bill and Accompanying Papers.

The Chair recognizes the Senator from Cumberland, Senator Diamond.

Senator DIAMOND: Thank you Mr. President, Ladies and Gentlemen of the Senate. I rise because the Committee on Audit and Program Review has looked at this question in an indirect way, in fact, we had the good Senator from Knox, Senator Chalmers, come in and speak with us during our review of the whole child abuse and child welfare system. We found, if nothing else, that this whole family court thing is so badly needed. It is so much larger than the issue we just heard discussed. We are talking about an area where judges and prosecuting attorneys and defense attorneys don't know the intricateness of what they are dealing with. They are putting things ahead of the child abuse cases, such as OUI, the brawls that are taking places in bars. The real problem is it is so intricate when you start talking about protective care workers, substitute care workers, foster parent programs, we need a court system that will deal with these issues and right now they can't for the most part. Right now they are putting these kids who are being abused, down the line in terms of priority. One of the things that we did in the legislation that this Senate voted on and the other Body voted on unanimously was to deal with the reunification law. The law that we have now that says, no matter what happens to a child, in an existing environment, the first and foremost thing has to be to put him back in that environment. We dealt with that issue in a way that I think is very progressive, for the most part took the feeling of the child and the consideration of the child first.

This Bill right here before us is so much larger then probate judges, we are talking about a judicial system that deals with kids who need to have their understanding and their help. We don't have it right now, we are no where near where we should be. Just because someone is a judge and because someone is a prosecuting attorney does not mean they have all the answers to all the problem areas before them. If we believe in a miniscule way that, in fact, these kids that we are talking about, these child abuse cases, do in fact, need to have someone in the Judicial Branch for them. If it was as simple as a Probate Judge, I wouldn't even be standing up, because that is not part of my committee, this has been, this is a neutral follow up to what we did in the Audit and Program Review Committee. A lot of the things we have spoken about during this last year of review were based on educating those judges and those attorneys, so they will know what they are talking about when it comes to dealing with these abused children. I would urge you to follow the good Senator from Knox, Senator Chalmers, and oppose this motion. Thank you.

THE PRESIDENT PRO TEM: The pending motion before the Senate is the motion of Senator WEBSTER of Franklin to INDEFINITELY POSTPONE the Bill and Accompanying Papers.

A vote of Yes will be in favor of the motion of Senator WEBSTER to Indefinitely Postpone the Bill and Accompanying Papers.

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, BERUBE, BLACK, SHUTE, STOVER, TUTTLE, WEBSTER

NAYS: Senators, ANDREWS, BALDACCI, BROWN, CARPENTER, CHALMERS, CLARK, DIAMOND, DOW, EMERSON, ERWIN, GAUVREAU, GILL, HICHENS, KANY, KERRY, MAYBURY, MCBREAIRTY, NAJARIAN, PEARSON, PERKINS, PRAY, SEWALL, TRAFTON, TWITCHELL, USHER, THE PRESIDENT PRO TEM - PAUL E. VIOLETTE

ABSENT: Senators, BUSTIN, MATTHEWS

EXCUSED: Senator DUTREMBLE

6 Senators having voted in the affirmative and 26 Senators having voted in the negative, with 2 Senators being absent and 1 Senator being excused, the motion of Senator WEBSTER of Franklin to INDEFINITELY POSTPONE the Bill and Accompanying Papers, in concurrence, FAILS.

On motion by Senator CHALMERS of Knox the Majority OUGHT TO PASS in NEW DRAFT under NEW TITLE Report ACCEPTED, in NON-CONCURRENCE.

The Bill in NEW DRAFT under NEW TITLE READ ONCE.

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

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

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

Senator CARPENTER: Mr. President, a Parliamentary Inquiry. We just voted to send the last Bill forthwith to the other Body, would it be proper to Reconsider sending the Bill forthwith?

THE PRESIDENT PRO TEM: The Chair would answer in the negative, the Bill having been sent forthwith, the Senate is no longer in possession of that Bill.

The President Pro Tem requested that the Sergeant-At-Arms escort the Senator from Penobscot, Senator PRAY to the Rostrum where he resumed his duties as President.

The Sergeant-At-Arms escorted the Senator from Aroostook, Senator VIOLETTE to his seat on the Senate floor. (Amid applause the Members rising.)

Senate called to order by the President.

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

COMMUNICATIONS

The Following Communication:

STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
AUGUSTA, MAINE 04333

April 14, 1986

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

Dear Madam Secretary:

The Speaker appointed the following conferees to the Committee of Conference on the disagreeing action of the two branches of the Legislature on RESOLUTION, Proposing an Amendment to the Constitution of Maine to Establish a Legislative Veto over Agency Rules (H.P. 1579) (L.D. 2228):

Representative GWADOSKY of Fairfield  
Representative CARTER of Winslow  
Representative SPROUL of Augusta

Sincerely,

S/Edwin H. Pert  
Clerk of the House

Which was READ and ORDERED PLACED ON FILE.

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

ENACTORS

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

Resolve

Resolve, in Favor of Edgar Warren, of Portland, for Injuries Received While He was a Ward of the State

H.P. 1377 L.D. 1940  
(Com. of Conf. "A" S-487)

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

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

COMMUNICATIONS

The Following Communication:

ONE HUNDRED AND TWELFTH LEGISLATURE  
COMMITTEE ON STATE GOVERNMENT

April 14, 1986

The Honorable Charles P. Pray  
President of the Senate  
112th Legislature

Dear President Pray:

We are pleased to report that all business which was placed before the Committee on State Government during the Second Regular Session of the 112th Legislature has been completed. The breakdown of bills referred to our committee follows:

Total number of bills received	46
Unanimous reports	42
Leave to Withdraw	13
Ought to Pass	5
Ought Not to Pass	1
Ought to Pass as Amended	11
Ought to Pass in New Draft	12
Divided reports	4

Respectfully submitted,

S/Thomas H. Andrews  
Senate Chair

S/Dan A. Gwadosky  
House Chair

Which was READ and ORDERED PLACED ON FILE.

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

SECOND READERS

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

House

Bill "An Act to Provide Funding for the Court Mediation Service through Fees" (Emergency)  
H.P. 1703 L.D. 2398

Which was READ A SECOND TIME.

On motion by Senator CLARK of Cumberland, Tabled until Later in Today's Session, pending PASSAGE TO BE ENGROSSED.

Senate at Ease

Senate called to order by the President.

ORDERS OF THE DAY

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

An Act to Strengthen State-local Cooperation through Regional Councils  
H.P. 837 L.D. 1181  
(S "A" S-409 to C "A" H-558)

Tabled - March 18, 1986, by Senator BERUBE of Androscoggin.

Pending - ENACTMENT

(In House, March 17, 1986, PASSED TO BE ENACTED.)

(In Senate, March 12, 1986, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-558) AS AMENDED BY SENATE AMENDMENT "A" (S-409) thereto.)

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 Senator, the Senate RECONSIDERED its action whereby Committee Amendment "A" (H-558) as Amended by Senate Amendment "A" (S-409), thereto was ADOPTED.

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-409) to Committee Amendment "A" (H-558) was ADOPTED.

On further motion by same Senator, Senate Amendment "A" (S-409) to Committee Amendment "A" (H-558) INDEFINITELY POSTPONED in NON-CONCURRENCE.

On further motion by same Senator, Senate Amendment "B" (S-501) to Committee Amendment "A" (H-558) READ and ADOPTED.

Committee Amendment "A" (H-558) as Amended by Senate Amendment "B" (S-501), thereto ADOPTED in NON-CONCURRENCE.

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

Sent down for concurrence.

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

An Act to Expand and Continue Alcoholism Treatment, Education, Prevention and Research Programs

H.P. 951 L.D. 1371  
(C "A" H-532)

Tabled - March 17, 1986, by Senator BERUBE of Androscoggin.

Pending - ENACTMENT

(In House, March 17, 1986, PASSED TO BE ENACTED.)

(In Senate, March 12, 1986, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-532), 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 Senator, the Senate RECONSIDERED its action whereby Committee Amendment "A" (H-532) was ADOPTED.

On further motion by same Senator, Senate Amendment "H" (S-502) to Committee Amendment "A" (H-532) READ and ADOPTED.

Committee Amendment "A" (H-532) as Amended by Senate Amendment "H" (S-502), thereto ADOPTED in NON-CONCURRENCE.

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

Sent down for concurrence.

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  
(S "A" S-460 to C "A" H-524)

Tabled - April 10, 1986, by Senator PEARSON of Penobscot.

Pending - ENACTMENT

(In House, April 10, 1986, PASSED TO BE ENACTED.)

(In Senate, April 8, 1986, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-524) AS AMENDED BY SENATE AMENDMENT "A" (S-460), thereto.)

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 Senator, the Senate RECONSIDERED its action whereby Committee Amendment "A" (H-524) as Amended by Senate Amendment "A" (S-460), thereto was ADOPTED.

On further motion by same Senator, Senate Amendment "B" (S-503) to Committee Amendment "A" (H-524) READ and ADOPTED.

Committee Amendment "A" (H-524) as Amended by Senate Amendments "A" (S-460) and "B" (S-503), thereto ADOPTED in NON-CONCURRENCE.

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

Sent down for concurrence.

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

An Act to Increase the Maine Child Care Credit Under the State Income Tax  
H.P. 1310 L.D. 1826  
(S "A" S-406 to C "A" H-562)

Tabled - March 17, 1986, by Senator PEARSON of Penobscot.

Pending - ENACTMENT

(In House, March 14, 1986, PASSED TO BE ENACTED.)

(In Senate, March 12, 1986, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-562) AS AMENDED BY SENATE AMENDMENT "A" (S-406), thereto.)

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 Senator the Senate RECONSIDERED its action whereby Committee Amendment "A" (H-562) as Amended by Senate Amendment "A" (S-406), thereto was ADOPTED.

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-406) to Committee Amendment "A" (H-562) was ADOPTED.

On further motion by same Senator, Senate Amendment "A" (S-406) to Committee Amendment "A" (H-562) INDEFINITELY POSTPONED in NON-CONCURRENCE.

On further motion by same Senator, Senate Amendment "B" (S-514) to Committee Amendment "A" (H-562) READ and ADOPTED.

Committee Amendment "A" (H-562) as Amended by Senate Amendment "B" (S-514), thereto ADOPTED in NON-CONCURRENCE.

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

Sent down for concurrence.

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

Emergency Resolve  
Resolve, Creating a Maine Commission to Commemorate the Bicentennial of the United States Constitution  
S.P. 813 L.D. 2045  
(H "A" H-684 to C "A" S-443)

Tabled - April 12, 1986, by Senator PEARSON of Penobscot.

Pending - FINAL PASSAGE

(In House, April 12, 1986, FINALLY PASSED.)

(In Senate, April 11, 1986, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-443) AS AMENDED BY HOUSE AMENDMENT "A" (H-684).)

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 Senator, the Senate RECONSIDERED its action whereby Committee Amendment "A" (S-443) as Amended by House Amendment "A" (H-684), thereto was ADOPTED

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

On further motion by same Senator, the Senate RECONSIDERED its action whereby House Amendment "A" (H-684) to Committee Amendment "A" (S-443) was ADOPTED.

On further motion by same Senator, House Amendment "A" (H-684) to Committee Amendment "A" (S-443) INDEFINITELY POSTPONED in NON-CONCURRENCE.

---

Senate at Ease

Senate called to order by the President.

---

On further motion by same Senator, Senate Amendment "A" (S-504) to Committee Amendment "A" (S-443) READ and ADOPTED.

Committee Amendment "A" (S-443) as Amended by Senate Amendment "A" (S-504), thereto ADOPTED in NON-CONCURRENCE.

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

Sent down for concurrence.

---

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

An Act to Increase the School Bus Purchase Limit  
S.P. 817 L.D. 2062

Tabled - April 4, 1986, by Senator PEARSON of Penobscot.

Pending - ENACTMENT

(In House, April 3, 1986, PASSED TO BE ENACTED.)

(In Senate, April 1, 1986, PASSED TO BE ENGROSSED.)

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.

On further motion by same Senator, Senate Amendment "A" (S-505) READ and ADOPTED.

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

Sent down for concurrence.

---

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

An Act to Promote Intensive Spruce-fir Management  
H.P. 1468 L.D. 2070  
(H "A" H-571; H "B"  
H-595)

Tabled - March 27, 1986, by Senator PEARSON of Penobscot.

Pending - ENACTMENT

(In House, March 26, 1986, PASSED TO BE ENACTED.)

(In Senate, March 24, 1986, PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENTS "A" (H-571) AND "B" (H-595), 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 Senator, the Senate RECONSIDERED its action whereby House Amendment "A" (H-571) was ADOPTED.

On further motion by same Senator, House Amendment "A" (H-571) INDEFINITELY POSTPONED in NON-CONCURRENCE.

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

On further motion by same Senator, the Senate RECONSIDERED its action whereby House Amendment "B" (H-595) was ADOPTED.



On further motion by same Senator, House Amendment "B" (H-595) INDEFINITELY POSTPONED in NON-CONCURRENCE.

On further motion by Senator, Senate Amendment "C" (S-513) READ and ADOPTED.

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

Sent down for concurrence.

---

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

An Act to Establish the Maine State Parks Development Fund

H.P. 1483 L.D. 2095  
(C "A" H-605)

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

Pending - ENACTMENT

(In House, April 2, 1986, PASSED TO BE ENACTED.)

(In Senate, March 31, 1986, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-605), 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 Senator, the Senate RECONSIDERED its action whereby Committee Amendment "A" (H-605) was ADOPTED.

On further motion by same Senator, Senate Amendment "A" (S-506) to Committee Amendment "A" (H-605) READ and ADOPTED.

Committee Amendment "A" (H-605) as Amended by Senate Amendment "A" (S-506), thereto ADOPTED in NON-CONCURRENCE.

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

Sent down for concurrence.

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

An Act to Provide Funding for Mental Health Programs

H.P. 1524 L.D. 2144

Tabled - March 13, 1986, by Senator PEARSON of Penobscot.

Pending - ENACTMENT

(In House, March 12, 1986, PASSED TO BE ENACTED.)

(In Senate, March 11, 1986, PASSED TO BE ENGROSSED, 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.

On further motion by same Senator, Senate Amendment "A" (S-507) READ and ADOPTED.

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

Sent down for concurrence.

---

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

An Act to Phase Out the Sales and Use Tax on Energy Used in Manufacturing

H.P. 1555 L.D. 2193

Tabled - March 21, 1986, by Senator PEARSON of Penobscot.

Pending - ENACTMENT

(In House, March 20, 1986, PASSED TO BE ENACTED.)

(In Senate, March 18, 1986, PASSED TO BE ENGROSSED, 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.

On further motion by same Senator, Senate Amendment "A" (S-508) READ and ADOPTED.

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

Sent down for concurrence.

---

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

An Act Concerning Transitional Services for Handicapped Persons Beyond School Age  
H.P. 1592 L.D. 2245  
(C "A" H-694)

Tabled - April 12, 1986, by Senator PEARSON of Penobscot.

Pending - ENACTMENT

(In House, April 12, 1986, PASSED TO BE ENACTED.)

(In Senate, April 11, 1986, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-694), 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 Senator, the Senate RECONSIDERED its action whereby Committee Amendment "A" (H-694) was ADOPTED.

On further motion by same Senator, Senate Amendment "A" (S-509) to Committee Amendment "A" (H-694) READ and ADOPTED.

Committee Amendment "A" (H-694) as Amended by Senate Amendment "A" (S-509), thereto ADOPTED in NON-CONCURRENCE.

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

Sent down for concurrence.

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

An Act to Provide Medicaid Coverage for Mental Health Services for Children in Certain Hospital Facilities  
H.P. 1610 L.D. 2267

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

Pending - ENACTMENT

(In House, April 2, 1986, PASSED TO BE ENACTED.)

(In Senate, March 31, 1986, PASSED TO BE ENGROSSED, 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.

On further motion by same Senator, Senate Amendment "A" (S-517) READ and ADOPTED.

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

Sent down for concurrence.

---

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

An Act Relating to Medicaid Fees for Pharmacies  
H.P. 1611 L.D. 2268

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

Pending - ENACTMENT

(In House, April 2, 1986, PASSED TO BE ENACTED.)

(In Senate, April 1, 1986, PASSED TO BE ENGROSSED, 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.

On further motion by same Senator, Senate Amendment "A" (S-510) READ and ADOPTED.

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

Sent down for concurrence.

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

Emergency

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. 1662 L.D. 2340

Tabled - April 10, 1986, by Senator PEARSON of Penobscot.

Pending - ENACTMENT

(In House, April 10, 1986, PASSED TO BE ENACTED.)

(In Senate, April 8, 1986, PASSED TO BE ENGROSSED, 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.

On further motion by same Senator, Senate Amendment "B" (S-518) READ and ADOPTED.

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

Sent down for concurrence.

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

Emergency Resolve

Resolve, to Establish a Maine Commission to Examine Chemical Testing of Employees

S.P. 934 L.D. 2343  
(S "A" S-475)

Tabled - April 12, 1986, by Senator PEARSON of Penobscot.

Pending - FINAL PASSAGE

(In House, April 12, 1986, FINALLY PASSED.)

(In Senate, April 11, 1986, PASSED TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENT "A" (S-475).)

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, Senate Amendment "B" (S-511) READ and ADOPTED.

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

Sent down for concurrence.

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

Emergency

An Act to Protect the Public Health in Relation to Acquired Immune Deficiency Syndrome

S.P. 943 L.D. 2367  
(H "C" H-695)

Tabled - April 12, 1986, by Senator PEARSON of Penobscot.

Pending - ENACTMENT

(In House, April 12, 1986, PASSED TO BE ENACTED.)

(In Senate, April 11, 1986, PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "C" (H-695), 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, Senate Amendment "A" (S-512) READ and ADOPTED.

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.

\* On motion by Senator CLARK of Cumberland RECESSED until the sound of the bell.

After Recess

Senate called to order by the President.

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

PAPERS FROM THE HOUSE

Non-concurrent Matter

Bill "An Act to Authorize a General Fund Bond Issue in the Amount of \$10,500,000 for Coastal Access, Harbor Improvements and Marine Laboratory Improvements"

S.P. 895 L.D. 2250 (C "B" S-490)

In Senate, April 12, 1986, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (S-490).

Comes from the House PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (S-490) AS AMENDED BY HOUSE AMENDMENT "A" (H-727), thereto in NON-CONCURRENCE.

The Senate RECEDED and CONCURRED.

Non-concurrent Matter

\* Bill "An Act to Confirm and Recognize Public Trust Rights in Intertidal Land"

S.P. 950 L.D. 2380

In Senate, April 14, 1986, PASSED TO BE ENGROSSED.

Comes from the House PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-730) in NON-CONCURRENCE.

Senator CARPENTER of Aroostook moved that the Senate RECEDE and CONCUR.

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

Senator SEWALL: Mr. President, I request a Division and would like to speak to my motion. I just want to try one more time, I realize where it is going, but there are a few more things that I would like to read into the Record. This is from the Portland Press Herald, March 5, 1986, The State claims that recreation based on past practice recently has emerged as a State protected right in Maine, "We haven't heard a word of evidence, yet, that this establishes recreation as a right of law." Just as Elmer Violette told Assistant Attorney General Paul Stearn during the arguments. "Don't you have to go through a fact finding, a judiciary hearing to find out whether these rights exist and to what extent. If the Legislature was to adopt a statute clarifying public access, wouldn't our problems be different than this abstract world that you lawyers have created today." So I suppose what we are doing is prejudicing a case that is in the court. Let me read you something else. "You have made a leap from the colonial ordinance, (which permitted only the fishing, fowling and navigation) to now allowing recreational uses", Justice Caroline Glassman said, "Maybe recreational rights have arisen through custom, but you need to determine that first before you can get into whether the state is involved."

Senator SEWALL of Lincoln requested a Division.

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

Senator NAJARIAN: Mr. president and Members of the Senate. I think that the remarks that Senator Sewall read to you from the Portland Press Herald were taking out of context. I attended the oral argument which those questions and statements were made by the justices', and what they were talking about is that the issue of recreational rights of the public at Moody Beach had been dismissed by the Superior Court Justice without it having gone to trial.

They had no factual record at the lower court to look at to determine what use the public had made on Moody Beach in Wells. The issue before the court was sovereign immunity and they hadn't heard any evidence of any kind on any of the issues that had been brought by the complaints of the plaintiff's at Moody Beach. I think that the issue of recreational rights is not before the courts right now, the issue before the courts is whether the state has sovereign immunity and whether the private land owners can indeed sue the State or not.

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

Senator SEWALL: Thank you Mr. President and Members of the Senate. If you really want to infuriate every private land owner along the coast of Maine and on every river in the coast of Maine and eventually, because remember what you are amending here is that Great Ponds Act, if you want to see problems with taxes, after all your property isn't worth the same, the more uses that are given away the less your property evaluation. If it goes one way they can go back and say, your property isn't worth as much it should be devalued and then you won't have all that money from the coast to distribute around the rest of the State, or if it goes the other way you will find that this Bill will be thrown out after a lengthy and very trying situation for the State and will be back to ground one and starting over.

If the arguments put forth that these rights are already there, there is no need for this Bill. If you are arguing that the rights are not there and you choose to take this property to take upon yourselves more rights than you are taking property without just compensation. You can't have it both ways, you can't expect people when the uniform property tax and fair assessment evaluations came in and decided to tax these people on the property down below water marks, they could get all the money they could to distribute evenly among the State for education purpose. You can't have it both ways. You can't say "now we are going to tax you, we are going to take all of this land and tax you on it because you own it, but on the other hand we now have decided that the public should use this area too. Although we are going to value it at the highest invest cost, we are now going to say that you actually can't use it and the public has an absolute right to use it." I think you are just making a terrible mistake and I think that you will see, if you thought the uniform property tax raised problems, you wait to see what this does. If you thought that the Indian Land Claims was expensive, you see what this would be if the State has to compensate every shore and river land owner in the State of Maine for the taking of property.

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

Senator TUTTLE: Mr. President and Members of the Senate. I will be brief, I am not a lawyer, but I will speak on this matter pertaining to beach access. I feel I sort of have an unique insight as to what is going on.

During the summer I am Marine Safety officer with the town of Wells, I think I can understand what is going on in this situation, I have done that for twelve years and one of my areas of responsibility is Moody Beach which is something that has been brought in here. As some of you might be aware, I guess that it has been said also, that the people of Moody Beach presently have a suit against the town of Wells to prevent the public from using Moody Beach for public recreation purposes. Most of the people that own property at Moody Beach are for the most part from out-of-state most of the year.

It is amazing to me that those same people that now find themselves in a situation of being property owners seem to have forgotten that years before, I can remember them, they used the beach as members of the public. But now that they own the land they want to kick everybody else off.

I remember one situation a couple of years ago, when I was about to make a rescue of a twelve year old boy at Moody Beach who was caught in the riptide, which is something that occurs at Moody Beach often, and his grandfather came up to me and said "no, don't rescue him, you don't belong here this is my beach, the public does not belong here." The man was about sixty years old and he proceeded to enter the water with his L.L. Bean boots, his dungarees, and his overcoat and ended up getting caught in the riptide with his grandson. I was fortunate that day that I was able to rescue both of them. Moody Beach has always had a lifeguard and as far as I can remember, it has always had public access. We probably make more rescues at that particular stand than any other part of the beach, but year after year I find myself and other members of the lifeguard squad putting our own lives on the line for people who I really feel have sincerely have forgotten where they have come from. Today, I will support this Bill, I think it is a long time overdue, and I will support the motion to Recede and Concur.

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

Senator NAJARIAN: Mr. President and Members of the Senate. The good Senator from Lincoln, Senator Sewall, raised a question as to why we needed this legislation if the rights already exists and I think there are several reasons why it is good to put this legislation in the statutes. First of all, I would like to say that there are certainly historical precedence for passing legislation to confirm rights that we believe already exist and put in the Bill of Rights in the Federal Constitution is the most famous of such confirmatory legislation. The second reason is the pressures for both recreational use of the coast and for sub-division and ownership of the piece of the coast are increasing. A current litigation in Wells involving the public trust rights is an indication that although the rights to recreation exist, there are those who are unfamiliar with the Maine tradition of recreational use of the intertidal zone who need a legislative declaration of the public's rights before they will recognize them.

Third, the confirmation of the public trust rights by the Legislature is supportive of the position that the State, through the Attorney General, is already taking in the Moody Beach case, as they stated in their brief to the law court. Efforts to pretend that the public does not have recreational rights to use beaches, such as Moody Beach, or that those rights are narrowing circumscribed defy the heritage, history, and life-style of the people of the State of Maine. A conclusion contrary to such rights would do serious mischief to the balance of the public and private rights in such beaches.

We submit to the public economy in Wells, as the court recognized in the opinion of the justice public trust rights encompass recreational rights. Forth, I think we need this legislation to diffuse the potential for serial legislation foot by foot all along the coast of Maine. Contrary to the statements of Senator Sewall I believe this will help to deter litigation on the coast. The Constitutionality of this law will undoubtedly be questioned by some of the private land owners and in the Supreme Court can declare the public and private rights in the intertidal zone in one decision.

THE PRESIDENT: The pending question before the Senate is the motion of Senator CARPENTER of Aroostook to RECEDE and CONCUR.

A Division has been requested.

Will all those Senators in favor of the motion of Senator CARPENTER of Aroostook to Recede and Concur, please rise in their places and remain standing until counted.

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

20 Senators having voted in the affirmative and 10 Senators having voted in the negative, the motion by Senator CARPENTER of Aroostook to RECEDE and CONCUR, PREVAILS.

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

COMMUNICATIONS

The Following Communication:

COMMITTEE ON JUDICIARY  
ONE HUNDRED AND TWELFTH LEGISLATURE

April 14, 1986

The Honorable Charles P. Pray  
President of the Senate  
112th Legislature

Dear President Pray:

In accordance with 3 M.R.S.A., Chapter 6, Section 151, and with Joint Rule 38 of the 112th Maine Legislature, the Joint Standing Committee on Judiciary has had under consideration the nomination of Douglas A. Clapp, of Pittsfield as District Court Judge.

After public hearing and discussion on this nomination, the Committee proceeded to vote on the motion to recommend to the Senate that this nomination be confirmed. The Committee Clerk called the roll with the following result:

YEAS:	Senators	2
	Representatives	6
NAYS:		0
ABSENT:		5
	(Sen. Sewall of Lincoln, Rep. Paradis of Augusta, Rep. Drinkwater of Belfast, Rep. MacBride of Presque Isle, Rep. Stetson of Damariscotta)	

Eight members of the Committee having voted in the affirmative and none in the negative, it was the vote of the Committee that the nomination of Douglas A. Clapp, of Pittsfield as District Court Judge be confirmed.

Sincerely,  
S/Sen. Michael E. Carpenter  
S/Rep. Edward J Kane  
House Chair

Which was READ and ORDERED PLACED ON FILE.

THE PRESIDENT: The Joint Standing Committee on JUDICIARY has recommended that the nomination of Douglas A. Clapp of Pittsfield be confirmed.

The pending question before the Senate is: "Shall the recommendation of the Committee on JUDICIARY be overridden?"

In accordance with 3 M.R.S.A., Chapter 6, section 151 and with Joint Rule 38 of the 112th Legislature the vote will be taken by the Yeas and Nays.

A vote of Yes will be in favor of overriding the recommendation of the Committee.

A vote of No will be in favor of sustaining the recommendation of the Committee.

Is the Senate ready for the question?  
The Doorkeepers will secure the Chamber.  
The Secretary will call the Roll.

ROLL CALL

YEAS: Senators None

NAYS: Senators, ANDREWS, BALDACCI, BERUBE, BLACK, BROWN, BUSTIN, CARPENTER, CHALMERS, CLARK, DIAMOND, DOW, EMERSON, ERWIN, GAUVREAU, GILL, KANY, KERRY, MAYBURY, MCBREAIRTY, NAJARIAN, PEARSON, PERKINS, SEWALL, SHUTE, STOVER, TRAFTON, TUTTLE, TWITCHELL, USHER, VIOLETTE, WEBSTER, THE PRESIDENT - CHARLES P. PRAY

ABSENT: Senators, HICHENS, MATTHEWS

EXCUSED: Senator DUTREMBLE

No Senators having voted in the affirmative and 32 Senators having voted in the negative, with 2 Senators being absent and 1 Senator being excused, and None being less than two-thirds of the Membership present and voting, it was the vote of the Senate that the Committee's recommendation be ACCEPTED and the nomination of Douglas A. Clapp was CONFIRMED.

The Secretary has so informed the Speaker of the House.

Under suspension of the Rules, all matters thus action upon were ordered sent down forthwith for concurrence.

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

PAPERS FROM THE HOUSE

Joint Order

The following Joint Order: H.P. 1705

WHEREAS, the Legislature may order a special election on any measure that is subject to a vote of the people pursuant to the Constitution of Maine, Article IV, Part Third, Section 18, Subsection 2; and

WHEREAS, direct initiative legislation has been transmitted to the Legislature which is identified as Legislative Document No. 2092, Initiated Bill 2, "AN ACT to Prohibit the Promotion and Wholesale Promotion of Pornographic Material in the State of Maine;" and

WHEREAS, it is the intent of the Legislature to refer this measure to the electors of the State at the next statewide election to be held on June 10, 1986, for determination by the people; now, therefore, be it

ORDERED, the Senate concurring, that the Office of the Secretary of State submit to the electors of the State for determination by the people at the next statewide election to be held June 10, 1986, the subject matter of "AN ACT to Prohibit the Promotion and Wholesale Promotion of Pornographic Material in the State of Maine;" and be it further

ORDERED, that a copy of this order be immediately transmitted to the Secretary of State.

Comes from the House READ and PASSED.

Which was READ.

THE PRESIDENT: The Chair recognizes the Senator from Hancock, Senator Perkins.

Senator PERKINS: I would request a Division of the Passage of the Order and I would only issue my concern with regard to the Order. I have with me a legislative calendar dated February 28, 1986, in this regard and in that calendar from the House is a report from James Henderson who is Deputy Secretary of State, informing the people that there will be an election call for November 1986. I have a subsequent calendar dated March 3, 1986, on a similar communication to this Body stating the same thing. These people have been informed that an election is called for November of 1986. That is not sixty-five days hence, it is more like two hundred days hence. We are taking from these people about four months of preparation time and time which they have been told is their's for which to utilize a passage of a referendum. They have forty-six thousand signatures to demonstrate their intentions for this referendum.

I have some grave concerns, even though I have no question as to the out come, nor to the plurality in this Chamber, but I do have some concerns because we are viewed as a whole, not as two parties, but as a whole. Our actions here this evening could well disenfranchise a whole group of people. The scheduling for this election for a primary election which is just that, is for a party election and the unenrolled have no part in this election for the various parties. Therefore, their attendance at the polls would be minimal at best, so for us here this evening after these people have been told that the election, or this process would be in November when there would be an optimum turn up to a time when there would be a minimal turn out would seem to be another one of those instances when we as a Legislature would be flaunting the public will.

I am told that there is a letter from the Attorney General substantiating this, I am not privy to such a communication, nor I fear are any of my party privy to such, although I have heard the debate in the other Body which made reference to this and the Representative from Pittsfield. Not having been privy to this communication, I am not at liberty in any way to address it, but it comes from the Attorney General who I hold in high regard and yet who finds himself a candidate also. Another instance of placing ourselves above the people.

Do we want to portray that? I imagine after having told these people that this is what will happen? I am afraid that we will, but I am not sure that it is in the best interest of this Legislature, the unenrolled voter, or the people of Maine as a whole. I ask you to consider these things late this evening when we are all tired and working towards the end of this Legislature, I question the wisdom of a move of this type, it may be perfectly legal, it certainly is within our rights, but is it in the best interest of the people of the State of Maine?

Senator PERKINS of Hancock requested a Division.

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

Senator CARPENTER: Mr. President, Ladies and Gentlemen of the Senate. In these types of initiated pieces of legislation, the Constitution pretty much lays down the rules as to the procedure that is to be followed, and that is if the legislature rejects in its entirety form a piece of legislation such as this, then that issue goes to the voters at a regularly scheduled state wide election. The next regularly scheduled state election is the primary election scheduled for June of this year. I think one of the compelling arguments here was made to me on this issue on the day of the public hearing, which I Chaired, quite surprised at the response that I got to a question that I asked, and here is the way that I posed the question. Of those of you in the room who favor enactment of this legislation, regardless of how it is enacted, just the proponents a show of hands of how many people would like to see the Legislature enact this before we go home in April. Quite frankly, I thought I would get a minority of people putting their hands up and I would say fully 80-85% of the people indicated that the issue was of such concern to them they wished it to be enacted by the Legislature and not placed before the voters. Completely contrary to what I had thought the response would be, completely contrary to what I think our thinking has been. The first person to put up their hand in this particular room was the person who initiated the petition drive. The Senator from Hancock, Senator Perkins, I think was intimating that because of the 65 day period there would not be time for the Christian Civic League and their supporters to gather the support necessary to enact this law. I think, quite frankly, that is not accurate. It would seem to me that with 46,000 signatures of petitions and no signatures that I am aware of in opposition other than a hand full of people who came to the public hearing. The score at day one was something like 46,000 to 40. I think it is important to get this issue before the people as expeditiously as possible.

I was only aware of the Attorney General's opinion a couple of days ago, since I was not the one who requested it, but I think that it is prudent on the part of the Legislature to do this. The argument that it is a primary election and so called independent voters don't have a voice is not accurate, either that it implies that independent voters may not have a choice. Persons who are unenrolled in either political party have every right, a statute is about to be enacted by public referendum, they have an obligation to go to the polls that day, take that ballot, and make their decision known.

It doesn't disenfranchise anyone. If anybody has watched television in the last two to three weeks, a number of political ads are beginning to pop up on television will certainly alert everybody for the next two months that there is about to be an election and that it is going to be held in June and it involves certain personalities and now I suspect you are going to see a large turn out of people both pro and con on this issue. My political party has a primary in June as does the opposing political party. Primary elections are going to generate a lot of interest, are going to become quite heated probably before it is over with, there is always the danger in a heated political primary that the losers after June will take their marbles and go home. If that is the case then you certainly can make the argument that the turn out in November will be low and it will not be reflective of the people's will, where as the heat and the interest that is going to be generated on June 10 will insure that there is going to be a good turn out. I think this puts the issue squarely, where it ought to be in the hands of the people. I think the issues are not well defined yet, but are getting better defined by the day. I think between now and June 10 there is ample time for both sides to expose the issues and to do a good job of it. I would urge passage of this Joint Order.

THE PRESIDENT: The Chair recognizes the Senator from Hancock, Senator Perkins.

Senator PERKINS: Mr. President, Ladies and Gentlemen of the Senate. The good Senator from Aroostook and I came into the Legislature at the same time. One of the things that we prided ourselves on in our coming, was that of open meetings and open Legislative Sessions and hearings and the right to know. They're still good, I think. We made some definite gains for the people of the State at those times, because prior to that the hearings, the work sessions and many parts of state government and local government were held behind closed doors. We all felt that it was a distinct game that the doors were open, that the people were given a chance to hear and see what was happening and particularly what was happening to them. This evening we are going to abbreviate a term which has been set by a approximately 120 days. Four months with which to make a stand for at least 46,000 people. They thought enough of their cause to sign their name on paper, sending it here to Augusta subscribing to the best that knew to every rule that was in the books. Tonight we are here changing that procedure for what?



Is the record in the turn out in June so monumentally large or larger of that in November that we are indeed doing someone a favor? I doubt it, it would appear to me that we are taking a bad step backward.

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

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

Senator CARPENTER: Mr. President, I don't want to prolong this issue a great deal, but I think the issues raised by the good Senator from Hancock, Senator Perkins, are important. The Senator is right, government today in Augusta is a lot more open than it used to be. I am very proud to say that during my twelve years of legislative service my party has lead the way in that fight. I don't want to minimize in any way the right of the people to choose, the right of the people to vote, or the right of the people to participate in this process. That is exactly what this legislature said last week when it decided not to enact this Bill on its own. I don't know who told whom that this referendum was going to be held in November, I haven't told anybody, in my legislative district because I haven't known. I think that is to be spelled out by either the Legislature or the Governor, pursuant to the Constitution. I am not sure that the people have been told that this is going to be held in November. I think we shouldn't underestimate the sophistication of the people to know when elections are held and when statewide elections are held, because we call them primaries, generals and referendums, I don't know the people attach a great deal of significance to that.

Does the Senator from Hancock, Senator Perkins, truly believe that there is one person, regardless of how remotely their home may be located, who on the tenth of June 1986, will not know if they care to know that this issue is being decided that day? We will see what the interest is, I think you are going to be surprised at the interest. What I think the Senator is implying is that they may know about it, but because it is not a November election, they won't come out. If they know about it and don't come out, then they have forsaking their right to expand in this process, I argue. They will know about it, they will participate, don't sell them short. It is not the norm, perhaps, but I am not sure this situation has ever arisen before. This is not taking a step backwards, this is being very forthright, we are telling the people 65 days, approximately ahead of time. The issue has been in the press now for over a year, signatures have been collected, not only at the polls but at the stores, and in the supermarkets, and at the bake sales and at the churches all across this State. Many of the 46,000 people who signed those petitions will be told as early as this Sunday, and that is fine. We will get participation in the process and I will be the first to stand here and oppose this order if I did not think that everybody that wants to participate in this process on this issue, if I believe that there were any of those people out there who are not going to know about it.

If the election were to be this Sunday, or even a week from Sunday, I would say that is not enough time, there is enough time here, not only to develop the issues but to notify the people. Thank you.

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

Senator WEBSTER: Mr. President, ladies and Gentlemen of the Senate. It appears to me that this Joint Resolve does not even pass the straight face test. I guess I want to pose a question to someone who might like to answer.

I am wondering, as to first of all, whether we could send all the bonds out in June, it seems to me that would bring more people to vote in June and that is what we seem to be hearing. I also want to know why we can't also send the Local Measure Service Bill out in June too, because I think we want to get all of those people involved in this process. I think that it is a healthy thing, if that is the argument we are going to use here today I would say that there may be other arguments, but lets assume that is the reason we are doing it, then I would like to find out why we can't put another resolve in to send all the bonds and the Local Measured Service issue out so that we can have the people voting on that in the June.

THE PRESIDENT: The Senator from Franklin, Senator Webster, 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, Ladies and Gentlemen of the Senate. In respond to the concerns of the good Senator from Franklin, Senator Webster, I think what makes this issue unique is the sense of immediacy that we have conveyed to both my Committee and to the Legislature and you all received the cards, you all received the phone calls, you all received the letters about the immediacy of this issue. That is what makes this issue unique. Again, if you attended the public hearing on this Bill, the question was asked, do you want it now or do you want it later. I don't believe I would have to go back and ask the Members of the Committee, that I ever said "do you want it now by the Legislature, or do you want it in November by the electors"? I believe I phrased the question, opposed the question, so you want it now or do you want the people to vote? The overwhelming response to that was, we want it as soon as possible. If you had been there that day and if you had heard the fervor with which the proponents of this issue supported the bill, and the concern that they expressed in all their sincerity that this issue is one of the most essential, if you will, to preserve the very fabric of our society. If you had sat there and listened to that debate, than I believe you would be supporting the Order that is before us.

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

Senator WEBSTER: Mr. President, Ladies and Gentlemen of the Senate. I am sure there are a number of bond issues that we are going to be enacting here today that will go to the people, that are equally as important to the people that I represent. A particular concern is the University bonding package, I think that is important, and perhaps if you want to continue on with the argument that the good Senator from Aroostook had. I sat through a public hearing as large for Local Measured Service. We dealt with legislation here several weeks ago, which would immediately stop Local Measured Service to be mandatory.

I don't think that is the issue here today, I think we all know that, I was hoping somebody was going to stand up here and lay the cards on the table, but I don't see that happening so I am going to say what I think is the problem. What the issue is here today, is that we have a concern by obviously, a certain group of people that perhaps having this issue on the ballot in November might not be good for them. I would argue that having an issue like this, or any issue as positive, I think the issues will be out before the voters, they will have a chance to decide whether they agree with the issue or whether they oppose the issue and they will have a chance to vote for other people. I think that is the issue we are concerned about. We have some conservative who might be out voting in November. We want to get them to vote in June instead, so they won't be there in November and perhaps not voting for some of us. But I would argue that the time to vote on this is November, as it has always been. If we don't want to vote on this in November and vote in June instead, then I say that we ought to put all the issue on in June, because I would like to have the University Bill on the June ballot, because I think that would help my cause. I think in June it would help the people that I am supporting, and it might help some of the candidates that I am supporting. Lets not hide this under some guise about being concerned about getting this issue out before the voters. The facts are, you all know it, the conservative people who support the pornography issue might not support certain candidates in the fall. I would say, that it seems to me in fair play it should be all one way or no way at all. If you want to put this Bill in November on the ballot, fine, let's put everything else with it. If you don't want to put it in November and put it in June instead, then let's put every other issue on, particularly the bond issues and Local Measured Service on in June so that everyone can have a chance to vote on these issues as soon as possible.

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

Senator KANY: Thank you Mr. President and fellow Senators. In reading the Attorney General's opinion, clearly the Local Measured Service direct initiative would be an order to have in June, if the Legislature so ordered. I would just like to say that if that is indeed the case that we do decide to do that, would please at least one constituent whose letter I found while I was cleaning out my desk today.

This letter from a Waterville gentlemen, an older gent, dated February 6, 1986, was saying that there are three things that he is very strongly opposed to, the worst coming first. The first was Local Measured Service, a big no, secondly, pornography no, and third, abortion no, so if the Legislature does indeed decide to do that, we will please at least one of my constituents, I am sure, because he will be able to vote on those sooner.

---

Off Record Remarks

---

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

Senator BALDACCII: Mr. President and Members of the Senate. Sometimes in the lateness of the Session we are missing some basic points. We have all stood in line in November and waited for people to vote on Governor's, Congressmen, State Senators, State Legislators, Sheriffs, County Commissioners, on Local Boards and then on Bond Issues, and then on Referendum Issues, and then on Constitutional Issues. This issue is probably one that disturbs me the most, because of the penalties involved in it. The debate from the Maine Civil Liberties Union, from the Maine Christen Civics League, it is a very important issue and it should not get lost in the November elections. It should stand the light of day, it should be debated throughly by people of both sides, it should be very clear and it should not get lost with all the other issues that are being taken up in November. My local Council in Bangor has opted not to have it's elections in November, because of a basic point, there are so many issues and personalities and offices being sought, that people will not be able to respond to the most important office to them, the people that make sure that the street lights are on and the roads are paved and the rubbish is taken and collected. I think that it is very important that this issue have that kind of debate, because I would hate to see this become part of the laws in the mix up of legislation or referendum questions that take place in the hurly burly of campaign activity in November.

We must remember also that some Members of this Body seem to have forgotten that this issue was being talked about to be enacted, because of concerns that have been registered here. I think by putting this question out to referendum it strikes a happy medium between enactment and between the hurly burly of the November elections. I think that it is only fair to the people that they have that kind of open debate on this particular issue, so I would appreciate it if you support this Joint Order.

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

Senator CLARK: Thank you Mr. President, Men and Women of the Senate. I am delighted this afternoon as the sun is setting that we are discussing and debating at length an issue which has raised the awareness and awakened a few of us who might be a little lacking in hours of sleep. I find the sincerity embodied in the remarks of the good Senator from Hancock, Senator Perkins, particularly endearing, for I am sure that he intends to express the position of his side of the aisle in a friendly and persuasive fashion. I find also the remarks of the good Senator from Franklin, Senator Webster, particularly refreshing for he has a reputation of "saying it like it is".

I would like to remind Members of the Senate, ever so gently, that this Legislature has affirmed the issue of Local Measured Service and a trial period which will ensue between the passage of that trial period and the referendum in November. So I encourage you to remove that from consideration, for it was on the basis of allowing this trial period of Local Measured Service the basis of experience in eight particular areas of our state, that the electives would be that much more informed, having experienced in large measure, and by many citizens the effects of Local Measured Service on their telephone bills. I think that this Joint Order is neat. It not only has awakened us in this early evening hour, but it has raised the awareness of a primary date. We now all know that it is June 10, even though there are some among us who are quite aware that, in fact, the primary date was June 10. I do not think that with the issues before us on June 10, that we are going to expect what has, in the past, been a minimal expedition of Maine's citizens exercising their right of vote. I think this is going to be an exciting primary election date on June 10 of this year and we all are going to be, if you will, hyped not only by the candidates who are going to be elected to represent both of the political parties, as a result of that election day, but by this issue, which in fact, will be settled on June 10. Perhaps it doesn't merit a great deal of debate, but I think that in large measure, the citizens of this State are going to feel relief that the issue of pornography as embodied by the initial bill, will be settled on June 10, 1986.

I only say that because it has long been my feeling, and I have always been in the minority on this issue I might add, that the citizens of this State and perhaps even the Nation, would like shorter campaigns. I have great faith in the intellect of the citizens of this State to listen to all sides of the pornography issue and make an intelligent decision. Even if the election, lest it were held next week. They have ample time as they always do and the media will act responsibly as it always does, and people will be encouraged to vote and they won't be deterred by snow and freezing rain and sleet and Christmas shopping. Yes indeed, primary election day is June 10, 1986. We will not be disenfranchising the people of this State, rather we are going to be encouraging them and inviting them to participate in the process.

It has been indeed a long time, probably over a decade, maybe my memory is faulty, it frequently is, but I don't remember a primary election date in which there weren't other issues before us and this is a particularly interesting issue and I am sure people's feelings will run high. When people's feelings run high, people get up and vote. While it may be perceived that this Joint Order has been introduced for political reasons, I would submit to you, Men and Women of this Maine Senate, as well as the citizens of this State, that it is not political but rather prudent and, in fact, quite practical. Thank you Mr. President.

THE PRESIDENT: The Chair recognizes the Senator from Hancock, Senator Perkins.

Senator PERKINS: Mr. President, Ladies and Gentlemen of the Senate. I thank my good friend, the lady from Cumberland, for the definitions, and far be it from me to have thought that such an order would have been placed before this Body for any such reasons as that. I must remind my good friend, the Senator from Aroostook, he asked who said, when did they say it with regard to the November 1986, and I must point out to him that on the February 28, on the House Calendar, said that in the event that the Legislature rejects the initiative proposal a Referendum election will be called for November 1986. The following Monday, the Senate Calendar reflected a similar thing and said in a similar manner and was signed by James S. Henderson, Deputy Secretary of State. It appears to me that the hearing for the proposal bill was held in the vicinity of March 27. Today is April 14. We have been busy. One of the things searching back that I wanted to find and see if there is a history of this efficiency. In 1975, there was an initiated petition for L.D. 1619, the so-called Bigelow Preserve, and it was voted on June 8, 1976, one year later. They have neglected to think of how they could cut 120 days off if it were your wedding, your coming out party, your bridal shower, or just your big day would you want 120 days taken from your time span? You, not me, the hour is late, but I think the subject is serious. I offer you an alternative, do what you said you would do. Can the people in your district and my district expect anything less? Mr. President, I request a Roll Call.

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

Senator CARPENTER of Aroostook requested and received Leave of the Senate to speak a fourth time.

Senator CARPENTER: Mr. President, Ladies and Gentlemen of the Senate. I assure you, my fourth and last time. I certainly can't match the wit of my good friend from Hancock, Senator Perkins, but I look at the House and Senate Calendars and I wonder if that is the method that was used to communicate this to the people, then somebody in this Chamber must have the House and Senate Calendars to the press and to everybody else, and I can't imagine who would have done that.

I guess that if we are going to follow the logic of the good Senator from Hancock, Senator Perkins, that from now on every non-policy making middle level bureaucrat of State government sends us a message and it appears on our calendar that we might want to start scrutinizing a little closer, because Senator Perkins is telling us that a commitment, you said it was going to happen. Jim Henderson doesn't speak for me. The last time I looked there were only 186 people in this state that were allowed to set policy in this manner. Clearly that policy making authority is vested in this Body and in the unmentionable Body at the other end of the Hall. That is who makes the policy in this State within the perimeters of the existing law and the perimeters of the State Constitution and the United States Constitution. The fact that we have had an assumption by some people in the bureaucracy, and obviously that assumption by some people within this Chamber doesn't negate that. This is the policy making Body and that is what we are about to do or not to do. Thank you.

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

Senator GILL: Mr. President, the good Senator from Aroostook talks about assumption and I would tell you that it is the assumption of the voters out there that the referendums would take place in the November election, because as Senator Perkins has stated from Hancock, that there has been only one referendum held in June, an initiated referendum and that was when the signatures were obtained one full year in advance. So, there was certainly ample preparation for that, but evidently the emergency wasn't there that Senator Carpenter feels is in this one. The people out there, the people who go to vote at the polls expect the referendums to take place in November. That's the way that it has always been and that is the way that they expect it today.

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

Senator KANY: Mr. President and fellow Senators. First, I would like to point out that the Bigelow Initiative was held prior to our changing the direct initiative of the people's veto law. Secondly, I would just like to say that whenever the direct initiative referendum is, whether in June or November, that I hope that we make certain that the debate is focused on a comparison between what is being suggested and what our current law is. I will just take this opportunity while the issue is before us to mention the fact that we do have some law particularly regarding the semination of obscene matters to minors on our statutes now. It is a crime to disseminate obscene matters to minors it is also a crime to allow minors to witness out door motion pictures at theaters showing obscene motion pictures. Third, we have a civil violation on the books of magazines containing obscene material or being displayed to minors without covers. I just wanted to put that into the debate. Thank you.

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

Senator CLARK: Thank you Mr. President, Men and Women of the Senate. Very briefly I would share with you that some of the first referendums that we ever had as a result of initiated bills, occurred back just prior to WWI, I think it was 1913 and that year we held five of those referendums in September.

We remember, of course, that in September, that month at that time, used to be our primary election time. That year we also had one special election that had been set on a special date and that date had been set by this Legislature. I am delighted to respond to the remarks of the good Senator from Hancock, Senator Perkins, with reference to the Bigelow Referendum, which I admit was not set for election in the very expedient nor efficient manner, as a matter of fact, as I recall that was my first legislative session, and unless my memory is failing, due to my increasing year or due to my fatigue, the latter being more appropriate, in that year it was the Senate that was controlled by what we call our friendly opposition. Maybe this Joint Order reflects more expedience and certainly more efficiency. Thank you Mr. President.

---

Off Record Remarks

---

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

Senator STOVER: Thank you Mr. President and Members of the Senate. In 1913, believe it or not, I was around. I didn't vote but as I recall my father telling me that they used to have the primary in June, the General Election was in September, and then the Presidential Election which occurred every four years was in November. I just wanted to set the record straight. Thank you.

THE PRESIDENT: The pending question before the Senate is the PASSAGE of the Joint Order.

A vote of Yes will be in favor of Passage.

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

An Act Relating to Staff Retention in Community-based Residential Facilities for Persons with Mental Retardation

YEAS: Senators, ANDREWS, BALDACCI, BERUBE, BROWN, BUSTIN, CARPENTER, CHALMERS, CLARK, DIAMOND, DOW, ERWIN, GAUVREAU, KANY, KERRY, NAJARIAN, PEARSON, TRAFTON, TUTTLE, TWITCHELL, USHER, VIOLETTE, THE PRESIDENT - CHARLES P. PRAY

S.P. 757 L.D. 1921 (H "A" H-705 to C "A" S-472)

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

NAYS: Senators, BLACK, EMERSON, GILL, MAYBURY, MCBREAIRTY, PERKINS, SEWALL, SHUTE, STOVER, WEBSTER

Senate at Ease

ABSENT: Senators, HICHENS, MATTHEWS

Senate called to order by the President.

EXCUSED: Senator DUTREMBLE

Off Record Remarks

22 Senators having voted in the affirmative and 10 Senators having voted in the negative, with 2 Senators being absent and 1 Senator being excused, the Joint Order was PASSED, in concurrence.

ORDERS OF THE DAY

Senate at Ease

Senate called to order by the President.

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

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

An Act Relating to Staff Retention in Community-based Residential Facilities for Persons with Mental Retardation

S.P. 757 L.D. 1921 (H "A" H-705 to C "A" S-472)

ENACTORS

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

Tabled - April 14, 1986, by Senator PEARSON of Penobscot.

Pending - ENACTMENT

An Act to Implement the Visiting Committee's Report and to Provide the Necessary Funds for the University of Maine and the Proper Operation of Government

H.P. 1641 L.D. 2315 (H "F" H-711 and H "G" H-713 to H "A" H-700)

(In House, April 14, 1986, PASSED TO BE ENACTED.)

(In Senate, April 14, 1986, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-472) AS AMENDED BY HOUSE AMENDMENT "A" (H-705), thereto, in concurrence.)

(See Action Later Today)

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

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

Senator PEARSON: Mr. President, Men and Women of the Senate. This was indicated on my supplement from the Legislative Finance Office to be one of those items to be Tabled. The Second item was the taxes that are necessary in order to pass the bills off the Table. I no longer need to table this.

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

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

ENACTORS

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

An Act to Recodify the Laws of the Maine State Retirement System

S.P. 886 L.D. 2231  
(H "B" H-690)

(See Action Later Today)

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

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

SECOND READERS

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

Senate

Bill "An Act to Amend and Improve the Education Laws of Maine"

S.P. 957 L.D.2399

Which was READ A SECOND TIME.

On motion by Senator BROWN of Washington, Senate Amendment "B" (S-526) READ and ADOPTED.

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

Emergency

An Act to Amend the ATV Laws

H.P. 1583 L.D. 2229  
(H "A" H-696; C "A" H-662)

This being an Emergency Measure and having received the affirmative vote of 28 Members of the Senate, with No Senators having voted in negative, and 28 being more than two-thirds of the entire elected Membership of the Senate, was PASSED TO BE ENACTED and having been signed by the President, was presented by the Secretary to the Governor for his approval.

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

ENACTORS

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

An Act to Implement the International Registration Plan to Apportion Fees for Certain Commercial Vehicles (Emergency)

S.P. 804 L.D. 2019  
(C "A" S-485)

An Act Relating to the Social Worker Registration Law

H.P. 1683 L.D. 2370  
(H "A" H-712)

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

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

PAPERS FROM THE HOUSE

Non-Concurrent Matter

Bill "An Act to Create a Paralytic Shellfish Poison Monitoring Program"

H.P. 1307 L.D. 1823

In Senate, March 6, 1986, PLACED IN THE LEGISLATIVE FILES pursuant to Joint Rule 15, in concurrence.

RECALLED FROM THE LEGISLATIVE FILES to the House, pursuant to Joint Order H.P. 1697, in concurrence.

Comes from the House PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-725) in NON-CONCURRENCE.

On motion by Senator PEARSON of Penobscot the Senate RECEDED.

The Bill READ ONCE.

House Amendment "A" (H-725) READ.

On motion by Senator PEARSON of Penobscot, House Amendment "A" (H-725) INDEFINITELY POSTPONED in NON-CONCURRENCE.

The Bill READ A SECOND TIME.

On further motion by same Senator, Senate Amendment "A" (S-528) READ and ADOPTED.

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

Sent down for concurrence.

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

Senator WEBSTER: Mr. President, is the Senate in possession of L.D. 2315?

THE PRESIDENT: The Chair would answer in the affirmative.

Senator WEBSTER of Franklin moved that the Senate RECONSIDER it's action whereby it PASSED TO BE ENACTED:

An Act to Implement the Visiting Committee's Report and to Provide the Necessary Funds for the University of Maine and the Proper Operation of Government

H.P. 1641 L.D. 2315  
(H "F" H-711 and H "G"  
H-713 to H "A" H-700)

(In Senate, April 14, 1986, PASSED TO BE ENACTED, in concurrence.)

(In House, April 14, 1986, PASSED TO BE ENACTED.)

Senator PEARSON of Penobscot requested a Division.

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

Senator WEBSTER: Mr. President, I have no intention of opposing this measure, I just want to speak very briefly to the issue. I am somewhat concerned about the manner that we proceeded on this issue. I am very concerned representing the University that we do something such as the Governor has suggested.

Since my tenure here in the Legislature, I have never seen a tax bill tacked on to something else and that concerns me. I have no problem with funding the University, I am wholeheartedly supporting that, but I feel that it would have been more appropriate, and I hope in the future it is more appropriate, that we bring a measure out separate, not a do or die situation. It has never been done that way since I have been here and I find it quite offensive and I just would like to put that on the Record. Thank you.

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

Senator VIOLETTE: Mr. President, Ladies and Gentlemen of the Senate. I can understand the concern that the gentlemen from Franklin, Senator Webster, expresses, but quite frankly, his concern is simply not the fact. This is the ordinary course of business in terms of the Appropriations Committee providing for particular needs of State government and attaching to them the funding to provide sufficient funds to provide for the allocations in this Bill. What this Bill is really saying is that you can't get away with just voting for the money to give to the University you have also got to vote at the same time for where you are going to get the money. That is the way that you fund Appropriations Bills. That is why the Appropriations Committee on this Bill and all other such major budget items, puts the money into, not only the appropriation but also the allocation into one package. The issue that the Senator raises, this is an ordinary course of business here in State Government and it goes to the core issue, which is if you want to spend money for the University of Maine you also have to vote at the same time to pay for it. That is the way you provide for services.

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

Senator WEBSTER: Mr. President, Ladies and Gentlemen of the Senate. First of all, I take offense to the implication that I would some how vote for this package and not the funding. Since I have been here, it seems to me that the appropriate way of running State Government is you look at what you need and you raise the money to do it. Since I have been here, I have never seen this type of proposal. It seems to me that if there is a genuine concern about funding the University or spending money on anything that we look at what we have, we set priorities, and we raise the money that we need, and we pay the bills. I don't feel this is the appropriate way to do this, by passing this measure. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion of Senator WEBSTER of Franklin, to RECONSIDER it's action whereby the Bill was PASSED TO BE ENACTED.

A Division has been requested.

Senator WEBSTER of Franklin requested and received Leave of the Senate to Withdraw his motion to RECONSIDER.

Emergency

An Act to Extend the Commission to Examine the Availability, Quality and Delivery of Services Provided to Children with Special Needs  
H.P. 1652 L.D. 2330  
(H "B" H-692)

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

Tabled - April 14, 1986, by Senator PEARSON of Penobscot.

Senator PEARSON: Mr. President, is the Senate in possession of L.D. 2231?

Pending - ENACTMENT

THE PRESIDENT: The Chair would answer in the affirmative.

(In House, April 14, 1986, PASSED TO BE ENACTED.)

(In Senate, April 12, 1986, PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "B" (H-692), in concurrence.)

Senate at Ease

Senate called to order by the President.

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.

Off Record Remarks

On further motion by same Senator, the Senate RECONSIDERED its action whereby House Amendment "B" (H-692) was ADOPTED.

On further motion by same Senator, Senate Amendment "A" (S-515) to House Amendment "B" (H-692) READ and ADOPTED.

On motion by Senator PEARSON of Penobscot the Senate RECONSIDERED it's action whereby it PASSED TO BE ENACTED:

House Amendment "B" (H-692) as Amended by Senate Amendment "A" (S-515), thereto ADOPTED in NON-CONCURRENCE.

An Act to Recodify the Laws of the Maine State Retirement System

S.P. 886 L.D. 2231  
(H "B" H-690)

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

Sent down for concurrence.

(In Senate, April 14, 1986, PASSED TO BE ENACTED, in concurrence.)

(In House, April 14, 1986, PASSED TO BE ENACTED.)

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

On further motion by same Senator, Tabled 1 Legislative Day, pending ENACTMENT.

ENACTORS

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

ORDERS OF THE DAY

An Act to Confirm and Recognize Public Trust Rights in Intertidal Land

S.P. 950 L.D. 2380  
(H "A" H-730)

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

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



Senator SEWALL: Thank you Mr. President and Members of the Senate. It seems to me that the first time that I discussed this, and it feels like I am doing it about every twenty minutes, the first time that I discussed this was this morning, and then again in the afternoon as the good Senator from Aroostook, Senator Violette is reminding me.

But on the other hand doesn't it seem strange to you that a bill of this magnitude is going to be pushed through here in one day. I would ask that someone Table this at least one day and let people read the newspapers and have some chance to react before we take a final vote on this.

Senator PERKINS of Hancock moved that this be TABLED 1 Legislative Day, pending ENACTMENT.

Senator VIOLETTE of Aroostook requested a Division.

THE PRESIDENT: The pending question before the Senate is the motion of Senator PERKINS of Hancock to TABLE 1 Legislative Day, pending ENACTMENT.

A Division has been requested.

Will all those Senators in favor of the motion by Senator PERKINS of Hancock to Table this 1 Legislative Day, please rise in their places and remain standing until counted.

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

14 Senators having voted in the affirmative and 15 Senators having voted in the negative, the motion of Senator PERKINS of Hancock to TABLE 1 Legislative Day, FAILS.

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

Senator SEWALL: Thank you Mr. President and Members of the Senate. You will never believe it, but I have a new issue to discuss with you on this subject. The issue is limited liability of shore front owners and I would like to ask a few questions.

I want to read to you a little something that was put into testimony, I suppose I might as well get into it, it will be my last shot. Who came to this hearing and wanted this? Was there a great clamoring of citizens? There were people from the Governor's Office and a few Legislators and lobbyists. That is the great clamoring from the public wanting this Bill. Who was against it? Well we had a lawyer who was on the property owners side of the Moody Beach case and we had Robert Boyd, a businessman, Paul Stearn the Assistant Attorney General, who was on the other side of the Moody Beach case. The Robert Kirk, who was a land owner, Jean Restin from York, David Calhoun representing the Realtors because obviously prices will go down and so will their fees. We had Barbara Paul from the Casco Bay Development Association, who was very much opposed to this.

Richard Emmet from the Conservative Legal Foundation of New England, and then we had private attorney, Frederick Green and William Logan from Boothbay Harbor, Jack Holbrook from York, anyway we had a whole bunch of honest to goodness people who came from home to testify against this Bill. There were no private citizens coming up to testify for the Bill. I just thought that might be of interest and I want to be sure that it gets on the Record.

The issue is somehow, in all the debate that I have been in today that I forgot to get into, has to do with limited liability. It says, and this comes from the Conservation Law Foundation of New England, another desirable part of an overall Legislative package would extend limited liability to shore front owners for injuries sustained by members of the public while using "their portion of the intertidal zone". Since we are going to push this through in one day, I think we ought to discuss this liability and just what happens when there is an accident and who is responsible.

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

Senator NAJARIAN: Mr. President and Members of the Senate. First of all, I would like to respond to the allegation that this Bill is being pushed through very quickly. I introduced this Bill in the First Regular Session of the Legislature. It was held over the summer, it was introduced before December, back again into the process. It had a public hearing in March, we had a news conference on the Bill, we had a public hearing on the Bill, it was up in the Judiciary Committee for several weeks after the public hearing and at this time of the year we are pushing through all the bills as fast as we can so that we can get out of here and adjourn. This Bill has been around for almost two years. Secondly, I would like to respond to the liability issue that was raised by Representative Scarpino in the other Body after the debate. We checked with the Attorney General, and we checked with several attorneys and they all agreed that the liability of the private land owners won't change one bit by the passage of this legislation. What ever liability they have now they will continue to have, this won't add to it in the least.

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

Senator SEWALL: Mr. President and Members of the Senate. Let me see if I got that right. The liability will remain just the same as it is now for the private land owners. So therefore, the private land owner has the same liability now, without people recreating all over the front of the beach as it will when they are recreating all over the front of the beach. When would there be more likely to have accidents and to have injuries, and more likely to have cases, obviously you are taking some rights away, but leaving some responsibilities in place.

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

Senator NAJARIAN: Thank you Mr. President and Members of the Senate. I reiterate for the tenth time that this is only, establishing the statute existing rights, we are not taking anything away from the private land owners that they have now.

The public has the right to be in the intertidal zone now and they will continue to have the right to be in the intertidal zone, they have the right to recreate now they will continue to have the right to recreate there after the passage of this Bill. It doesn't change, it just puts into the statutes the status quos of the situation as it is today.

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

Senator SEWALL: Thank you Mr. President, I will just say one final thing. Nowhere has there ever been a case or a time where they said the public has a right to recreation in the intertidal zone.

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

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

A vote of Yes will be in favor of Enactment.

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 Nay requested and received permission to pair his vote with Senator HICHENS of York who would have voted Yea.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators, ANDREWS, BALDACCI, BERUBE, BLACK, BROWN, BUSTIN, CARPENTER, DIAMOND, DOW, ERWIN, GAUVREAU, KANY, KERRY, NAJARIAN, SHUTE, STOVER, TRAFTON, TUTTLE, TWITCHELL, USHER, VIOLETTE, THE PRESIDENT - CHARLES P. PRAY

NAYS: Senators, CHALMERS, EMERSON, GILL, MAYBURY, MCBREAIRTY, PEARSON, PERKINS, SEWALL, WEBSTER

ABSENT: Senator MATTHEWS

EXCUSED: Senator DUTREMBLE

22 Senators having voted in the affirmative and 9 Senators having voted in the negative, with 1 Senator being absent and 1 Senator being excused and 2 Senators having paired their votes, the Bill was PASSED TO BE ENACTED and having been signed by the President, was presented by the Secretary to the Governor for his approval.

On motion by Senator PEARSON of Penobscot RECESSED until the sound of the bell.

After Recess

Senate called to order by the President.

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

ENACTORS

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

An Act Relating to the Administration of Preventable Disease Programs and the Bureau of Health  
H.P. 1651 L.D. 2329  
(C "A" H-701)

On motion by Senator BROWN of Washington the Senate SUSPENDED THE RULES.

On further motion by same Senator, the Senate RECONSIDERED it's 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 it's action whereby Committee Amendment "A" (H-701) was ADOPTED.

On further motion by same Senator, Senate Amendment "A" (S-539) to Committee Amendment "A" (H-701) READ and ADOPTED.

Committee Amendment "A" (H-701) as Amended by Senate Amendment "A" (S-539) thereto ADOPTED in NON-CONCURRENCE.

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

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

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

ENACTORS

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

An Act Relating to Boards and Commissions  
H.P. 1614 L.D. 2269  
(S "A" S-493 to H "A"  
H-657; S "A" S-446)

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

---

Under suspension of the Rules, all matters thus  
acted upon were order sent down forthwith for  
concurrence.

---

On motion by Senator CLARK of Cumberland  
ADJOURNED until 10 o'clock in the morning.