

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 Thirteenth Legislature
OF THE
State Of Maine

VOLUME III

FIRST CONFIRMATION SESSION

August 21, 1987
Index

FIRST SPECIAL SESSION

October 9, 1987 to October 10, 1987
Index

SECOND SPECIAL SESSION

October 21, 1987 to November 20, 1987
Index

SECOND REGULAR SESSION

January 6, 1988 to March 24, 1988

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

In Senate Chamber
Wednesday
February 24, 1988

Senate called to Order by the President

Prayer by Father Renald Labarre of the Saint Phillip's Catholic Church in Auburn.

FATHER LABARRE: Let us pray. Oh mighty and everlasting God who alone works great wonders, pour down upon us and upon the members of the Senate and upon all committed to their care the spirit of their saving grace that we may truly please You and grow under the continual grace of Your blessing. Oh Lord may we be the recipients of Your choicest favors as we strive to use the time allocated to us for the growth and welfare of Your people. Look favorably Oh Lord upon our prayers for You are the giver of peace and the lover of charity. May no plan of ours ever go astray nor dream of service and civic improvement not come to fruition nor prayer be in vein. May we be ever faithful in the execution of our duties and responsibilities and be an inspiration in improving the equality of life for our citizenry. Ever loving Father, stretch forth Your hand and bless them and us that as one we may glorify Your name and in justice and in peace, build Your kingdom on earth. This we ask through Christ our Lord. Amen.

Reading of the Journal of Yesterday.

PAPERS FROM THE HOUSE
House Papers

Bill "An Act to Provide for the Education of Students Residing in Long-Term Drug Treatment Centers" (Emergency)

H.P. 1700 L.D. 2333

Comes from the House referred to the Committee on EDUCATION and ORDERED PRINTED.

Which was referred to the Committee on EDUCATION and ORDERED PRINTED, in concurrence.

Bill "An Act Relating to Employment of Minors"
H.P. 1697 L.D. 2330

Comes from the House referred to the Committee on LABOR and ORDERED PRINTED.

Which was referred to the Committee on LABOR and ORDERED PRINTED, in concurrence.

Bill "An Act to Create Tax Incentives for Employers who Utilize the Services of Sheltered Workshops"
H.P. 1699 L.D. 2332

Comes from the House referred to the Committee on TAXATION and ORDERED PRINTED.

Which was referred to the Committee on TAXATION and ORDERED PRINTED, in concurrence.

Bill "An Act to Give the Commissioner of Transportation Power to Condemn Existing Rail Lines for Transfer to Safe, Reliable and Efficient Rail Operators"
H.P. 1701 L.D. 2338

Comes from the House referred to the Committee on TRANSPORTATION and ORDERED PRINTED.

Which was referred to the Committee on TRANSPORTATION and ORDERED PRINTED, in concurrence.

Pursuant to Resolves
Commission on the Role of State Government
in Providing Independent Living Opportunities
and Services to Disabled Persons
The Commission on the Role of State Government in Providing Independent Living Opportunities and Services to Disabled Persons, pursuant to Resolve 1987, Chapter 62, ask leave to submit its findings and to report that the accompanying Bill "An Act to Promote the Creation and Expansion of Independent Living Opportunities for Maine's Citizens with Disabilities"
H.P. 1694 L.D. 2327

Be referred to the Committee on APPROPRIATIONS AND FINANCIAL AFFAIRS for public hearing and printed pursuant to Joint Rule 18.

Comes from the House with the Report READ and ACCEPTED and the Bill referred to the Committee on HUMAN RESOURCES for public hearing and printed, pursuant to Joint Rule 18.

Which Report was READ and ACCEPTED, in concurrence.

The Bill referred to the Committee on HUMAN RESOURCES and ORDERED PRINTED, pursuant to Joint Rule 18, in concurrence.

(See Action Later Today)

Senator CLARK of Cumberland was granted unanimous consent to address the Senate off the Record.

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

Off Record Remarks

On motion by Senator DUTREMBLE of York, RECESSED until the sound of the bell.

After Recess

Senate called to order by the President.

On motion by Senator CLARK of Cumberland, the Senate RECONSIDERED whereby it referred to the Committee on HUMAN RESOURCES:

Bill "An Act to Promote the Creation and Expansion of Independent Living Opportunities for Maine's Citizens with Disabilities"
H.P. 1694 L.D. 2327

(In House, February 23, 1988, referred to the Committee on HUMAN RESOURCES for public hearing and printed, pursuant to Joint Rule 18.)

On further motion by same Senator, referred to the Committee on APPROPRIATIONS AND FINANCIAL AFFAIRS and ORDERED PRINTED, pursuant to Joint Rule 18 in NON-CONCURRENCE.

Sent down for concurrence.

COMMUNICATIONS

The Following Communication:

113th LEGISLATURE
COMMITTEE ON UTILITIES

February 23, 1988

The Honorable Charles P. Pray
President of the Senate of Maine
State House

Augusta, Maine 04333

Dear Mr. President:

In accordance with 3 M.R.S.A., Chapter 6, Section 151, and with Joint Rule 38 of the 113th Maine Legislature, the Joint Standing Committee on Utilities has had under consideration the nomination of Lewis Perl of Scarsdale, New York, for appointment as Chairman of the Public Utilities Commission.

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	1
	Representatives	4
NAYS:	Senators	2
	Representatives	6
ABSENT:		0

Five members of the Committee having voted in the affirmative and eight in the negative, it was the vote of the Committee that the nomination of Lewis Perl of Scarsdale, New York, for appointment as Chairman of the Public Utilities Commission be denied.

Sincerely,
S/John M. Kerry
Senate Chair
S/Harry L. Vose
House Chair

Which was READ and ORDERED PLACED ON FILE.

THE PRESIDENT: The Joint Standing Committee on UTILITIES has recommended the nomination of Lewis Perl of Scarsdale, New York, for appointment as Chairman of the Public Utilities Commission, be denied.

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

In accordance with 3 M.R.S.A., Chapter 6, Section 151 and with Joint Rule 38 of the 113th 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 PRESIDENT: The Chair recognizes the Senator from Lincoln, Senator Sewall.

Senator SEWALL: Thank you. Mr. President, men and women of the Senate. I stand today feeling confused and upset by what happened in the committee hearing yesterday. I didn't attend that hearing and I haven't been particularly interested in this nominee or this particular subject. Utilities has never been a committee I served on, but I do have some feeling for the system. I understand that it is okay to vote, not okay but the right thing to do to vote against a candidate for a position who is not qualified. I don't think there is any way that Dr. Perl isn't qualified for this position. He came highly recommended by Peter Bradford, the former commissioner who I think most of us supported at one time or another even though we disagreed with some of his political outlooks that he had personally. I understand that you can vote against someone because your party tells you that we are now going to embarrass the Governor and vote in the other direction. I don't believe I have ever done that in my fourteen years here. But the thing that really bothers me above all is the idea of conflict of interest.

As a matter of fact, I woke up thinking about it in the night and said I think maybe this is my time to get up and talk about my experience with conflict of interest, both in the House of Representatives and

in the Senate. The first run in I had with the whole idea came with the Bottle Bill. When there was a Representative from Auburn, Stephen Hughes, who wanted to vote for the Bottle Bill although all of his personal and financial interests came from a position in an industry where they were opposing the Bottle Bill. There was a great to do about whether he had a conflict of interest or didn't even though he wanted to vote against himself. The ruling at that time was generally that he shouldn't be voting either way because it was such a tug. That was my first run in with the whole idea of legislative conflict of interest.

The second one came to me very personally when I was about to marry a man who did a great deal of lobbying at the State House. There was some question that if I should marry him during the Session, could I then go ahead and vote either for or against an issue which was very dear to my heart and to my constituents because he happened to be lobbying by the way on the same side as I was on this issue. The ruling on that from the Ethics Commission was generally accepted by all in power by the other end of the hall that if I were to marry him that I couldn't vote either way on the Uniform Property Tax whether to change it, abolish it, or keep it in place. I wasn't supposed to vote one way or the other on that issue. We even had kind of a funny time about the conflict of interest when he represented some magazines and there was a Bill that came in banning pornography in magazines and it was kind of an unwritten joke between the Speaker or me whether he could catch me in my seat at that time before I tried to get out of the House so that I would have to get up and excuse myself from voting on pornographic material. I escaped every time. The Record will show.

My next problem with conflict of interest came when I served on the Judiciary Committee and I was appointed to the Indian Land Claims Commission at that time. While we were going through all the hearing process my husband, who as you know is an attorney and was then practicing from an office in Portland, had from time-to-time discussed with Mr. Tom Tureen some of the aspects of the Indian Land Claims Proposal and he had been quite interested in it in a legal way. He was never in any way, shape, or form, employed by the Indians or by the other side, or by the state to work in this at all and he never sought one penny of compensation in this. But there was a problem with me serving on the Committee apparently because I knew something about it because I had spent some time discussing this with my husband. Someone went to the Speaker and said that I really should be removed from the Indian Land Claims Committee and they went to Senator Collins, then chairman of the Committee because of my husband's relationship with Tom Tureen which amounted to their having offices in the same building in Portland and they sometimes had lunch and once in a while if Tom's secretary was sick, messages would be forward to Loyal's office, a floor below and they would take the messages for him during lunch hour. I went to Senator Collins about it, obviously upset about possibly being bumped off the committee and he said well don't worry about it, nothing will happen, stick to your guns and don't resign. I didn't, I stayed on the Committee until the end. Also at the hearing a strange thing happened. Libby Mitchell was on the Committee with us too and her husband was representing some Indians in the Indian Land Claim as the Record will show and he testified there at the hearing and she served on the Committee. No one challenged that. I was concerned to say the least

that I had gone through this horrible challenge when nothing happened in the other direction when Representative Mitchell served on the Committee and her husband testified before it. As a matter of fact, she had him testify before the people who were waiting there because he had a busy schedule. I didn't say anything about that at the time, but it seemed unfair to me.

I got thinking about this conflict of interest. I then served on the Judiciary Committee for sometime and we went through judicial reviews. Men and women becoming judges and justices in the State of Maine. There were many times you certainly didn't want a lawyer to become a judge who knew nothing about practicing law. You wouldn't say that a man who devoted his life to being a criminal lawyer shouldn't serve in the Trial Court because after all, he had been on the side of some criminals. You want that kind of experience in people. And if someone feels they have a conflict of interest, they excuse themselves from the case. This happened with the Chief Justice of our Supreme Court when Vincent McKusick was nominated for that. He had represented companies and had done very well at it. He had been fair and honest and he had done the best he could do for his clients. Because he had a lot of experience in it made him a better judge.

I then served in 1980, as many of you will remember, as Chairman of the Labor Committee. It was a long, tough time that I served then. It was the beginning of the workers' compensation struggles. A bitterly divided committee and the hardest one I ever served on and thank heavens that seniority has some privileges and I was able to get off the Labor Committee. During the time that I served there, I was generally considered to be on the side of management and business and so forth which I generally am philosophically. A fellow testified on the other side solely and completely from Pat McTeague's Law Office and his name is Ralph Tucker. I have to explain how this worked. If someone came in representing a small company the other side says there is a lawyer from the insurance company and the other side says no, that is the lawyer from the small business. Now the opposite side of this is that if someone represents the employee, like a labor union representing the employee, management says well there is labor's lawyer and the labor lawyer refers to himself as no, I am representing the poor employee. Well, from whatever perspective you want to look at it. Ralph Tucker represented the unions or the employee solely and completely and never represented the other side. When it came about that he was then recommended to go on the Workers' Compensation Board even as chairman, would the obvious knee jerk reaction from either of them be well, he is obviously totally and completely on one side of this issue and has a lot of experience there, believe me a lot of experience. More than most people in the state, more than most other law firms in the state. Therefore, I should vote against him because he philosophically believes the other way. I didn't, as a matter of fact. I supported Ralph Tucker much to his surprise because I knew him to be a man of integrity who could decide in his own heart whether or not he could be fair. He had what I think is judicial temperament and I supported him openly and sent a letter to the Committee in that support. Because he was a man with enough character even though he had been totally and completely on the other side to make decisions and not only that, he knew the law. No one had to train him. We have gone so far as to putting a judge in the Trial Court who had never, never been in the Trial Court, never been in a case one side or the

other and had to be trained and Judge Alexander is a great judge and has done a miraculous job. It seems to me that if we have someone like a Ralph Tucker, whether he be totally representing one side or the other who is qualified the only decision you make in conflict of interest is whether you think that person has the fortitude, the courage and the integrity to make the decision and to exclude themselves when they feel they have a conflict of interest. That seems to be the decision in conflict of interest. So when you say in this case, well I am going to vote against this man because he had a conflict of interest, he has actually done business in this sector. In other words, he has some knowledge in it. What are you saying? Who is going to qualify for these positions? Are we looking for people who have no experience at all in some field and say there, they can be fair? Would you want to find a general practitioner doctor to look at a specific problem you had rather than someone who had experience in it? I think when you judge someone like this you have to look at their criteria. I just read yesterday for the first time that Lewis Perl I think was referred to as a superstar even by the Committee. What you are really judging is his character because as you can see in this state conflict of interest is very much a matter of opinion and I think mostly rests in the integrity of the candidate. If you want to impune someone's integrity, or if you want to vote for your party to embarrass the governor for whatever reason, or if you think that someone is not qualified, you can do it. But it seems to me that there is a bigger issue here. Are we going to get people who are qualified and good people to serve, or are we just going to get people who are someone in the middle who will do their best, but maybe not the best job for the people of the State of Maine. Thank you.

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

Senator KANY: Thank you. Mr. President, men and women of the Senate. I testified in opposition to the nomination of Lewis Perl and I would like to tell you why. I never before had ever testified against a person and I was hesitant to do so. I believe so strongly that Lewis Perl would not be a good Chairman of the Public Utilities Commission. I believe strongly that that position is an extremely important one for the citizens of Maine, for all customers whether commercial, industrial, or residential in that it can impact our economy greatly, the quality of the decisions that are made by the Maine Public Utility Commission. I followed Lewis Perl's work very closely as an intervenor in the Seabrook Investigation and beginning in 1979, as many of you know because I repeatedly over the years mentioned it, I thought Seabrook was a white elephant and was extremely concerned that Bangor Hydro and C.M.P. wanted to purchase more of it than when it should have been clear to them that it was a white elephant, that it was a poor investment, that it was a lousy economic decision to purchase more of Seabrook after Three Mile Island, after demand had gone down with a very small utility Public Service Company of New Hampshire trying to build two huge nuclear power plants knowing that the cost of their capital would be great and that they would not be able to afford to do that, in fact, when they were purchasing more of it here in Maine, the New Hampshire Public Service Commission had actually ordered Public Service Company of New Hampshire to divest itself of some of Seabrook. It was my opinion then that it was only because of this brotherhood/sisterhood membership that our utilities were even considering it. Not

because it was a good economic decision. Well given that background, that is why I followed the investigation of Seabrook so closely when there was a general feeling in the state among those who were knowledgeable that it was a white elephant. The investigation was called by the Maine Public Utilities Commission to see if it really would be better to absorb losses and to try and sell Seabrook ownership of our utilities even if they would get a very small dollar amount and that both the stockholders and the rate payers would have to absorb major losses. In the long run would that be the better decision?

Well, that is when Lewis Perl came into the picture and his firm NERA looked into the Seabrook ownerships very closely and they did recommend that Seabrook II was no longer economic and everybody knew that then and it was no big deal in 1984 when Lewis Perl made that suggestion. It was really already moth balled. So, on Seabrook II the rate payers of Maine really only have to absorb about a \$24 million loss. That is not bad, but on Seabrook I, in 1984 when reasonable people should have agreed that Seabrook I was a white elephant, we should have taken our losses and run, Mr. Perl recommended continued ownership and continued investment and involvement in Seabrook I. Fortunately, the Maine Public Utilities Commission rejected his analysis, rejected his decision and forced our three utilities to divest themselves of ownership in Seabrook. Fortunately, because it is only costing our rate payers in Maine \$178 million. That is how much Maine rate payers are paying for Seabrook I electricity that they will never see. Thank goodness we got out of it then. Think what the losses would be now if you invested any more. This is just terribly uneconomic and even with that \$178 million the Maine rate payers are paying, \$106 million loss was absorbed by the stockholders. Not only would Mr. Perl's decision have hampered and hurt Maine rate payers, it would have hurt the stockholders of the utilities. And that includes and takes into consideration the amount of money that was received for the sale of that Seabrook ownership. So, men and women of the Senate, I must say I don't believe that the people of Maine or the stockholders of our utilities can afford to have Mr. Perl as Chairman of the Public Utilities Commission or as a member and that is why I reject his nomination. Not for partisan reasons, not for personal reasons, because of his poor recommendations on economics, poor assumptions not recognizing the trends that should have been clear. Those are the reasons. And here, \$178 million absorbed by Maine rate payers for electricity they will never see and people talk about \$100 million for a railroad being a lot of money. Just think, you could have bought a couple of railroads if we hadn't been so involved in this terrible white elephant. So on that basis alone, I hope you will vote in opposition to his nomination.

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

Senator BALDACCII: Thank you. Mr. President, men and women of the Senate. I would like to start out by saying that I attended the hearing when Mr. Perl's nomination was presented and I must say for the four and a half hours that I sat there and listened to testimony from Dr. Silkman and Mr. Perl, it was one of the most professional, most thorough committee meetings that I had ever attended and it was very non-partisan during those four and a half hours. I think that to characterize the Chairman of the Commission itself as representatives of the consumers is a mistake. In the statutes the Public Utilities

Commission is to provide a balance between the interest of the consumers and the interest of the utilities. Because by law there is only one electric company, one phone company and because of that undue advantage that they have as far as providing service, they have to be regulated by the Public Utilities Commission. For that regulation, they are guaranteed a return on their investment. By law they are guaranteed that return. So the judgment of the Commission is not to advocate for one side or the other, but in real truth is to balance those interests. In order to balance those interests, by law we have a public advocate who is to represent the using and consuming public. He is to represent that particular entity. The industrial customers when they complain because their rates are too high, they hire attorneys to represent their interest in front of a proceeding before the Commission. The Commission itself as staff advocates will propose positions that are in favor of the consumer versus the industrial, residential or small business commercial, they will propose that. So you must take in total the entire complex, plus this Legislature as you all well know from our involvement in local measured service, gets involved in some utility matters. So not only do you have all that checks and balances, but you have this Legislature with its Committee on Utilities to provide that constant and vigil supervision of utility matters. We have not been shy about involvement in utility matters, plus you have the Supreme Court in the State of Maine which all decisions the Commission makes can be appealed by the public advocate or by a particular group to the Supreme Court.

Now going back to Dr. Perl. Dr. Perl has worked for utilities. He has worked for utilities because when you present the information to the Public Utilities Commission they are not going to listen to you if you hire a company doctor. They are only going to listen to you if you get a particular objective source to say what it is you would like presented before the commission. I also resent the fact that because you are in business, you are anti-consumer. I would like to state to you ladies and gentlemen of the Senate that being in business and offering the consumers a good deal can be both done. Because in order to open the doors the next day you will have had to make sure that those customers or residential consumers are satisfied and to guarantee that in public utilities we have the Public Utilities Commission and its vigilance and its regulation. It is a three member Commission and we have two other members there who were severely criticized by members of the Utilities Committee when they were up for confirmation and by some members of the Senate because they were too consumer oriented. They had never had any feel for the other side. So when you are looking at Dr. Perl, don't look at him under a microscope without looking at the total situation of what exactly exists. He is a component of the decision-making process. I submit to you that if you can have bright people working for the State of Maine taking a severe pay cut, but having bright people that are interested in fostering economics in the State of Maine that are willing to do that sort of thing, you are putting him to work for the State of Maine. He is going to take an oath of office. He is going to be sworn to the Constitution and he has all those checks and balances and I submit to you that you will have one of the best that you have had and we had one of the best with Peter Bradford who I consider to have been a friend of mine and worked with for four years. He was a bright guy and he thinks an awful lot of Dr. Perl.

Let's not throw the baby out with the bath water. Let's give Dr. Perl a fair shake. I feel that is the essence of the argument here today. I would hope you would vote to overturn the committee's decision. Thank you.

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

Senator KERRY: Thank you. Mr. President, ladies and gentlemen of the Senate. This nomination of Dr. Perl is probably one of the most important nominations that we have had to consider during this current Governor's Administration. I consider it the most important.

First let me respond to the remarks of the good Senator from Lincoln, Senator Sewall. I think it is important that you all know, members of both parties, that this was one of the fairest hearings that I have ever personally participated in. First and foremost because like Senator Sewall indicated and Senator Baldacci indicated, I realized we had a person of integrity, a person with what I considered exceptional qualities, of technical talent. I did not take that lightly and neither did the Committee. Therefore, I made it quite certain that the Committee would consider this nomination with as complete objectivity as possible. In fact, I did not request or ask or discuss the decisions of any of the other Committee members regarding Dr. Perl's nomination prior to. Several people advanced their positions on their own. I listened to them and thanked them for their consideration and kept going. But I think that it is important that the people of the State of Maine and certainly this Legislature know, that the calls of partisanship are so unfair that I think they should not be given credence.

I was disappointed to hear Governor McKernan last night on television state that it was a partisan issue. That the vote was a partisan vote. I am very disappointed to hear that members of the other party who serve in the other Body and members of the other party who serve in this Body have referred to it as partisan. Because two minutes after the completion of the hearing yesterday, several members of the other party mentioned to me what a fair hearing, what a good hearing. We thought it was very well managed, very well conducted with due respect for the nominee and the Governor's Office and I concur with that decision. I guess all the problems started after people made their decisions. I surmise if I had voted in favor of Dr. Perl's nomination I think everyone would have said, what a fair hearing. What a nice process. Justice has been done. You voted for the person we believed in. The Governor would have been on television in Washington, D.C., saying great. This process has worked. There was no partisanship. It is wonderful. But unfortunately Mr. President and ladies and gentlemen of the Senate, I have a mind of my own. I can make independent judgments. I can look at an issue holistically. I can give a person a fair hearing and then I can make my own judgments. In making that judgment I think I can do it without being influenced by the President of the Senate, the head of my party or anybody else. In fact I told the President of the Senate prior to his speaking before my Committee that I had not made up my mind and I may very well vote for Dr. Perl. He knew it and I think everybody on my Committee knew it. In fact, about ten minutes before the vote was taken there was a little caucus of people out there in the audience and they were talking and I heard this after and they said, I don't know how that Kerry is going to vote and I don't know how this one is going to vote and I am wondering how this one is

going to vote. There was no directives from the President's Office or from anybody else. All the Republicans, all the people of the other party, they all voted the same way. Did anyone criticize the people of the other party for partisanship. That they made an independent judgment to come up with the same. Did anyone discuss this issue? Was there any non-objectivity on their part? No one seems to have mentioned that in the papers, no one is talking about that. I didn't criticize them for it because you know why, I think they all made a legitimate good effort. But I also believe this, there is a qualitative difference between the members of my party and the members of the other party. There is a qualitative difference between my co-chairman in the House and me. We are different people. We live in a pluralistic society. We make independent judgments. We have integrity. We believe in what we believe it. The good Senator from Aroostook wrote a letter to all of the Senators the other day. She said I normally don't do this but because of the legitimacy of this issue, I am going to share this with everybody. She stood up against people of her own party, she stood up against people of her constituency. Senator Ludwig has integrity. She has principles. She has a mind of her own. She voted the way she thought she should vote and that is the way we vote in my Committee. This partisan issue aspect I am going to lay to rest right now. The responsibility for the divisiveness lies with the Governor of this state in the process by which he nominated the person that we had to consider. Did he consult the consumers of this state? Did he consult the Senators in this state? Did he consult the industries of this state? No. By the admission of Dr. Perl himself, he was given five to seven hours and all of the other representatives of the Governor's Office to tell us that there was a fair consideration and the the decision-making process was fair and balanced. They never once spoke to a person who represented a consumer group. Is that fair? Is that just? Is that balanced?

Several weeks ago I read in the paper, the Portland Press Herald, the Gannett Publishing Company. They said of Dr. Perl we might have found a superstar or a gem. And you know what, I think there was some merit to that consideration. I read their editorial. You know what I think also, I think they were trying to influence the judgment of this Legislature as they do many times. Secondly, they wrote another editorial after I had written a letter requesting the Governor to reconsider his nomination and submit a more balanced nominee because you know why? I felt it might undermine the integrity of the Public Utilities Commission. It might undermine the integrity of this Body in the nomination process and thirdly and most importantly, I thought the issue would come down to the perception that we would be debating the integrity, the character and the objectivity of Dr. Perl himself. Exactly today on the floor of the Senate what did we hear. Senator Sewall talked about that issue. It is framed in that issue. Dr. Perl was placed in an untenable position because the Governor of this state made a mistake, a very critical mistake. I for one said I didn't want to have to face it and I didn't want my Committee to face it because they are good people and there has been no partisanship in this Committee ever to my knowledge this year. There may have been partisanship in the other Body. There is no partisanship here, there was none there.

Secondly, I said Dr. Perl is a good man and I was the one who used the term he is a technical superstar and he is. Because you know why? I was the Energy

Director of this state and I did participate in the public hearings. I did participate behind the scenes at the Public Utilities Commission. I did go before them. I had other people on my staff, good solid economists go before them. I knew the qualities of this man and I honestly believe that Dr. Perl is a good man and I don't think his integrity should be one bit demeaned. So why should we not accept his nomination? I wanted to look, as the good Senator from Lincoln indicated, at the holistic picture and I think we used this phrase several times in the committee. Technically the man has the capability, but you know what we are considering here? The decision-making process of the Public Utilities Commission. The decision-making process of the State of Maine. The integrity of the State of Maine is at stake in many ways. First and foremost I asked the question of Dr. Perl myself personally. Dr. Perl, have you ever represented a consumer group before any public service body in this country, knowing full well that Dr. Perl had been before twenty-three different public service organizations in the country, that means Public Utilities Commissions that his company has virtually represented every major utility organization in the country for well over a decade or two. Knowing that he had represented the Maine Public Service, Bangor Hydro, New England Telephone, Central Maine Power, I asked him did you ever once represent a consumer oriented group. You know what his answer was? Never. It is the nature of my business that you are either on one side or the other side - not once. And I said Dr. Perl, excuse me, did you ever represent anyone ever in your 30,000 hours of professional life, did you ever once and he said Mr. Chairman, no. It is the nature of my business that there is a ying and a yang, a positive and a negative. They would not hire me if I represented the other side and the other side would not hire them. So as I listen to the debate today and as I thought about it and I said you have a difficult decision to make. The perception is of partisanship. The reality is I didn't like the decision. I didn't even like having to make the decision, but I said I have a responsibility and this Senate has a responsibility to uphold the Constitution, to make hard decisions, to represent all the people of this state not just the consumers as Senator Baldacci has referred to. I believe the Public Utilities Commission should represent everybody, small business, large business, elderly people, poor people. And I for one as the Energy Director of this state recommended that Central Maine Power Company and all utilities, whoever invested in conservation, should get more of a return on their investment because they deserved it and because they did a service to the state. That is balance, that is objectivity.

This gentlemen for all of his good qualities never once represented consumers. Let me say to you that if we are to have balance and integrity within this system and respect for the credibility of the Public Utilities Commission and this Senate and this Legislature, we must be able to make the hard decisions and say did he or did he not make, on his own free will, the choice to represent one side for fifteen years and we must say yes he did. Secondly, should we acknowledge what the Portland Press Herald and other papers have said that if we cannot accept Dr. Perl then we should not be able to accept Peter Bradford because of his consumer-oriented issues or his consumer-oriented philosophy. You know what I say, yes we should then consider if a person such as Peter Bradford had represented Ralph Nader's Consumer Group for fifteen years and that he might come to the

Public Utilities Commission with the possibility of prejudice of undue bias and therefore, not be able to render an objective decision. Mr. President, ladies and gentlemen of the Senate, I don't know about anybody else but when that question was posed to me indirectly through the Press Herald I had to make a decision honestly to myself and I said yes. I would have to really seriously consider whether or not a person who worked fifteen years for a consumer-oriented group such as Ralph Nader's whether or not that person could make an objective decision. The criteria should be the same for all. So I asked, how long did Peter Bradford since his name has been utilized several times today in the newspapers and throughout, how long did Peter Bradford work for Ralph Nader? Does anyone know? I said he must have worked there for at least a decade. I had no idea. He was on the Nuclear Regulatory Commission. But how long did he work for Ralph Nader? Our good Senator from Cumberland has given me the answer, Mr. President. Four months - a summer job. Is that balanced ladies and gentlemen of the Senate. Isn't it unfair to analogize Peter Bradford's career of four months with a consumer group such as Nader's Raiders with fifteen years of being the pilot, the captain, one of the chief architects for the utilities industries policies and principles for that long. Is it fair? I don't think so, I don't think it is balanced. I personally wrote a letter to the Portland Press Herald last week saying that I felt their attitudes were prejudicial or at least at best did a disservice to this state and to this Legislature. I have yet to see it printed. Where is the fairness in that. We held the public hearing yesterday, they knew the public hearing was yesterday. They called me up and said oh gee, we want to check Senator and make sure it was written from you and yet I read in the paper today another editorial and what does that say? It says wait a minute, I lost the ball game, at least I think I have lost the first half. We are in the second half of the Superbowl. What does the Portland Press Herald say Mr. President and ladies and gentlemen of the Senate, they aren't going to take their ball and go home, they want to completely change the field. They want to eliminate it and say let's change the rules of the Senate. Let's vote by a majority vote rather than a two-thirds vote. Isn't that objectivity? So what does that play into? It plays into the fact that the members of our Committee who made an objective decision like any other member of this body would make and I say we made the right decision. It was a difficult decision.

I want to say for my final comments that this Senate and the people in it are the best in my estimation in terms of integrity and honesty and objectivity. I would also say this, that I for one will not allow this Governor who I feel and believe deep in my heart has not provided the proper leadership, has not provided the proper standards of governance to remove this difficult issue from this Body. I will not allow it to be taken in to be a partisan issue. I think that every member of this body who votes today should vote on the merit of the issue. I respect the Senators and Representatives who vote the other way in Committee. I didn't know how they were going to vote, they didn't know how I was going to vote. When you vote today, I would hope that everyone would recognize that it is done because you believe in your philosophy. You believe that this nomination may undermine the credibility of the Public Utilities Commission in this Body, it may do a disservice to the people of Maine. I, in no way, wish to infer that it would be a disservice to Dr.

Perl. I felt very badly about that and I consider him a very fine person. Mr. President, ladies and gentlemen of the Senate, I hope you support the Majority vote. Thank you.

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

Senator DILLENBACK: Thank you. Mr. President, ladies and gentlemen of the Senate. I am not going to make a long speech as I just heard. I do want to say that there is no more honorable or honest man than the Senator from York and I don't think anybody would question that. I appreciate his comments. I do not appreciate his judgment. Unfortunately, I think the Governor of this state made a fine decision. He made an excellent decision. He picked the very best person that was available, Dr. Perl a person who had the background and the qualifications to do an excellent job for the State of Maine. I don't think anybody in that position is going to necessarily worry about favoring the consumer, or the utility, or the businessman, or anybody else. Now you talk about partisanship. I don't know if there is partisanship there or not, but the general public certainly thinks there is when you have all Republicans on one side and all Democrats on another side. And it will certainly be shown today when we have the vote here in the Senate whether it is partisan or not partisan. I don't think it is right to attack the Governor when he does a good job. What is the alternative? Is the alternative to get somebody that isn't necessarily as qualified, who has worked only for consumers. I don't think that is the person we want.

I used to be a Trustee of the Portland Water District. As a Trustee of the Portland Water District we came before the Public Utilities. We went to New York or Boston and hired the most professional people we could find to appear before the Public Utilities Commission. We spent thousands of dollars for these people. They worked months to prepare their presentation. Now when you have people like that you certainly want somebody on the Utilities Commission who can stand up to those people and those are the type of people we want here working for the State of Maine. I have no problem if the doctor only had one side of the business because that was his profession. He is qualified. He has the answers. You don't want somebody in there who is going to be one sided or the other. I don't think that is fair either. You talk about balance. Balance is in the integrity of the person that you talk about yourself. That is where the balance is. I give the Governor an "A" for what he has done and I hope you people will too. Thank you.

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

Senator BALDACCII: Thank you. Mr. President, men and women of the Senate. I would like to thank the good Senator from Cumberland, Senator Dillenback for pointing out the qualifications of Dr. Perl and the role the Governor has to play. It is unfortunate that the Governor is of the other party, but the Constitution is very clear the the Governor shall appoint and it is up to the Legislature to review and confirm. It is his constitutional duty, he is the Governor of this state for four years, sworn to uphold the public health and safety. He is the Chief Executive of the state and it is his decision to appoint the Chairman of the Commission and also in a year and a half or two to select two other members or to reappoint the two that are presently on that particular board.

The point I want to raise today is that I strongly resent the implication that Dr. Perl has

never represented any consumer interest. I stood right behind Dr. Perl when he told the Utilities Committee that he had done approximately thirty percent of his work had been rejected by the utilities for presentation in front of the Commission because they didn't agree with it. Thirty percent of his work was done and prepared in study presented to the utilities that they didn't want to present to a commission because they didn't go along with his point of view. Dr. Perl's firm is a firm that is very widely respected, so much so that when you appear before a commission and you have testimony from his particular firm it holds a lot of credibility so much so and as it was pointed out in the hearing that other public utility commissions solicit from Dr. Perl's firm an economic analysis that is then presented to that commission. He is a very, very well-qualified individual and he is a very bright person. He is not an attorney and maybe that was one of his stumbling blocks. When I remember the Utilities Commission we had too many attorneys. This time we have an opportunity to have an economist and a proposal that he made at the hearing made a tremendous amount of sense and it is something that I think needs to be done. He talked about getting the Utilities Commission off the backs of the utilities as far as any of their projects or reviews so much so that because every time they turn around and say is it all right with you, (Public Utilities Commission) the consumers are further and further on the hook because if that decision doesn't turn out right then all of the sudden the utilities are going to turn around and say well you said to do this. He suggested maybe if there was a little bit of incentive there for the utilities and for the consumer groups that they would be able to make the utilities more profitable, taking less from the consumers. I think that was a very good and innovative idea. That doesn't show somebody that is on the side of the utilities or on the side of the consumer groups that is somebody who wants to make the whole process better and change what is there to benefit both the consumer and maybe the utilities if they do a good job.

I can't help but stand up here and say that Dr. Perl never represented a consumer interest. I don't ever remember anyone on the Committee saying that any consumer group ever solicited Dr. Perl's firm to present testimony in front of the Commission of any kind either. I think that Dr. Perl pointing out the type of firm that he has and the respect that it has with other commissions, we are going to be losing somebody. The decision maybe has already been made, but you are going to be losing a very well-qualified individual and somebody who would have been an asset to the State of Maine in important areas as telecommunications and energy and in areas like that you want to have the best. That is the way I think. We want to have the best people in those positions. We have the checks and balances. You get bright people, you make them work for the state and I think you can't lose. Thank you.

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

Senator ERWIN: Thank you. Mr. President, men and women of the Senate. When the good Senator from Cumberland made reference to partisanship, I would like to point out to the members of this Chamber that one of the very first people to get up to testify for the good Doctor was a Democrat. One of the people that made one of the best presentations for Dr. Perl was a Democrat. Out of the discussion we have had this morning, I think that the good Senator, Senator Baldacci from Penobscot has made one of the best

arguments for Dr. Perl here on the floor today. It is difficult to understand how anyone can say that is partisanship. As far as the good Doctor presenting some material which the utilities rejected, he also pointed out that he never did anything in line that he thought could be considered that he was knuckling under to the utilities. He would try to do the best job that he could and sometimes the material that he presented to the utilities was not necessarily what they wanted, so naturally they didn't use it.

As far as him not having the capability that you might associate with the legal profession, I think that he is perhaps one of the most capable, persuasive gentlemen that I have ever had the opportunity to meet and if you had been there to hear him present his points of view I think you would all have been convinced that he is a most persuasive gentleman. He is capable of standing up for himself and he did an excellent job in that area. If I had had to base my vote based truly upon his presentation he would have gotten my vote. I did some research on material that was made available. I listened to the testimony and I cast my vote accordingly. Thank you.

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

Senator PERKINS: Thank you. Mr. President, men and women of the Senate. I first would like to issue my personal appreciation to the Committee for the long hours they put in yesterday. Having gone through some of these and knowing what a task it is and many times no matter how interested you are in the subject to spend as many hours as they spent at that hearing is really a task. They have my appreciation for the work they did. I think they applied themselves to the task and remained there and that was a credit to this Body as well as the other.

There have been several comments made with regard to consumers and I fear that we are missing one of the cogent points here. If consumers are indeed what we are here to protect, and I firmly believe that they are part of the component, are not we short changing them by not lending the third person to the Public Utilities Commission. The people who are on the Commission at this time have proven themselves through the times and were there during a previous administration so it cannot be said that they would not in one way or another counterbalance just as one Body counterbalances another here, just as one floor counterbalances another here.

I wonder if perhaps we are not missing the point and short changing our public and our constituents by depriving them of the third component for the Public Utilities Commission. Because whether he be an educated and a very qualified individual as I feel Dr. Perl is, or whether he perhaps has some shortcomings which some others feel he does, these shortcomings as with some others that we, through the best of our efforts, do confirm and do pass through to positions of authority, I think these have a point of leveling themselves and they adapt themselves to the position. But the position requires and needs a third person. So I think on this area perhaps we are short changing the people of the State of Maine. Because regardless of whether this man is posted or not, it is frankly been admitted by my Governor and yours that he has nobody in the wings and he has tried to come up with someone who would be qualified and satisfactory for the position. Perhaps we all haven't led ourselves to the task, but I encourage you to join me if you know of such an individual. Let's all put ourselves to the task. There are, I think, in this Legislature and in life, areas that are neither black nor white and I think this Legislature is sometimes the focal point of these

very particular instances. For instance, the good Senator from Waldo and myself and the Senator from Cumberland are not reluctant many times to talk of health issues because of our backgrounds. I don't think anyone has ever questioned our integrity. My good friend the Senator from Cumberland, Senator Clark, the Senator from York, Senator Estes, the Senator from Knox, Senator Brawn and the Senator from York who at one time was in education, but now is in real estate and finds himself in a position of addressing each subject. Never to my knowledge was integrity questioned. Nor do I want it to be and I hope it never will be. In the insurance field my good friend from Auburn, Senator Whitmore, or my good friend from Kennebec, Senator Dow. Nor because my good President's car was stolen do I think he should decline to vote on issues where criminals are concerned and nor my good friend from Cumberland who has been all things to all people but has been able to address them with integrity and respect. There is a gentlemen at the other end of the hall who hails from Northern parts of Maine, one of the lake areas I think who works for a University but has been known to deal in insurance, but no more vehement of the insurance companies have I found than that gentlemen who leads at the other end of the hall. Neither black nor white and yet at times we find those of us who we think are not our friends but maybe our foe and yet I have hopes for this company up here off Western Avenue I think it is Edison Drive because they have added some people of recent years who I think carry the respect of all the Body. I think they will be coming back to the Alumni Ball - Flannigan, Bustin, Allen. I think perhaps they will be joining us. I think they will improve the atmosphere.

Through all this, this Body remains a family and the family, while it has its separate parts and its separate issues, finds its way back together as I hope and know we will today. We still, I fear, have not dealt a fair hand to the consumer who we all at one time or another and in one fashion or another must deal with as part of the component. So my friends here in the Senate today, vote as you will and vote as you see it. Neither black nor white, but for all the people for the State of Maine. Thank you.

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

Senator MATTHEWS: Thank you. Mr. President, men and women of the Senate. I couldn't help but rise today with this debate on this confirmation and the statements from the Governor's Office and other members of this Body that somehow politics has entered into our decision today. I went through some of the debate and some of the legislative history on the creation of the Public Utilities Commission and I would like to share with you some of those thoughts from 1913. On the first question that has been charged by the minority that somehow we in the Legislature of the Democratic Party have made this a partisan issue because we happen to disagree with the Governor and in the confirmation process of review, happen to disagree with the Governor's decision. Let me just read this from 1913. "And the decision fell upon the two Houses. If I know anything about the Legislature of 1911, the policy on the part of the majority was that it didn't want to pass much legislation. They said if you don't pass any laws, then you can't pass any bad laws. If you don't do anything, why of course you can't find fault with what you didn't do." Well the Democrats of the Committee on Utilities decided that they would take action and do something.

One other quote from 1913. The Committee on drafting the Bill to form a Public Utilities Commission had in its mind the various points that the Senator has previously expressed. He does not want a partisan Bill, neither did the Committee. "The Committee in drafting this Bill today placed the members of the Commission upon the high footing of the Supreme Judicial Court of Maine. It gave them the full power to decide and finally decide all questions of fact, paying them a salary equal to the salary of the Supreme Court. It had the faith in the Chief Executive of the State of Maine that he would appoint only to that court men who were qualified to act and act in an unbiased manner. This Commission is not created for the benefit of those who would go upon the Commission as members of the same. It does not ask for the Chief Executive to appoint the members of any particular party. It asks him to appoint three men capable of executing the powers conferred upon them under this Bill and under the Constitution."

I think the members of the Utilities Committee acted very appropriately yesterday, very courageously and in keeping with what the confirmation process is all about. Sometimes the Committee members say Yea and sometimes they say Nay and that is not partisan politics. I happened to be there and testified against this nomination by the Governor. That was not partisan politics. That is because I am down here under oath to defend and fight for the Constitution and the people that I represent and apparently that was also the charge in 1913. Thank you Mr. President.

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

Senator COLLINS: Thank you. Mr. President, men and women of the Senate. This morning we have had an interesting debate on a subject that is of utmost importance to all of us who live in this great state. We have had a history lesson, a discussion of economics, a discussion of consumerism. We have talked about a business viewpoint and a balanced viewpoint and we have even alluded from time to time to the importance of the public interest and it seems to me that this is the area in which we should be most concerned. Incidentally, I would like to say that those of you who have discussed economics should know of course that it is not an objective science, it is a very subjective field. And to my knowledge there has never, never been anyone who has been correct all of the time. If you have any doubt about this you might look at Wall Street on October the nineteenth of the year past to determine the winners, the losers, the guessers, the economists who were on one side and those who were on another side.

It seems to me that the candidate that we were concerned about and are concerned about had a great deal to offer to the state of Maine. His academic credentials, his performance as a consultant, to public utilities, to public regulators. It seems to me we had an expert in the field and it seems to me that the only thing we argue about is whether or not he had a bias. I suggest to you that everybody has some bias, everybody. But when we perform public duties we try to cast that away. It seems to me that unless you can say that the candidate lacked the character and the ability to perform this office you have no case. I hope today that you will join me in overriding the Committee's report. I respect the Committee. I know the report is an honest one that they felt deeply as they do. Even so, I feel deeply as I disagree with the majority report. Thank you Mr. President.

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

Senator CLARK: Thank you. Mr. President, men and women of the Senate. The Maine Senate this morning has been the focus of a great deal of interest as we exercise our responsibility in the confirmation process here in our state. This morning we do not appear as unfortunately we sometimes do, rubber stamping without debate the recommendations of the Committee because we have an unusual situation. Since our Governor took his oath of office in 1987, we have had over one hundred gubernatorial appointments. This is only the second one to be denied by the Joint Standing Committee reviewing those appointments and nominations. The first, as you remember, was the man by the name of Van Note and subsequent to the negative Committee review, the Governor withdrew that nominee from further consideration. The Governor has chosen not to withdraw the nomination of Dr. Perl for Chair of the Public Utilities Commission and that is why we find ourselves here this morning, conscientiously debating the presentation before that Committee, the Committee's deliberations and ultimate action and the credentials submitted to that Committee. There are those among us, members who were privy to that public hearing, testifying both for and against and sitting in judgment on the Committee.

I have enjoyed the ability this morning to listening to this debate as well as reviewing the Legislative Record in this Chamber of similar debates which occurred during the previous administration of Governor Joseph Brennan. There are some very obvious omissions, questions regarding the residency of the nominee. Don't we have equally and amply qualified candidates who are Maine citizens? Was that a consideration? No. Is anyone really challenging this morning the credentials of Dr. Perl? No. Yet, Democratic legislators who may vote this morning to sustain the Committee's report and recommendation have been charged with a shrill label of partisanship and members of that Democratic caucus have attempted sincerely to respond sincerely and calmly to that claim. We have even heard this morning that our party is telling us how we are going to vote and if anyone understands Democratic politics you should know here and for the Record, once and for all, let's get it through our heads, that people in the Democratic party don't exercise that power effectively. That is why we are Democrats. We are not this morning going to vote for something or someone just to embarrass the Governor. We are not judging the character of Dr. Perl, nor are we impugning his integrity. The Governor need not be embarrassed because he nominated Dr. Lewis Perl to serve as Chair of the Public Utilities Commission. He may be slightly embarrassed because the nomination was delayed since June, but I do sincerely believe that he was searching for the best possible nominee within the purview of the judgment that he exercises and that of his collective staff. There has been another allegation that we intend to embarrass the Governor or the Governor's staff or the Executive Department by denying him his choice in the nomination process. The record stands. This Legislature and this Senate in particular, Democrats and Republicans, have affirmed the Governors selection time, after time, after time and after time. Let's compare that record with the action of this Chamber and its members during the previous administration and the manner in which those votes fell, when they did not support gubernatorial nominations. Did we charge politics and partisanship? Collectively members of the Senate

respect, historically and I fervently hope currently, the position and the integrity of all of our votes individually. I haven't, Mr. President, honestly and truly, the faintest idea how members of the Democratic caucus are going to vote this morning when we finally take the vote. I didn't ask them to vote one way, neither did the Assistant Majority Floor Leader, neither did the Chair of the Joint Standing Committee on Utilities, neither did the President of the Maine Senate or even those people who represent Maine citizens in the other Body. There is no deal, what is there to deal? We all attempt to the best of our ability to represent our constituency. If partisanship and politics entered into this I would submit to you for your consideration the nomination in the past on one Linda Crawford before the Committee on Judiciary to serve on the Bench. She was rejected not only by Democrats on that Committee, but by Republicans. Those Democrats on the current Joint Standing Committee on Utilities who are recommending that this Senate not confirm the nomination of Dr. Lewis Perl did so for reasons that they have attempted this morning to explain. I judge them not. I accept their reasons. I accept their ultimate recommendation because quite frankly, members of the Senate, I had not intended to vote to confirm this gentlemen based on the pounds of paper that I had reviewed, literally pounds. I am concerned that we would be in good faith. The citizens of western Maine and the citizens of a town in my Senate district, the town of Pownal, who would not have three members on the Public Utilities Committee when the Hydro-Quebec question is ultimately resolved before that Commission, for Dr. Lewis Perl would have to abstain during that deliberation. Is this fair to Maine Public Utilities and to Maine consumers? I submit that the answer is no. Yes, I acknowledge that there is a Bill before us this session that would have us establish a process for a part-time Commissioner who would step in when a Commissioner on the Public Utilities Commission is held to be in conflict of interest. So that always there would be three who would be making judgments. But, that Bill has not been reported out and the Hydro-Quebec question is already before the Public Utilities Commission.

Democrats and Republicans alike this morning have an opportunity to vote on the recommendation as tendered by our Joint Standing Committee. The Joint Standing Committee on Utilities has recommended that this nomination not be confirmed. You are invited to vote your conscience, but I would submit that the issue before us is one of objectivity and creditability and unfortunately for the State of Maine, Dr. Lewis Perl does not survive the test of either of those qualities. It is important as a representative and Commissioner of both the utilities and the public in our state that the person who chairs the Public Utilities Commission be without shadow, with respect particularly to the qualities of objectivity and creditability. Dr. Perl has, by his own admission and by the record presented to the Committee on Utilities, labored successfully in providing public utility testimony not only national but here in our state. His presence as represented not only by Dr. Perl, but by his firm, has been particularly prominent before the Public Utilities Commission on which he seeks to serve as Chair. That erodes tremendously from his appearance and membership on that Commission with respect again to the qualities of objectivity and credibility. I would submit this morning that the recommendation of the Committee on Utilities be supported. Thank you Mr. President.

THE PRESIDENT: The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators BALDACCI, BLACK, BRAWN, CAHILL, COLLINS, DILLENBACK, EMERSON, GILL, GOULD, LUDWIG, MAYBURY, PERKINS, RANDALL, SEWALL, TWITCHELL, WHITMORE

NAYS: Senators ANDREWS, BERUBE, BRANNIGAN, BUSTIN, CLARK, DOW, DUTREMBLE, ERWIN, ESTES, KANY, KERRY, MATTHEWS, PEARSON, THERIAULT, TUTTLE, USHER, THE PRESIDENT - CHARLES P. PRAY

ABSENT: Senators GAUVREAU, WEBSTER

16 Senators having voted in the affirmative and 17 Senators having voted in the negative, with 2 Senators being absent, and 16 being less than two-thirds of the Membership present, it was the vote of the Senate that the Committee's recommendation be ACCEPTED and the nomination of Lewis Perl, for appointment as Chairman of the Public Utilities Commission, was DENIED.

The Secretary has so informed the Speaker of the House.

SENATE PAPERS

Bill "An Act Concerning the National Bicentennial Competition" (Emergency)

S.P. 905 L.D. 2351

Presented by Senator CLARK of Cumberland
Cosponsored by: Representative DIAMOND of Bangor, Senator PERKINS of Hancock, Representative MURPHY of Kennebec

Approved for Introduction by a Majority of the Legislative Council pursuant to Joint Rule 27

Which was referred to the Committee on APPROPRIATIONS AND FINANCIAL AFFAIRS and ORDERED PRINTED.

Sent down for concurrence.

Bill "An Act to Provide Use Immunity for Witnesses"

S.P. 903 L.D. 2349

Presented by Senator BRANNIGAN of Cumberland
Cosponsored by: Representative PARADIS of Augusta
Approved for Introduction by a Majority of the Legislative Council pursuant to Joint Rule 26

Which was referred to the Committee on JUDICIARY and ORDERED PRINTED.

Sent down for concurrence.

Bill "An Act to Restore to Maine Counties a Portion of the Real Estate Transfer Tax"

S.P. 904 L.D. 2350

Presented by Senator DOW of Kennebec
Cosponsored by: Representative ROTONDI of Athens, Senator EMERSON of Penobscot
Approved for Introduction by a Majority of the Legislative Council pursuant to Joint Rule 26

Which was referred to the Committee on TAXATION and ORDERED PRINTED.

Sent down for concurrence.

COMMITTEE REPORTS

House

Ought to Pass As Amended

The Committee on EDUCATION on Bill "An Act to Clarify the Method of Computing Unusual Enrollment Adjustments"

H.P. 1469 L.D. 1980

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-453).

Comes from the House, with the Report READ and ACCEPTED and the Bill PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-453)

Which Report was READ and ACCEPTED, in concurrence.

The Bill READ ONCE.

Committee Amendment "A" (H-453) READ and ADOPTED, in concurrence.

The Bill as Amended, TOMORROW ASSIGNED FOR SECOND READING.

The Committee on TRANSPORTATION on Bill "An Act Requiring that Curb Ramps be Constructed in Accordance with the American National Standards Institute Standards"

H.P. 1483 L.D. 2017

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-452).

Comes from the House, with the Report READ and ACCEPTED and the Bill PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-452)

Which Report was READ and ACCEPTED, in concurrence.

The Bill READ ONCE.

Committee Amendment "A" (H-452) READ and ADOPTED, in concurrence.

The Bill as Amended, TOMORROW ASSIGNED FOR SECOND READING.

Ought to Pass in New Draft under New Title
The Committee on EDUCATION on Bill "An Act to Create the Maine Choice Scholarship Fund"

H.P. 927 L.D. 1240

Reported that the same Ought to Pass in New Draft under New Title Bill "An Act to Create the Maine Choice Fund"

H.P. 1695 L.D. 2328

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 TOMORROW ASSIGNED FOR SECOND READING.

Senate

Leave to Withdraw

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

Bill "An Act to Require Insurance Companies to Make an Early Determination of Fault and Release All Other Innocent Parties"

S.P. 739 L.D. 1998

SECOND READERS

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

House

Bill "An Act to Clarify the Authority of Local Health Officers"

H.P. 1540 L.D. 2095

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

ENACTORS

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

An Act to Authorize the Bureau of Banking, Securities Division, to Adopt a Simplified Registration Statement for Limited Public Offerings

S.P. 738 L.D. 1997

Which 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:

An Act to Strengthen the Disciplinary Authority of Various State Regulatory Boards

S.P. 733 L.D. 1992

(C "A" S-315)

Tabled - February 23, 1988, by Senator CLARK of Cumberland.

Pending - ENACTMENT

(In Senate, February 16, 1988, PASSED TO BE ENGROSSED, AS AMENDED BY COMMITTEE AMENDMENT "A" (S-315).)

(In House, February 22, 1988, PASSED TO BE ENACTED.)

On motion by Senator CLARK of Cumberland, Tabled 1 Legislative Day, pending ENACTMENT.

The Chair laid before the Senate the matter Tabled pending a Ruling of the Chair:

HOUSE REPORTS - from the Committee on STATE AND LOCAL GOVERNMENT on Bill "An Act Allowing the Town of Island Falls to Annex Township 4, Range 3 WELS in Aroostook County"

H.P. 1017 L.D. 1370

Majority - Ought to Pass as Amended by Committee Amendment "A" (H-437).

Minority - Ought Not to Pass.

Tabled - February 22, 1988, by the President.

Pending - RULING OF THE CHAIR

(In House, February 4, 1988, the Majority OUGHT TO PASS AS AMENDED Report READ and ACCEPTED and the Bill PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-437).)

(In Senate, February 8, 1988, the Minority OUGHT NOT TO PASS Report READ and ACCEPTED in NON-CONCURRENCE.)

(In House, February 18, 1988, that Body ADHERED.)

THE PRESIDENT: The Chair will refer to Reed's Rules of Order, Section 224. It is not permissible to allude to the action of the other House of a Legislature, or to refer to a debate there. Such conduct might lead to misunderstanding and ill-will between two Bodies which must cooperate in order to properly serve the people. So, also, the action of the other Body should not be referred to to influence the Body the member is addressing.

The Chair would interpret that if the Senator is attempting to influence an action in this Body by doing so, that it would not be proper. Thus, the Chair would rule that he could not refer to debate in the other Body.

Senator TUTTLE of York, moved that the Senate RECEDE and CONCUR.

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

Senator LUDWIG: Thank you. Mr. President, men and women of the Senate. I realize you have heard a

great many speeches today, many of them eloquent and moving. This one is going to be blessedly brief, but I have waited for it too long to let the time go by now. I have already expressed my reservations about L.D. 1370. This Bill has ramifications which could go far beyond the two, six mile square parcels of land in Aroostook County. Does any town have the right even by a majority vote of its own citizens to annex an adjoining Unorganized Township territory, when the majority of those who own the land in that territory are opposed to annexation? Think about this very carefully. If this Bill is passed, I am afraid it will send a message that the Unorganized Territory, all 3.2 million acres of it, half the land in the State of Maine, is up for grabs. Is this a responsible message to be sending? I hope you will join me in voting against the pending motion. Thank you.

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

Senator PEARSON: Thank you. Mr. President, men and women of the Senate. This particular Bill before us has been a very curious one from my standpoint and from a lot of other people because it has caused a lot of controversy in the area around Island Falls and a number of misstatements. The Houlton Pioneer Times, which is a paper that is owned by the Bangor Daily News people, but runs autonomously and as far as I know has no real control over it, has in it as do most local weekly papers a letter from the local Representative. The local Representative in this case was not quoted, but the one in the adjacent area of Houlton was. He said in part of his article, "this annexation issue has been shrouded in secrecy, innuendo and misinformation. I will try to separate facts from rumors from the best of my knowledge and belief." I trust that he did try to do that to the best of his knowledge and his belief, but he was inaccurate in my opinion. First of all, it wasn't shrouded in secrecy. This issue of the annexation of this unorganized territory was taken before a town meeting in Island Falls and voted on last March. It says that there has been innuendo, but I really don't know how you would address that, but misinformation, he goes on in his article and says, "In L.D. 1370, the only year-round legal residence of Township 4, Range 3 is forced to vote in the town of Island Falls and his vote is combined with the votes of all Island Falls voters. He petitioned the Maine Senate not to let this violation of his rights occur." Well I suppose you could say a petition could take the form of an oral request. But he goes on to say, "at the time of his personal appearance in the Senate Chamber of February 8," you know that just doesn't happen. So I just trust that is a product of a new person who doesn't understand the legislative process.

But, I would like to address this particular question of the individual who lives in Township 4, Range 3, being forced to vote in Island Falls. The law says if you don't have a polling place in an Unorganized Territory, you go to the next closest town that is still within your legislative and Senate district and you vote there. Either that or we would have to set up polling places where ever there is an individual anywhere in the State. Since consequently Island Falls was considering this particular area that is where he chose to go. I understand he could have gone to Oakfield, but he chose not to do that and he went to Island Falls. I also understand that this particular individual had never been a legal resident of Township 4, Range 3 until this issue came up and even the vehicles that he owned were not registered there and the sporting camps that he claims he owns aren't licensed with the state and he

only became a resident when it was most advantageous for him to do so. Now, Island Falls is asking that it be able to annex this town because it controls what is historically been connected with Island Falls a lake on which there are a number of cottages. One owned or leased from somebody from out of the country, eight of them are owned from people from Houlton and various other places in the state. The question is, is development going to take place up there in what is really sort of part of the town, historically, without any say of the people of Island Falls and they say that they don't want that to happen. The only recorded vote that Island Falls has had they have said they are interested in acquiring it and the main reason is because they are afraid they are not going to have any control over it. For a couple of years, two maybe three, LURC is going to have control over it in a transitional period, but I am willing to bet that if it were part of Island Falls that LURC would be listening to Island Falls very closely in what it was going to allow as far as development of that community. So, consequently, I support the motion of the Chairman of the Committee.

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

Senator COLLINS: Thank you. Mr. President, men and women of the Senate. I should like this morning to support the good Senator from Southern Aroostook, Senator Ludwig, in her opposition to the pending motion. I don't pretend to know all of the detailed intricacies of the politics of the village of Island Falls and the Unorganized Territory adjacent, but I am aware of Unorganized Territories in general because I have a great deal of those territories in my district. In fact, all of us who come from Aroostook County have to represent to some degree the Unorganized Territory. It seems to me that any change we make in governmental structure is indeed an important one and one that requires a great amount of caution. I suspect that it also ought to require a good deal of unanimity among the concerned parties. In spite of the fact that we only have one year-round resident in this particular Unorganized Territory, there are a number of people who have summer cottages there who are residents in Aroostook County. It seems to me that the overall issue in Aroostook County is one that we should approach very carefully. For example, last year Benedicta, which is a town in southern Aroostook, decided to become unorganized. This immediately effected the county budget. It immediately made a change in the amount of money that had to be raised for school support and in many ways it effected a lot of people in Aroostook County. We have pending before us a proposal concerning the town of Sherman. It is an organized town at the present time and it also wants to be deorganized. In my immediate area we have a number of unorganized towns who are considering the advantages one way or the other. My point is that it does make a difference to somebody other than the party who attempts to annex or reorganize in some other fashion. Let me give you an idea of what I think might happen in the case of Island Falls. Were they to annex this township, one their valuation would increase. Two, their school subsidy from the state would probably decrease and it seems to me that isn't a very good position for the town of Island Falls to find themselves in. Now, as their valuation increases they will also be subject to an increase in their County tax, because County taxes are levied on the basis of valuation. On the other hand, the people in the unorganized will probably have an increase in their taxes and they probably will not have an increase in the services that are provided to

them by government. So, I think it is rather difficult to analyze the plus' and minus' in these reorganizations. It seems to me that if there isn't a great deal of unanimity among the concerned parties we ought not to attempt to do it. We ought to do it much more slowly than we are in the present instance. So, I would urge you today, to vote against the present pending motion. Thank you Mr. President.

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

Senator BALDACCI: Thank you. Mr. President, men and women of the Senate. There has been some reference to the individual resident in that particular area earlier in the debate here and I have a signed affidavit by a notary, Donald Goodrich, that states I, Robert Magison, on oath depose that and say that I am a resident of New Limerick, operate a service station in Island Falls, Maine. I have known the individual Glen Holmes for at least twenty years and all of the information contained in this affidavit is based on my personal knowledge. I have personal knowledge that Glen Holmes has lived continuously in Township 4, Range 3 for at least the past three years. I have visited his home which is a year-round residence several times. I know that he plows the roads in order to maintain winter access and that he has made substantial renovations to the property including digging a well. Dated at Houlton, Maine this nineteenth day of February, 1988, Signed Robert Magison, notarized February 19, 1988, Aroostook County, Donald Goodrich, Notary Public.

Earlier in the debate on this particular issue it was suggested that there was concern about the water and growth control around the water area and the lakes. The question was asked why did not Island Falls survey that area and say we want to include just this area with out town. The answer was we were told by surveyors that it was too expensive and it was cheaper just to add the whole thing to Island Falls. I submit to you, ladies and gentlemen of the Senate, that one may be even unconstitutional, but normally when there is an annexation, you allow the property that is going to be annexed to vote separately as to whether or not it wants to be part of another annexation. If Bangor wanted to have Brewer as part of it, it would not take Brewer's votes and dilute it with Bangor, Bangor would vote separately and so would Brewer. What you are asking in this particular instance is not only to give away the whole township to Island Falls just when it wants the area around the lakes, but you are also saying to that individual who lives there hey, you don't have rights as an individual in this particular township, you are going to move over to Island Falls and vote with a thousand other people and if it is a good idea for Island Falls and a bad idea for this township, well that is just too bad. That is unprecedented in the action we talked about earlier with Carrabassett Valley and also unprecedented with the earlier action that was discussed here today. The third point that I would submit to you is that I don't think this is a good deal for Island Falls. One, because you increase their valuation, you increase their county tax that is based on valuation. You increase their valuation, you decrease their aid for education that they get from the state. They say well we will increase the taxes in the area to make up the difference and what have we all been trying to do for the last four to six years? To get away from property taxes and more on the ability to pay and not based on your property. So, I submit that this is not a very good idea. And on top of that, the town of Oakfield is interested in it and would like an

opportunity to sit down with the other communities and I think that is what we should be doing is saying no to this legislation and yes to sitting down and working up something with the area communities. Thank you.

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

Senator PEARSON: Thank you. Mr. President, men and women of the Senate. With regards to the point that was made from the Senator from Aroostook, Senator Collins and also the Senator from Penobscot, Senator Baldacci, about whether this was good for Island Falls or not, I submit to you that this is going to be a question that is going to be allowed to be voted on by the people of Island Falls as to whether it is good for them or not. I would suspect that at the time that it is going to be done would be a town meeting and I would suspect that it would probably be told to them exactly what the tax ramifications were going to be so that they could vote on it intelligently at that time. I am not somebody who likes to get involved in somebody else's debate, but tangentially do have an interest in Island Falls. I used to represent it and I became fond of a number of people up there and it is something that is of some interest to me. Island Falls is truly capable of deciding that particular question for themselves. I know them to be intelligent people and thoughtful people. I never got a majority there, but they are nice people. With regard to this one individual who lives in Township 4, Range 3, I think he is being used as a device to debate with. I understand that he has lived there three years, he probably has lived there even longer than that. He never registered any vehicles there, never registered his sporting camps that he says he owns, never registered to vote, which is his right, he doesn't have to vote if he doesn't want to. But, to compare that with the people who live in Carrabassett, where there were a number of people I think is like comparing apples and oranges because the individual was apparently not a legal resident of that particular area under the definitions of the law until this issue came up.

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

Senator BALDACCI: Thank you. Mr. President, men and women of the Senate. I take with great umbrage the remarks of the good Senator from Penobscot, Senator Pearson, where he tries to parallel the Carrabassett annexation and the amount of people involved in that with this particular character or individual as referred to in the earlier debate. I would remind the good Senator from Penobscot, Senator Pearson, and other members of the Senate that government even protects one person. One person has as much rights as a group of people have. Just because it is one person with a beard and long hair who may not fit the normal standard that you are used to, he has those rights. And what is different here is not what Island Falls does, but what that township does that is being treated differently. That one person is being told, you go across and vote with Island Falls and the total will be whether it makes sense or not, not whether you will vote separately as we have with other communities. The issue here today is whether the individual rights of that person are being overridden by what we are doing here today. The one individual has as much rights as a group and his rights need to be protected because it is the Constitution which gives him those rights. It is the government that is at the bottom and it is the people who are at the top, the way the constitution is drafted. That, men and women of the Senate, is what

the issue is here. How that individual is going to be treated.

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

Senator TUTTLE: Thank you. Mr. President, men and women of the Senate. I will be brief. The issues have been elaborated here quite adequately on both sides of the issue. As the good Senator from Penobscot, Senator Baldacci has alluded to, this should not be an issue of personal interest to that individual. I, in the beginning, had a very hard time deciding on which way I was going to vote on this issue, but I received a letter from the selectman of Island Falls and would like to share it with you. "We feel that pleasant pond in Mattawamkeag Lake, which are both partially within Township 4, Range 3 are very vital to Island Falls and the surrounding areas, both economically and environmentally and will become increasing important in the future. We desire to insure the proper development by control through our planning board, our code enforcement office and authorize development committees to insure effective, efficient environmental control and as well as to participate in our own future and destiny." That is the reason why I originally voted for this Bill and that is why I have stuck with the Representative from the other Body and the people of the Island Falls area, because I think it is in their best interest to control their own destiny. It is for that reason that I hope we could support the motion to Recede and Concur.

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

Off Record Remarks

THE PRESIDENT: The pending question before the Senate is the motion of Senator TUTTLE of York, to RECEDE and CONCUR.

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

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators ANDREWS, BERUBE, BRANNIGAN, BUSTIN, CLARK, DOW, DUTREMBLE, ESTES, KANY, KERRY, MATTHEWS, PEARSON, THERIAULT, TUTTLE, USHER

NAYS: Senators BALDACCI, BLACK, BRAWN, CAHILL, COLLINS, DILLENBACK, EMERSON, ERWIN, GILL, GOULD, LUDWIG, MAYBURY, PERKINS, RANDALL, SEWALL, TWITCHELL, WHITMORE, THE PRESIDENT - CHARLES P. PRAY

ABSENT: Senators GAUVREAU, WEBSTER

15 Senators having voted in the affirmative and 18 Senators having voted in the negative, with 2 Senators being absent, the motion of Senator TUTTLE of York, to RECEDE and CONCUR, FAILED.

On motion by Senator LUDWIG of Aroostook, the Senate ADHERED.

The Chair laid before the Senate the matter Tabled pending a Ruling of the Chair:

Bill "An Act to Amend the Charter of the Eastport Port Authority" (Emergency)

H.P. 1684 L.D. 2313

Tabled - February 23, 1988, by the President.

Pending - RULING OF THE CHAIR

(In Senate, February 22, 1988, Senator TUTTLE of YORK moved to refer to the Committee on STATE AND LOCAL GOVERNMENT in NON-CONCURRENCE.)

(In House, February 19, 1988, referred to the Committee on TRANSPORTATION and ORDERED PRINTED.)

THE PRESIDENT: Senator Randall had inquired as to whether this Bill was properly before the Body pursuant to Joint Rule 37. The Chair would rule that the Bill is not in violation of Joint Rule 37. Joint Rule 37 pertains to a Bill having failed passage in the First Session not being allowed to be reintroduced in the Second Session. The Bill had passed, but was vetoed by the Governor and the inability to override the veto is not a reflection of a defeated measure, based upon previous Rulings.

On motion by Senator TUTTLE of York, referred to the Committee on STATE AND LOCAL GOVERNMENT and ORDERED PRINTED in NON-CONCURRENCE.

Sent down for concurrence.

Off Record Remarks

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

Senate at Ease

Senate called to order by the President.

On motion by Senator USHER of Cumberland, ADJOURNED until Thursday, February 25, 1988, at 9:00 in the morning.