

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred And Thirteenth Legislature

OF THE

State Of Maine

VOLUME IV

SECOND REGULAR SESSION

March 25, 1988 to May 5, 1988

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HOUSE & SENATE LEGISLATIVE SENTIMENTS

December 3, 1986 to December 6, 1988

Senator GOULD of Waldo was granted unanimous consent to address the Senate off the Record.

On motion by Senator PERKINS of Hancock, ADJOURNED until Wednesday, April 20, 1988, at 1:00 in the afternoon.

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

In Senate Chamber
Wednesday
April 20, 1988

Senate called to Order by the President.

Prayer by the Honorable Ronald E. Usher of Cumberland.
SENATOR USHER: Lord, give us Your blessings as we approach the final hours of this Session. Let nothing happen these final days that would leave lasting scars on the Members of this Chamber. Help us Oh Lord to make proper decisions when we vote for Maine's future. Amen.

Reading of the Journal of Yesterday.

Off Record Remarks

Senate at Ease
Senate called to order by the President.

ORDERS

On motion by Senator DUTREMBLE of York the following Order:

ORDERED, that the Secretary of the Senate be authorized to furnish 100 25-cent stamps for each member of the Senate for the purpose of distributing various reports of the Departments of State and other public documents such as they may desire to mail to the citizens of the State.

Which was READ and PASSED.

Senate at Ease
Senate called to order by the President.

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.

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

On motion by Senator THERIAULT of Aroostook, RECESSED until the sound of the bell.

After Recess
Senate called to order by the President.

ORDERS OF THE DAY
Unfinished Business

The following matters in the consideration of which the Senate was engaged at the time of Adjournment, have preference in the Orders of the Day and continue with such preference until disposed of as provided by Senate Rule 29.

(Non-Concurrent Matter - April 19, 1988)
Bill "An Act to Correct Additional Errors and Inconsistencies in the Laws of Maine" (Emergency)

H.P. 1939 L.D. 2638

In House, April 19, 1988, PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-755).

In Senate, April 19, 1988, PASSED TO BE ENGROSSED in NON-CONCURRENCE.

In House, April 19, 1988, that Body ADHERED.

In Senate, April 19, 1988, RECEDED and CONCURRED. Subsequently, RECONSIDERED. The Senate ADHERED. Subsequently, RECONSIDERED. The Senate RECEDED. House Amendment "A" (H-755) READ and INDEFINITELY POSTPONED in NON-CONCURRENCE.

On motion by Senator WEBSTER of Franklin, the Senate RECONSIDERED whereby it INDEFINITELY POSTPONED House Amendment "A" (H-755).

Subsequently, House Amendment "A" (H-755) ADOPTED, in concurrence.

The Senate CONCURRED.

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

COMMUNICATIONS

The Following Communication:

COMMITTEE ON HUMAN RESOURCES
ONE HUNDRED AND THIRTEENTH LEGISLATURE
April 20, 1988

The Honorable Charles P. Pray
President of the Senate
113th Legislature

Dear President Pray:

We are pleased to report that all business which was placed before the Committee on Human Resources during the Second Regular Session of the 113th Legislature has been completed. The breakdown of bills referred to our committee follows:

Total number of bills received	48
Unanimous reports	43
Leave to Withdraw	18
Ought to Pass	4
Ought Not to Pass	0
Ought to Pass as Amended	20
Ought to Pass in New Draft	1
Divided reports	5

Respectfully submitted,

S/Sen. N. Paul Gauvreau S/Rep. Peter J. Manning
Senate Chair House Chair
Which was READ and ORDERED PLACED ON FILE.

Off Record Remarks

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

COMMUNICATIONS

The Following Communication:

COMMITTEE ON EDUCATION
ONE HUNDRED AND THIRTEENTH LEGISLATURE
April 20, 1988

The Honorable Charles P. Pray
President of the Senate
113th Legislature

Dear President Pray:

We are pleased to report that all business which was placed before the Committee on Education during the Second Regular Session of the 113th Legislature has been completed. The breakdown of bills referred to our committee follows:

Total number of bills received	37
Unanimous reports	33
Leave to Withdraw	5
Ought to Pass	4
Ought Not to Pass	3
Ought to Pass as Amended	17

Ought to Pass in New Draft 4
Divided reports

4

Respectfully submitted,
S/Stephen C. Estes S/Stephen M. Bost
Senate Chair House Chair
Which was READ and ORDERED PLACED ON FILE.

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

COMMUNICATIONS

The Following Communication:

COMMITTEE ON STATE AND LOCAL GOVERNMENT
ONE HUNDRED AND THIRTEENTH LEGISLATURE
April 20, 1988

The Honorable Charles P. Pray
President of the Senate
113th Legislature
Dear President Pray:

We are pleased to report that all business which was placed before the Committee on State and Local Government during the Second Regular Session of the 113th Legislature has been completed. The breakdown of bills referred to our committee follows:

Total number of bills received	57
Unanimous reports	47
Leave to Withdraw	14
Ought to Pass	4
Ought Not to Pass	5
Ought to Pass as Amended	15
Ought to Pass in New Draft	7
Re-referred	2

Divided reports 10
1 Committee Bill pursuant to Joint Order (H.P. 1489)
14 County Budgets

Respectfully submitted,

S/John L. Tuttle S/Donnell P. Carroll
Senate Chair House Chair
Which was READ and ORDERED PLACED ON FILE.

PAPERS FROM THE HOUSE

Joint Resolution

The Following Joint Resolution: H.P. 1940
JOINT RESOLUTION IN HONOR OF THE 200TH ANNIVERSARY
OF THE TOWN OF FAIRFIELD

WHEREAS, one of the great strengths of this nation is the place that the town has come to occupy in the hearts and minds of New Englanders; and

WHEREAS, characteristic of its name and natural beauty, Fairfield, the 56th town to be incorporated in the District of Maine, is such a place; and

WHEREAS, in a village nestled on the west bank of that great water thoroughfare to the north along the Arnold Trail a dream was realized on the 18th of June 1788, the dream of founding a town; and

WHEREAS, the inhabitants of this southernmost Somerset County town have watched with pride its spread from the shadows of the great willow, old meeting house and Kendalls Mills to a thriving town of many villages within its 42 square miles; now, therefore, be it

RESOLVED: That We, the Members of the 113th Legislature now assembled in Second Regular Session, pause to honor this historic town on the occasion of its bicentennial anniversary and extend our support and best wishes to the good citizens of Fairfield for continued success and achievement as they look to the future; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be presented to the town officials in honor of this special occasion.

Comes from the House READ and ADOPTED.
Which was READ and ADOPTED, in concurrence.

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

ENACTORS

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

Emergency

An Act to Make Supplemental Appropriations and Allocations for the Expenditures of State Government and to Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 1988, and June 30, 1989

S.P. 831 L.D. 2156

(C "A" S-489)

On motion by Senator PEARSON of Penobscot, Tabled Unassigned, pending ENACTMENT.

Emergency

An Act to Establish the Strategic Training for Accelerated Reemployment Program

S.P. 946 L.D. 2494

(H "B" H-750)

On motion by Senator CLARK of Cumberland, Tabled Unassigned, pending ENACTMENT.

Emergency

An Act to Implement the Recommendations of the Study of the Department of Environmental Protection

H.P. 1907 L.D. 2604

(S "A" S-488 to C "A" H-745)

On motion by Senator CLARK of Cumberland, Tabled Unassigned, pending ENACTMENT.

ORDERS OF THE DAY

On motion by Senator PEARSON of Penobscot, the Senate removed from the Unassigned Tabled the following:

Emergency

An Act to Make Supplemental Appropriations and Allocations for the Expenditures of State Government and to Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 1988, and June 30, 1989

S.P. 831 L.D. 2156

(C "A" S-489)

Tabled - April 20, 1988, by Senator PEARSON of Penobscot.

Pending - ENACTMENT

(In House, April 20, 1988, PASSED TO BE ENACTED.)

(In Senate, April 19, 1988, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-489).)

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

Senator PEARSON: Thank you Mr. President, men and women of the Senate. Some confusion has arisen over the wording of a section of the supplemental budget relating to lobbyists financial disclosure and I want to clarify the intent of that section on the Record to eliminate any potential problems that might otherwise arise when the Section is implemented.

Currently, lobbyists are required to disclose income received as a result of their attempts to influence legislators' votes on specific legislation. In order to obtain a more comprehensive view of the overall income derived by lobbyists from plying their trade, the section in the supplemental

budget is intended to require lobbyists to disclose all income, including retainers and other general fees, received from other lobbying efforts.

It is not intended that lobbyists should be required to disclose income they receive for their activities or services provided to their clients unrelated to lobbying. For example, it is not intended that an attorney be required to disclose income received from a client for ordinary legal services or court representation. It is intended that that attorney disclose all income received from a client related to other lobbying activities, heretofore unreported retainers as well as hourly charges, for time spent actually lobbying bills.

I wanted to make clear, for the Record, the exact legislative intent in regard to this section.

On motion by Senator CLARK of Cumberland, Tabled Unassigned, pending ENACTMENT.

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

ENACTORS

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

An Act to Amend the Laws Relating to AIDS and Communicable Diseases

S.P. 916 L.D. 2392

(C "A" S-487)

On motion by Senator BUSTIN of Kennebec, the Senate RECONSIDERED whereby the Bill was PASSED TO BE ENGROSSED AS AMENDED.

On further motion by same Senator, the Senate RECONSIDERED ADOPTION of Committee Amendment "A" (S-487).

On further motion by same Senator, Senate Amendment "B" (S-498) to Committee Amendment "A" (S-487) READ.

THE PRESIDENT: The Chair recognizes the same Senator.

Senator BUSTIN: Thank you Mr. President. Mr. President, men and women of the Senate. I think a brief explanation is due on this and if you look at you amendment I think it will tell you. I will only read that portion of it that we want to change.

"Pretest and post-test counseling must be provided by the person or organization requesting the test. Any person or organization requesting the test must be responsible for offering the person being tested pretest and post-test counseling. If the offer is accepted an insurer shall reimburse the applicant for the cost of counseling as defined in section 19204-A, Subsections 1 and 2. In no event may an insurer reimbursing the proposed insured be liable for any outcomes resulting from the consultation." Normally, I would not have to amend this, but as I understand it from the insurance people this is the first time we have put in law that a test must be offered. When you put yourself in the position of offering the test, then you put yourself in the position of being liable for the results of this test. When in fact what I think the AIDS Committee meant to do was to only make sure that there was pretest and post-test counseling and to not make them responsible or liable for the results of that. Only for offering it and paying for that counseling. There is no objection to the payment, there is objection to the liability that might accrue from that. Thank you.

Senator GAUVREAU of Androscoggin moved the INDEFINITE POSTPONEMENT of Senate Amendment "B" (S-498) to Committee Amendment "A" (S-487).

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

Senator GAUVREAU: Thank you Mr. President. Mr. President, men and women of the Senate. As you know over the course of the last few trying days I serve as the Senate Chair of the Committee of the Joint Standing Committee on Human Resources and it is in that capacity that I address you this evening. L.D. 2392, which stands before you today is a unanimous report out of the Joint Standing Committee on Human Resources and it is a comprehensive piece of legislation dealing with many facets of Acquired Immunity Deficiency Syndrome. The section we are discussing today deals with the rights and responsibilities of insurance carriers to request of applicants for health or life insurance to submit to HIV testing procedure to determine whether the applicant has either AIDS or ARC, AIDS Related Complex. As you may know under current law there are very strict requirements as far as what information insurance companies can gather as to a persons health history relating to AIDS. In fact, it is against our state law for an insurance company to require of any applicant for insurance to disclose whether the applicant has in fact tested positive or not for AIDS. We do allow insurance carriers to require applicants for insurance to submit to this HIV testing and my understanding of the unanimous Committee intent was that if an insurance company decides as its option and don't forget this is optional, but if an insurance carrier should decide to require an applicant for insurance to submit to the HIV testing, that the insurance carrier would bear two primary responsibilities. First of all and as the good Senator from Kennebec, Senator Bustin, has told you, it is our intent to impose the burden of payment for the HIV screening on the insurance carrier requesting the applicant to take that test. The second issue deals with potential legal liability emanating from the post-test or pretest counseling required under this law. I think you are aware this is tremendous emotional travail attendant to a positive finding of HIV virus with any individual.

Because the Human Resources Committee is highly sensitive to that, we are very clearly putting the responsibility on insurance companies requesting this test to make sure that the applicants are properly counseled. I have not done research between eleven this morning and the present time as to the precise state of Maine law governing liability on parties requesting this testing. It strikes me we ought to allow the courts of our state to develop the common law in this area. A more important concern for me, as Chair of the Committee, is to point out to you that L.D. 2392 represents a very fragile compromise. There were very many emotional issues attended to this piece of legislation. All of us on the Committee made major compromises in order to meet middle ground. I would suggest to you that if we open up this very sensitive area by allowing this amendment or any other amendments the whole process might unravel. Clearly, I have canvassed my Committee and the Committee members are united, they oppose any amendments to this legislation because of the delicate nature of the compromise which was fashioned. I think all of you who have worked in Committee on very sensitive issues understand that necessity of standing united on very sensitive issues. I am proud, I am very proud with the members of my Committee who were able to put aside philosophical reservations and work in harmony on this most sensitive subject area to report to you an unanimous report. It is for these reasons that I urge you this evening to Indefinitely Postpone the proposed Senate Amendment "B" (S-498). Thank you.

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

Senator GILL: Thank you Mr. President. Mr. President, men and women of the Senate. I appreciate Senator Gauvreau telling you what the Committee went through and as I recall when we opened this session this evening the President spoke about unanimous reports and how proud he was of the number of unanimous reports that came out of Committees. This was indeed a unanimous report, it came from people who were in the high risk group that we dealt with, it was from people within the department structure, the Department of Health. We had people from the left and the right that really got together and worked this Bill out. In the Bill itself there is a provision that allows promulgating of rules by the Superintendent of Insurance to define language requirements of the section that deals with insurers in the Bill. I have pledged along with another Legislator from the other Body, who also serves with me on the Advisory Committee on AIDS to attend the hearing when rules are being promulgated and to express our intent along with the appropriate parties to what the intent of this legislation was. I just wanted to put that into the Record today. We were concerned about pretest counseling, we still are concerned about pretest counseling and this is why the committee was very emphatic about having pretest counseling done by the insurers or anyone else who asked for a test to be taken. So, I would hope that you would vote for the Indefinite Postponement of this amendment and go on to keep the original Bill in tact.

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

Senator BUSTIN: Thank you Mr. President. Mr. President, men and women of the Senate. I was the Senate Chair of the Human Resources Committee at one point and I do realize the fragile compromises that are made up there. I realize the tremendous amount of work that goes on with those bills and I know has gone on with this Bill. That, I think, is not the issue and it is not the issue we are talking about pretest or post-test counseling, that is already set in the Bill, nobody is debating that. We all agree on the pretest and the post-test counseling. We all agree on the need for it. We all agree on the promulgation of the rules to have that. I disagree, however, and it pains me somewhat to go against the good Senator from Androscoggin, Senator Gauvreau, because as a general rule I am always on his side of the issue, and I suspect in the long run will be on the same side of the issue on this particular one. For some reason this issue did not get addressed in those hearings, it was not put in the Bill and it is a question of where liability lies. It is the first time that I know of, and I grant you that we need the research to set that straight, when we have said to a medical insurer that they must offer a service and they must pay for it. That makes them somewhat liable. It distresses me that we always have to go to court in order to make sure that is the way we want to have it here at this Legislature. We don't need to, you have an amendment before you that you can vote on to clear up that question. You don't need to go to court for it, it can be settled here.

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

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

Senator GAUVREAU: Thank you Mr. President. Mr. President, men and women of the Senate. The Human Resources Committee intent is to provide quality pre

and post-test counseling. It strikes me that if we immunize any insurance carrier from liability as to adverse consequences of testing, there is no real incentive upon that insurance carrier to insure that applicants receive appropriate and good counseling. That is the nature of tort law, it provide incentives for parties to act in reasonable fashion. I would hope that you would join with me in voting to Indefinitely Postpone Senate Amendment "B" (S-498). Thank you.

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

Senator BUSTIN: Thank you Mr. President. Mr. President, men and women of the Senate. Perhaps this is an inquiry to anyone who cares to answer. I did not think insurance companies are or should be put in a position, other than perhaps the workers' compensation issue, of stating who their medical practitioner should be and I would hope that is not the intent of this Bill.

THE PRESIDENT: The pending question before the Senate is the motion of Senator GAUVREAU of Androscoggin, to INDEFINITELY POSTPONE Senate Amendment "B" (S-498) to Committee Amendment "A" (S-487).

A vote of Yes will be in favor of the motion to INDEFINITELY POSTPONE.

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 BLACK, BRANNIGAN, BRAWN, COLLINS, EMERSON, ERWIN, ESTES, GAUVREAU, GILL, GOULD, KERRY, LUDWIG, MAYBURY, PEARSON, PERKINS, RANDALL, TUTTLE

NAYS: Senators ANDREWS, BALDACCI, BERUBE, BUSTIN, CAHILL, CLARK, DILLENBACK, DOW, DUTREMBLE, KANY, MATTHEWS, SEWALL, THERIAULT, TWITCHELL, USHER, WEBSTER, WHITMORE, THE PRESIDENT - CHARLES P. PRAY

ABSENT: Senators None

17 Senators having voted in the affirmative and 18 Senators having voted in the negative, with No Senators being absent, the motion of Senator GAUVREAU of Androscoggin, to INDEFINITELY POSTPONE Senate Amendment "B" (S-498) to Committee Amendment "A" (S-487), FAILED.

On motion by Senator BUSTIN of Kennebec, Senate Amendment "B" (S-498) to Committee Amendment "A" (S-487) ADOPTED.

Committee Amendment "A" (S-487) as Amended by Senate Amendment "B" (S-498) thereto, ADOPTED in NON-CONCURRENCE.

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

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

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

ENACTORS

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

An Act to Strengthen the Site Location of Development Law

S.P. 846 L.D. 2202
(S "A" S-483 and H "B" H-753 to C "A" S-477)

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

An Act to Promote Equity in Determining Medicaid Eligibility for Institutionalized Care

H.P. 313 L.D. 412
(H "A" H-751)

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

An Act to Revise the General Assistance Laws

H.P. 1249 L.D. 1705
(H "B" H-749)

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

An Act to Make Interim Adjustments in the Certificate of Need Development Account

S.P. 845 L.D. 2191
(S "A" S-491)

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

An Act to Respond to Health Care Occupation Shortages in Maine through the Health Occupations Training Project

S.P. 892 L.D. 2304
(C "A" S-468)

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

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

ENACTORS

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

An Act to Clarify and Correct Errors and Omissions and to Improve the Laws Relating to Education

S.P. 947 L.D. 2501
(C. C. "A" S-484)

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

An Act Concerning Storage Of Radioactive Material in Public Buildings

S.P. 1003 L.D. 2637

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

ORDERS OF THE DAY

On motion by Senator CLARK of Cumberland, the Senate removed from the Unassigned Table the following:

Emergency

An Act to Implement the Recommendations of the Study of the Department of Environmental Protection
H.P. 1907 L.D. 2604
(S "A" S-488 to C "A" H-745)

Tabled - April 20, 1988, by Senator CLARK of Cumberland.

Pending - ENACTMENT

(In House, April 20, 1988, PASSED TO BE ENACTED.)
(In Senate, April 19, 1988, PASSED TO BE ENACTED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-745) AS AMENDED BY SENATE AMENDMENT "A" (H-745) thereto, in concurrence.)

This being an Emergency Measure and having received the affirmative vote of 33 Members of the Senate, with No Senators having voted in negative, and 33 being more than two-thirds of the entire elected Membership of the Senate, was PASSED TO BE ENACTED and having been signed by the President, was presented by the Secretary to the Governor for his approval.

On motion by Senator CLARK of Cumberland, the Senate removed from the Unassigned Table the following:

JOINT RESOLUTION - Requesting Immediate Action to Restore the Public Peace, Health and Safety of Maine Citizens in Franklin and Androscoggin Counties
S.P. 902

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

Pending - ADOPTION

(In Senate, February 23, 1988, READ.)
Senator MATTHEWS of Kennebec requested and received Leave of the Senate to withdraw the Joint Resolution.

On motion by Senator CLARK of Cumberland, the Senate removed from the Unassigned Table the following:

An Act to Continue Professional Forestry Supervision of Biomass Fuel Wood Harvesting Operations
H.P. 1707 L.D. 2344
(C "A" H-526)

Tabled - April 4, 1988, by Senator CLARK of Cumberland.

Pending - ENACTMENT

(In Senate, March 31, 1988, PASSED TO BE ENACTED. Subsequently, RECONSIDERED.)
(In House, March 30, 1988, PASSED TO BE ENACTED.)
(In Senate, March 28, 1988, PASSED TO BE ENACTED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-526), in concurrence.)

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

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

After Recess

Senate called to order by the President.

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

ENACTORS

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

Bond Issue

An Act to Authorize a General Fund Bond Issue in the Amount of \$3,000,000 for Construction and Renovation of Public Safety Facilities

S.P. 970 L.D. 2578
(C "A" S-494)

On motion by Senator CLARK of Cumberland, Tabled Unassigned, pending ENACTMENT.

Bond Issue

An Act to Authorize a General Fund Bond Issue in the Amount of \$13,000,000 to Investigate, Abate, Clean Up and Mitigate Threats to Public Health and the Environment from Uncontrolled Hazardous Substance Sites, Solid Waste Landfills and Underground Oil Storage Tanks

H.P. 1902 L.D. 2598
(C "A" H-759)

This being a Bond Authorization Act and having received the affirmative vote of 32 Members of the Senate, with No Senators having voted in negative, and 32 being more than two-thirds of the Membership present and voting was PASSED TO BE ENACTED and having been signed by the President, was presented by the Secretary to the Governor for his approval.

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

ENACTORS

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

Bond Issue

An Act to Authorize a General Fund Bond Issue in the Amount of \$12,000,000 for Sewerage Facilities Construction

H.P. 1883 L.D. 2575
(C "A" H-758)

This being a Bond Authorization Act and having received the affirmative vote of 34 Members of the Senate, with No Senators having voted in negative, and 34 being more than two-thirds of the Membership present and voting was PASSED TO BE ENACTED and having been signed by the President, was presented by the Secretary to the Governor for his approval.

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

ENACTORS

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

Bond Issue

An Act to Authorize a Bond Issue to Provide Funds to Create an Adaptive Equipment Loan Program for Disabled Maine Citizens

H.P. 1686 L.D. 2315
(C "A" H-760)

Comes from the House FAILING OF ENACTMENT.
THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Pearson.

Senator PEARSON: Thank you Mr. President. Mr. President, men and women of the Senate. This is not as most people know part of the Governor's bond package. It is an adaptive equipment loan program for disabled Maine citizens. I would like to plead for your vote for a few minutes here and try and make a case for this. The Governor of this state is a friend of mine and he has a lot of good ideas. The bond issues that he has suggested, I think are admirable. But he doesn't have all the good ideas. This is also a good idea. On the walls of this Senate in the rear is a picture of President Jefferson, the third president of the United States. President Thomas Jefferson was alive when Maine became a state and he was consulted when the constitution of this state was drawn up. Some of the phrases and some of the rhetoric that is used in the Maine Constitution came directly from his pen. I don't purport to say that this did, but I don't know that it didn't either. But it reads "all men are

born equally free and independent and of certain natural inherent and unalienable rights among which are those of enjoying and defending life and liberty, acquiring and possessing and protecting property and pursuing and obtaining safety and happiness." Over here on this wall we have the great emancipator who wrote the Gettysburg Address with balance towards none, with charity for all although he was talking about a war he could very well have been talking about those among us who are less fortunate and then there is Franklin Delano Roosevelt who became the most respected leader of the free world during the Great Depression and the Second World War who could not walk, who went to such great heights in the history of mankind and accomplished so much for the American people.

This loan program is a loan program. It is a bond issue to create a loan program so people who cannot walk or do other things that we take for granted, will be able to purchase equipment at a low interest loan and pay it back. We had people here not long ago in wheel chairs in my committee room who filled the room. I asked one of them how much does that wheel chair cost that you have? And he said to me it is between five and six thousand dollars. The average person can't afford that. I want to tell you a little story that is going to be somewhat difficult for me to tell you, but I am going to try. When I was a little kid, when my grandmother was still alive, her sister was alive, Aunt Maude, that was a common name in those days and Aunt Maude had been widowed somewhat early in her life. She had a daughter Blanche. I remember Blanche. Blanche was struck by infantile paralysis when she was a little girl. When I knew her she was forty or fifty years old. She crawled around on her knees. She had leather pads on her knees. She had a speech impediment. She knew who I was and she knew who her mother was and her mother devoted her entire life to taking care of Blanche who never had a wheel chair because she couldn't afford one. Never had one until of course her nieces and nephews purchased one for her. The people in the neighborhood, she lived in Bangor, came from Mattawamkeag, took up a collection and bought them a black and white television. They called my mother and said we don't have enough money, we have half as much, so my mother gave the rest and they bought her a television. She didn't have good dental care, she had lost her teeth, it was hard for me to understand her and I was scared of her and she knew I was scared of her. She didn't have any of the advantages that people have today. I look back and remember that every week my mother used to drive down to Bangor to bring her down some money and some food. Poor Blanche, she never had a chance. Blanche Dunlap and you know what the most notable thing that ever happened to her in her life was the fact that I just may have mentioned her name and it went in the Maine Register. She died about two months before her mother did, which was a blessing because her mother was frantic about what was going to happen to her when she passed away. Her mother became delirious or traumatized or whatever when it happened and I remember bringing the body home to Mattawamkeag. About ten years ago, I was in the House of Representatives, at the time there was a Representative from Madison who was a person who sold monuments. My aunt Maude saved up enough money to buy a stone for Blanche, just a little stone the kind that lays in the ground, but she never had enough for herself. When she died, the grave was never marked. I walked over to him one day and said, I would like to purchase a stone and he brought it in and had it engraved for me and I put it on the grave.

These people today that are disabled now can do things that they never could do. They can work on computers, they can earn a livelihood that nobody else could ever do, but the problem they have is they can't get to work. People criticize me about the budget on one thing or another, but one of the things we did do was put a million dollars in the budget for personal care assistance and for insurance for these people who cannot function alone. I think this will complete the package. Thomas Jefferson always used to say "the government that governs least governs best," but one of the things that he always felt and so many people have repeated so many times since is that "government ought to be at least directed to those who can do least for themselves." It seems to me that the bottom line of government is if a person cannot function by themselves then the state has a responsibility to do it for them. I know there are programs from time to time that are somewhat questionable, I question them myself, but when a person has had a spinal injury and cannot function from the neck down, truly that is something that government should be involved in it seems to me. I am willing to bet the people of this state will say the same. The Bond Issue originally didn't have the words for disabled Maine citizens, I put that on there because I wanted people to know what this was all about. Can you imagine a world that would have been without Franklin Roosevelt? Without his abilities, he fortunately came from a family that was an old Dutch family in New York, landed and moneyed and was able to have the necessary tools and equipment to carry him through life, but these people do not. I think it would be a shame of all the Bond Issues you look at here today, you can talk about sewers, we have to do things about sewers. You talk about water, we have to do things about water. You talk about the University of Maine, that is a fine institution, but when you think about all of the Bond Issues put together, they are not as important, it seems to me, when I think about my Blanche.

This being a Bond Authorization Act and having received the affirmative vote of 35 Members of the Senate, with No Senators having voted in negative, and 35 being more than two-thirds of the Membership present and voting was PASSED TO BE ENACTED IN NON-CONCURRENCE and having been signed by the President, was under suspension of the Rules, ordered sent down forthwith for concurrence.

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

SENATE PAPERS

Bill "An Act to Adjust the Rainy Day Fund Program" (Emergency)

S.P. 1007

Presented by Senator PEARSON of Penobscot
Cosponsored by: Representative HIGGINS of Scarborough, Senator EMERSON of Penobscot, Representative CARTER of Winslow
Committee on APPROPRIATIONS AND FINANCIAL AFFAIRS suggested.

Under suspension of the Rules, the Bill READ ONCE, without reference to a Committee.

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

Senator BUSTIN: Thank you Mr. President. I would like to pose a question through the Chair to anyone who may care to respond. I can't discern from reading this to what this Bill addresses.

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

The Chair recognizes the Senator from Penobscot, Senator Pearson.

Senator PEARSON: Thank you Mr. President. Last year we set aside some money in the Rainy Day Fund above and beyond the normal capacity of the Rainy Day Fund for the purpose of studying the Retirement System and hiring an actuary and looking into it and this is the result of that study. Two actuaries have been hired, it became necessary to deal with the money as it is described in this Bill.

Under suspension of the Rules, READ A SECOND TIME and PASSED TO BE ENGROSSED, without reference to a Committee, and ORDERED PRINTED.

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

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

PAPERS FROM THE HOUSE
Non-concurrent Matter

Bill "An Act to Amend the Laws Relating to AIDS and Communicable Diseases"

S.P. 916 L.D. 2392
(S "B" S-498 to C "A"
S-487)

In House, April 20, 1988, PASSED TO BE ENACTED.

In Senate, April 20, 1988, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-487) AS AMENDED BY SENATE AMENDMENT "B" (S-498), thereto in NON-CONCURRENCE.

Comes from the House that Body ADHERED.

On motion by Senator GAUVREAU of Androscoggin, the Senate RECEDED and CONCURRED.

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

Senator GAUVREAU: Thank you Mr. President. Mr. President, men and women of the Senate. We have just engaged in an action to Recede and Concur with the action of the other Body regarding L.D. 2392, which was the unanimous report of the Joint Standing Committee on Human Resources regarding AIDS. As you recall earlier this evening we had some debate regarding Senate Amendment "B", which if adopted would have provided language immunizing any insurance carrier from potential liability in the event the insurance carrier requested HIV testing of an applicant for insurance. Between Sessions of the Senate there has been significant discussion on the Amendment. It is my understanding the proponents of Senate Amendment "B" have consented not to pursue their case at this time and to accede in the Recede and Concur motion I made a few moments ago. It is also my understanding that the Human Resources Committee, when it considered the AIDS legislation, was bearing its focus upon financial concerns of people who had to submit to HIV screening and the thrust of the Committee attention was not on whether legal liability should be imposed upon insurance carriers requesting HIV testing. It strikes me that this matter might be appropriate for consideration in this Body at another time. Thank you.

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

PAPERS FROM THE HOUSE
Non-concurrent Matter

Bill "An Act To Promote the Prompt and Peaceful Settlement of Labor Disputes" (Emergency)

S.P. 956 L.D. 2531

In Senate, March 17, 1988, PASSED TO BE ENGROSSED.

Comes from the House PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-777) in NON-CONCURRENCE.

Senate at Ease

Senate called to order by the President.

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

Senator DUTREMBLE: Thank you Mr. President. Mr. President, men and women of the Senate. This is "An Act to Promote the Prompt and Peaceful Settlement of Labor Disputes," better known as the Strikebreaker Bill and I just want to reassure the good Senator from Aroostook, Senator Collins, that I did not go around and take the supplements off your desk, but I do have some spare copies in my office if you want some. This is the Bill that everyone in this Chamber wanted the opportunity to vote for just a few days ago and I assure everyone including the good Senator from Aroostook, Senator Collins, that where he was so interested in voting for the Strikebreaker Bill a few days ago that there would be another one coming that he could support wholeheartedly today.

On motion by Senator DUTREMBLE of York, the Senate RECEDED and CONCURRED.

Non-concurrent Matter

HOUSE REPORTS - from the Committee on APPROPRIATIONS AND FINANCIAL AFFAIRS on Bill "An Act to Establish an Enhanced 9-1-1 System"

H.P. 1911 L.D. 2608

Majority - Ought Not to Pass.

Minority - Ought to Pass as Amended by Committee Amendment "A" (H-761).

In House, April 19, 1988, the Minority OUGHT TO PASS AS AMENDED Report READ and ACCEPTED and the Bill PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-761).

In Senate, April 19, 1988, the Majority OUGHT NOT TO PASS Report READ and ACCEPTED in NON-CONCURRENCE.

Comes from the House, that Body ADHERED.

On motion by Senator KERRY of York, the Senate RECEDED and CONCURRED.

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

After Recess

Senate called to order by the President.

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

ORDERS

Joint Order

On motion by Senator CLARK of Cumberland the following Joint Order:

S.P. 1006

ORDERED, the House concurring, that in accordance with emergency authority granted under the Revised Statutes, Title 3, section 2, the Second Regular Session of the 113th Legislature shall be extended in accordance with the provisions of said section.

Which was READ.

Pursuant to Title 3, Section 2, this Joint Order requires the affirmative vote of two-thirds of the Members present and voting for Passage. 30 Senators having voted in the affirmative and 1 Senator having voted in the negative, and 30 being more than

two-thirds of the Members present and voting, the Joint Order was PASSED.

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

Senate at Ease
Senate called to order by the President.

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

ENACTORS

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

Emergency

An Act to Increase the State Funding of Educational Costs

H.P. 272 L.D. 355
(S "A" S-492)

This being an Emergency Measure and having received the affirmative vote of 31 Members of the Senate, with No Senators having voted in negative, and 31 being more than two-thirds of the entire elected Membership of the Senate, was PASSED TO BE ENACTED.

(See Action Later Today)

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

Divided Report

The Majority of the Committee on HUMAN RESOURCES on Bill "An Act to Establish the Additional Support for People in Retraining and Education Program"

H.P. 1744 L.D. 2390

Reported that the same Ought to Pass as Amended by Committee Amendment "C" (H-770).

Signed:

Senators:

KERRY of York

GAUVREAU of Androscoggin

Representatives:

MANNING of Portland

BOUTILIER of Lewiston

CLARK of Brunswick

SIMPSON of Casco

LAPINTE of Auburn

ROLDE of York

The Minority of the same Committee on the same subject reported that the same Ought to Pass as Amended by Committee Amendment "D" (H-771).

Signed:

Senator:

GILL of Cumberland

Representatives:

FARNUM of South Berwick

PINES of Limestone

DELLERT of Gardiner

TAYLOR of Camden

Comes from the House the Majority OUGHT TO PASS AS AMENDED Report READ and ACCEPTED and the Bill PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "C" (H-770) AS AMENDED BY HOUSE AMENDMENT "C" (H-780), thereto.

Which Reports were READ.

Senator GAUVREAU of Androscoggin moved to ACCEPT the Majority OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "C" (H-770) Report, in concurrence.

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

Senator GAUVREAU: Thank you Mr. President. Mr. President, men and women of the Senate. I would commence my remarks this evening by expressing some

degree of regret that I have perhaps become Maine's not ready for prime time Legislator. There have been many bills which have come out of Human Resources during the last week due to the vagueness of the legislative time schedule, I have been on my feet from eleven thirty p.m. until one-thirty a.m., so I do express my regrets for extending this evening. I would point out that the Bill we have before us is the ASPIRE program, which has generated a fair degree of controversy and commentary over the past few weeks. Although the matter would appear of supplement #19 as being a Divided Report in point of fact the Committee has reached consensus and it is an unanimous Committee report. You will note that the other Body earlier this evening amended L.D. 2390 by House Amendment "C" (H-780) to Committee Amendment "C" (H-770) and therein lies the basis for the unanimity in the Committee. I will not extend this evenings proceedings by engaging in protracted explanation of what this Bill does, I would point out that the state of Maine is one of many states in this country which was embarked upon a rather ambitious course of welfare reform and the so styled ASPIRE program certainly has in its basis a very sound and innovative concept, that being that we would provide additional support services in the form of child care, transportation, personal development, resources, to assist people who have heretofore been dependent upon AFDC in order for these people to have a meaningful opportunity to secure employment and gain a modicum of self sufficiency. The Human Resources Committee has labored long hours during the course of the last month in order to reach consensus. At this point I would like to publicly express my sincere appreciation to all members of the Committee who have in fact searched within themselves in order to find a meaningful and appropriate compromise to this very important piece of legislation. It should be noted that the Committee is calling for a two year sunset of the entire ASPIRE program and we had introduced into this legislation language which would require a rather extensive and comprehensive review of the efficacy of the ASPIRE program. It is my contemplation and certainly that of my colleagues on the Joint Standing Committee on Human Resources that we would probably be making modifications over time to this program based upon the experience of the ASPIRE program. I will conclude my remarks at this time and would be glad to answer any questions you may have regarding this legislation. Thank you.

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

Senator BUSTIN: Thank you Mr. President. Mr. President, men and women of the Senate. I had thought about offering an amendment for this Bill as you can see I have not, because I think it is probably useless to do so and I would not want to take up your time or the state's money in doing that. I do feel I should express my concerns regarding how this program is going to be delivered. It has to do with the privatization issue. That issue has been around for a long time and it has been shown time and time again that it does not work. Why we are now going from a very good state program to a contracting out program, I do not know. I know that the Audit and Program Review Committee, which I Chair, will be reviewing that program in a couple of years, but obviously that is not going to help the discussion right now.

One of the places where we have tried privatization in this county is correctional facilities and we have found that they simply do not work, they are always more cost effective and they

are always less efficient than what we can produce by running it ourselves. I suspect that will be true in this instance. I am not going to vote against this Bill because I will vote for anything that will make an attempt at helping those people who are less fortunate than ourselves and that is indeed what this program does.

I have some problems with spending upwards of five million dollars with the program that I am afraid that is programming these people to fail. That is what it seems like we always do with these programs. I am hoping against hope that this one will not do that. I have been a trainer for four years under the WEET program in the early 1970's. I come from a place of experience and there are some very special needs that these people have and I am not sure that this Bill or any Bill that we could put in could address those needs. The important thing is being able to have the trained people to deliver the services to these people. The people with the understanding of how you get at these people to teach them how to take the training and how to use that training to better themselves. That I grant you is a very specialized thing. I see nothing in this Bill that would tell me that we are going to do that. I would feel much more comfortable if we stayed with where the rest of the country was going and that is with the WEET program with what we know to be working and working to give that program a bigger shot in the arm and to help these people with what we already know helps them. It is distressing to me that we could not come to agreement on that. I hope and pray this program will in fact employ those three to five thousand people and give them better jobs. I really have little faith in that.

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

Senator GILL: Thank you Mr. President. Mr. President, men and women of the Senate. I think that my good seat mate, the Senator from Kennebec, Senator Bustin, will be back with the rest of us at some point and say how happy she is that this program has been as successful as it is. What we are doing here is having two Departments working together, the WEET program within the Department of Human Services and the JTPA program within the Department of Labor. This is an opportunity for those programs to work under the ASPIRE umbrella to provide those three thousand plus people who are now on AFDC the opportunity for education, the opportunity for training and the opportunity for jobs out in the private sector which pay them a good salary and which will provide them with insurance where it is necessary. By the year 1992 we are hoping to have our case load of AFDC recipients reduced by twenty-five percent and I think that this program will prove very successful in the future and I hope you will vote for it.

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

Senator GAUVREAU: Thank you Mr. President. Mr. President, men and women of the Senate. I would like to briefly respond to some of the concerns expressed by the good Senator from Kennebec, Senator Bustin. I would support certainly the commentary of my colleague on the Human Resources Committee, the good Senator from Cumberland, Senator Gill. Perhaps the most important component of the ASPIRE program and a feature which is not currently available under the WEET program is that of extensive medical insurance. As you may be aware there is no greater disincentive for people who are receiving AFDC to leave that program and secure employment than the lack of an adequate health care insurance program for their

family. This is a major concern obviously because parents of young children have major need for appropriate and quality medical services and unfortunately all too often, people who leave AFDC have secured employment in businesses which are not able to provide for full range of medical insurance. Under the ASPIRE program the program participants would be eligible for at least twelve months of medicaid like insurance coverage, after the person completes the AFDC program and has gone to work. It is expected and certainly hoped that after that one year of time the person would have secured the requisite seniority to join in a full group insurance plan or move on with his or her experience to another employer which can offer that type of insurance benefits. Beyond that I would underscore that we are, as we mentioned earlier in the discussion, bringing to bear a wide-range of support services for child care, transportation, social services, individual counseling, in order to allow individuals to really realize their full self potential. I certainly cannot stand here tonight and indicate that I do not harbor any reservations as far as whether the ASPIRE program will reach its projected goals of returning some three thousand persons per year to the job sector. Frankly, those goals are very ambitious, but if we were to achieve one half of that, if we were to achieve fifteen hundred persons leaving AFDC and securing meaningful employment that would be a quantum advancement in human dignity and personal integrity. It seems to me that the amount of money we are proposing in this project, although significant, would pale when one is considering the type of meaningful personal development we are calling for in the ASPIRE program. I would also reiterate that yes, some people on the Committee to have concerns, do have reservations as to the effect of a private model in developing the full comprehensive types of services currently provided under Maine's WEET program. In fact Maine is a nationally recognized model. That does not mean that we cannot improve and let us not be afraid of innovation, let us not be afraid to challenge our present practices in order that we can meaningfully assist people in their efforts to obtain a decent level of financial independence and personal dignity. That is what the ASPIRE program is all about and that ultimately is what lead every Representative and every Senator on the Human Resources Committee to engage Promethean efforts in order to affect a consensus on this issue. We believe very strongly that the Governor's suggestion for welfare reform is meritorious, we also likewise believe that the language, the concepts, the assurances we have appended to this package of welfare reform greatly enhances this legislation and that why we stand together tonight as perhaps a fatigued assemblage of individuals, but also a very proud Committee to offer for your consideration a meaningful program of welfare reform. Thank you.

On motion by Senator GAUVREAU of Androscoggin, the Majority OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "C" (H-770) ACCEPTED, in concurrence.

The Bill READ ONCE.

Committee Amendment "C" (H-770) READ.

House Amendment "C" (H-780) to Committee Amendment "C" (H-770) READ and ADOPTED, in concurrence.

Committee Amendment "C" (H-770) as Amended by House Amendment "C" (H-780) thereto, ADOPTED, in concurrence.

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

The following proceedings were conducted after 12:01 a.m., April 21, 1988.

On motion by Senator PEARSON of Penobscot, the Senate RECONSIDERED whereby it PASSED TO BE ENACTED, in concurrence:

An Act to Increase the State Funding of Educational Costs

H.P. 272 L.D. 355
(S "A" S-492)

(In House, April 18, 1988, PASSED TO BE ENACTED.)
(In Senate, April 15, 1988, PASSED TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENT "A" (S-492), in concurrence.)

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

Senator PEARSON: Thank you Mr. President. Mr. President, men and women of the Senate. I thought all the amendments that were agreed upon had been attached to this. I find that they were not and it needs another amendment. For all parties concerned to have signed off on this to be happy and so I would ask the Majority Leader to Table it.

On motion by Senator CLARK of Cumberland, Tabled Unassigned, pending ENACTMENT.

Off Record Remarks

On motion by Senator PERKINS of Hancock, RECESSED until the sound of the bell.

After Recess

Senate called to order by the President.

ORDERS OF THE DAY

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

An Act to Replace the Sales Tax with an Excise Tax on Jet Fuel Used by Turbine-Powered Aircraft Providing Commercial Air Service in Maine

H.P. 1470 L.D. 1981
(C "A" H-496)

Tabled - March 24, 1988, by Senator PEARSON of Penobscot.

Pending - ENACTMENT

(In House, March 24, 1988, PASSED TO BE ENACTED.)
(In Senate, March 22, 1988, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-496), in concurrence.)

The same Senator moved that the RULES BE SUSPENDED for the purpose of RECONSIDERATION.

At the request of Senator ANDREWS of Cumberland, a Division was had.

24 Senators having voted in the affirmative and 8 Senators having voted in the negative, the motion by Senator PEARSON of Penobscot, to SUSPEND THE RULES, PREVAILED.

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

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

On further motion by same Senator, the Senate RECONSIDERED whereby it ADOPTED Committee Amendment "A" (H-496).

On further motion by same Senator, Senate Amendment "A" (S-506) to Committee Amendment "A" (H-496) READ.

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

Senator PEARSON: Thank you Mr. President. Mr. President, men and women of the Senate. This is an amendment that makes retroactive the effective date of the sales tax exemption for what was at that time called Bar Harbor Airlines. It has been told me, by at least one individual who was on the Taxation Committee at the time that this was the original intention of the Bill that was passed at the time, but this was left out. That is to make retroactive the effective date of the sales tax exemption. It was made prospectively, it was suppose to be retroactive and this is what this amendment accomplishes.

Senator ANDREWS of Cumberland moved the INDEFINITE POSTPONEMENT of Senate Amendment "A" (S-506) to Committee Amendment "A" (H-496).

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

Senator ANDREWS: Thank you Mr. President. Mr. President, men and women of the Senate. I would like to speak to my motion. I find it nothing short of incredible that I am standing on the floor of the Senate at one-thirty in the morning, the final day of the session, debating this particular issue. This is an amendment that is going to retroactively go back to 1984 change a law that was passed by the 11th Legislature and I would just like to review some of the basic facts of this case before we take a final vote on it. There is some question about the intent of the Legislature, apparently, in 1984 on this issue. I was a member of the Joint Standing Committee on Taxation, I attended the public hearing on this issue, I attended every work session on this issue, I attended every discussion and debate in both Houses on this issue. I can say confidently that I disagree with the contention that it was our intention to pass a Bill retroactive to January of that year. The basic fact of this particular situation is this; there is a case currently pending in the courts over the failure of a Maine company to pay its taxes. No one disputes that. The case involves the Bureau of Taxation and the Attorney General's office, against this Maine corporation for its failure. This amendment that is being presented in the final hours of this session, is an attempt to rewrite tax history so that this corporation can presto chango, abracadabra be in conformity with Maine law. Now I ask you, no matter what you feel about this particular corporation, or what your recollection happens to be back in 1984, is this a sound and reasonable way to do our business? Does it make the members of this Senate feel good about taking on an issue, such as this, making this retroactive change in the middle of a court case on a Bill presented to us at one-thirty in the morning with no public hearing, not even the presentation of a piece of legislation, but an amendment, ladies and gentlemen of the Senate, on an aircraft fuel tax Bill? I don't believe that the people of this Senate feel comfortable in this way of establishing tax policy. In this way of handling this piece of legislation. So, I ask you why is it, why is it, that we are dealing with this issue at one-thirty in the morning? Why is it that in the entire course of the Legislative Session this issue is brought to us on the final day of this session? There is some irony tonight and as I read the Legislative Record of our debate four years ago, I started the debate in 1984 over this original issue by apologizing to the members of the Legislature that they had to listen to a debate on this issue so late at night at the very tail end of the session. Isn't that ironic? The

same company, the same issue, a tax break, very late in the session, very, very late at night. The question before us is if a taxpayer is in a court for not paying his or her taxes and they may not feel comfortable about that case in the outcome, should they be able to come before us and retroactively change the law? Let me just talk about the issue of intent and what we intended in 1984. Did we intend to make this law retroactive to January of 1984? Clearly the answer is no, not only from my recollection, ladies and gentlemen of the Senate, but the fact is that a lease agreement, a taxable lease agreement, clearly if you look at the statute was entered into before this piece of legislation was even introduced to the 111th Legislature back in 1984. A transaction actually occurred before the Bill even came into the Legislature. And then further deals were made before the law took effect later that year. There is not a bit of evidence, ladies and gentlemen of the Senate, tangible evidence that we intended to do this in 1984. I asked the Legislative staff involved to go through all the Records to see if there was any evidence at all. There was none. I asked the Bureau of Taxation staff, was there any evidence at all? There was none. I have reviewed the Committee Records, there was no evidence whatsoever. I reviewed the Bill and as a matter of fact if you look at the Bill back in 1984 not only is there no mention of a retroactive provision, but if you look at the fiscal note "the fiscal note is based upon this leased agreement that is under consideration." It says specifically that "this particular corporation has stated it is considering leasing aircraft" prospectively ladies and gentlemen of the Senate. The fiscal note was based upon the possibility that they would actually do it and said if they do it there would be an additional future loss of one million, two hundred and fifty thousand dollars. If they did it a future tax loss of one million, two hundred and fifty thousand dollars. That same corporation is in court right now for failure to pay its taxes. One million, two hundred and fifty thousand dollars. It is clear from the evidence that was not our intent. It is clear from my experience at that time that it was not our intent.

But the point, ladies and gentlemen of the Senate, and we could debate our intent until the sun comes up, is that this issue is in the courts. The courts are going to weigh the Bureau of Taxation's and the Attorney General's position with this corporation's position and they are going to make a judgment. That is exactly where this case belongs. Not coming to the Legislature asking for us to presto change the law, so that suddenly they are in compliance with the law four years after.

There is another irony about all of this and that is that the Bureau of Taxation in the debate on this Bill in 1984 was chastised in this Chamber for agreeing to an out of court settlement with this very corporation for failing to pay its taxes. Chastised because it entered into an out of court agreement that allowed state employees to ride on this aircraft to pay off its debt to the state. The irony is that if we pass this amendment we will be chastising the Bureau of Taxation for doing its job. For auditing and for enforcing our tax laws. There are probably a lot of other people in the state who didn't pay their taxes in 1984, should we pass a blanket amnesty for them? What about the people who did pay their taxes in 1984, what about them? It would be something if all you had to do if you didn't pay your taxes and you found yourself in court and you didn't think you had a strong enough argument, just hire

representation and come up to the Legislature and get a Bill passed to change the law, but my constituents can't do that and yours can't do that either. We all have to pay taxes and the state doesn't have the ability or the money to go out and hire enough auditors and tax enforcement officials to chase everybody around. Our system is based upon voluntary tax compliance and if that system begins to erode because of special deals for special people passed at one-thirty in the morning in the Legislature, then it erodes our system of taxation, it erodes confidence in our Legislature, it erodes confidence in our state government. I know there is a lot of pressure on us tonight, I apologize for this coming up so late, believe me I am not responsible for it. But despite the pressure on us, ladies and gentlemen of the Senate, I hope that we can do what is right and we can think about all the taxpayers of this state and not allow for a presto change change of law when it certainly is not justified.

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

Senator BALDACCI: Thank you Mr. President. Mr. President, men and women of the Senate. I take great umbrage with the comments of the good Senator from Cumberland in reference to the supposedly special treatment that this particular Maine company is going to supposedly be treated differently than all the other taxpayers in the state. I think it is important to go back very quickly as to why this issue is here today before us at this hour. This company brought this issue to the Legislature in January when we were down here at the beginning of the Session. It was reviewed by people in the Legislature, it was reviewed in the context of laws that had been passed. It was said to the company and the individuals that, that is an error and inconsistency and it can be dealt with in errors and inconsistencies which we deal with at the end of the Session, or it could be put into the appropriations act. At that time in January, it wasn't brought here in the dark of night, at the end of the session, to supposedly sneak something through. I resent the fact of the wheeling and dealing, this is a Maine company, this is a Maine family that owns fifty percent of that company and this company made a promise to this Legislator in this Legislature that the company would locate its aviation service center in Maine and not in New Hampshire. It would locate it at Bangor International Airport and it provided five hundred jobs, over five hundred jobs, almost six hundred jobs in the greater Bangor area. A tremendous inducement to economic commerce and development. They kept their word, they are there, it is a Maine company. We passed a law which said that if you are going to buy something and not pay a sales tax on it, but you are going to lease it, you have to pay the sales tax on the whole thing, that didn't make sense. This company was asked to produce documents at the Taxation Committee to show them that they really were going to go ahead with these aircraft, that it wasn't smoke and mirrors. That is the same document that the Tax Department is going to hang this company with. They were asked to produce it, they produced what they call a demonstration project with Beech craft, where they were going to be with Beech craft having the use of airplanes and if the law changed that they would keep the airplanes. If the law doesn't change they take the airplanes back. That demonstration project and the documentation that went along with it was submitted to the Taxation Committee. The Taxation Committee knew this, they reviewed it, they saw the hard facts. This company has been up front and honest,

not only with this Legislator but with this Legislature. This company is not receiving any special treatment because it was given in the context that well if Maine didn't change it they would be forced to relocate their aviation service center outside of the state of Maine. Maine is not out any money, they did not purchase or lease any aircraft until that law was changed. That demonstration agreement was converted into a lease arrangement. Now the Tax Department, which was not in favor of the changes, is now using that document and the dates on those documents to hang that company with. The taxes that are supposedly owed the state because they look at the demonstration agreement as a conceptualization of the lease, is what the company is contesting and what this amendment is re-edifying is the point that it is not any more or any less than what we agreed to in this Body years ago. It is the same thing. The thing that I think is more important than anything else is the families that are affected, that are working, that are earning money and that are paying taxes.

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

Senator TWITCHELL: Thank you Mr. President. Mr. President, men and women of the Senate. I have been on the Taxation Committee now going on sixteen years and it seems like every two years we do face Bar Harbor Airlines and we do give them an exemption. I went back to some of my files, which I still have, and I came up with some documents from 1984. Bar Harbor Airlines appeared before the Taxation Committee and they explained the problem which faced the airline industry by virtue of the tax treatment which accorded leased as opposed to purchased aircraft. The airline requested legislation which would exempt leased aircraft and pass from the sales tax. Just as purchased aircraft were and are tax exempt. Bar Harbor Airlines explained to the Committee that they had brought there aircraft into the state under demonstration agreement with Beach aircraft. They told the Committee that if the sales tax exemption was enacted they would purchase a lease for the aircraft. If the exemption was denied then the company intended to return the aircraft since there are in no financial position to acquire the aircraft. The Committee thus fully aware of the presence of the aircraft in the state and fully intended that these aircraft be exempt from the tax under the legislation which was enacted. Indeed it was on account of these very aircraft that the Committee and the Legislature enacted a sales tax exemption. That is how it was in 1984.

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

Senator GAUVREAU: Thank you Mr. President. Mr. President, men and women of the Senate. I rise this morning to express my philosophical congruence and concurrence of the remarks of the good Senator from Cumberland, Senator Andrews. I will readily concede that at ten minutes of two in the morning I have not thoroughly assimilated the rather complicated phraseology or activity which did or did not occur, depending upon which participant we listen to, in 1984. As I listened to the argumentation I can't help but think back to an old Stephen Stills tune which begins, "there is something strange happening here, what it is ain't exactly clear." It seems to me that crystallizes my thoughts. Frankly, I do not know whether or not the proponents of this measure are correct or not. My understanding is this measure is currently pending in Superior Court in the state of Maine. I doubt seriously if anyone here could maintain the argument that this Body should serve as

a legislative court of appeals on tax questions. It strikes me that is highly inappropriate public policy, a policy I will quickly distance myself from.

I have major reservations about legislation which retroactively confers benefits or retroactively changes established public policy. I have already expressed my views on certain legislation relating to hospital care financing when we retroactively, if you will, re-size the Hospital Development Account. The issue here although on the tax policy is largely the same. More importantly it seems to me this Body is intruding in the appropriate province of our courts to ascertain and define what the legislative intent was regarding the so-called tax break. It seems to me the appropriate form for this dispute to be resolved is not in the Maine Legislature at five minutes of two in the morning on the final day of the legislative session, but rather in an appropriate court of law. I would also point out my grave concern with the propriety of this Body taking action on a 1.2 million dollar tax break at this point in time. Many of us still are reeling from the emotional aftermath of the apportionment the the legislative appropriations table. I am sure that all of us can point to programs, highly worthy programs, which we simply could not afford. The Joint Standing Committee on Appropriations has labored long and hard and done excellent service in trying to provide for the most cogent needs of our people. Even at this early hour of the morning I can think and point to particularly programs, basic health care, housing, education, economic development, a whole host and variety of issues which were not thoroughly addressed or financed due to the lack of legislative funding.

Unless and until I have more appropriate and comprehensive information available to me which I can assimilate in an appropriate and reasonable fashion, I will not place my name in support of the proffered amendment. Therefore, I find myself in agreement with the good Senator from Cumberland, and would urge this Body to Indefinitely Postpone the offered amendment. Thank you.

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

Senator DILLENBACK: Thank you Mr. President. Mr. President, men and women of the Senate. I don't believe I have ever had the privilege of speaking at this hour and I don't want to miss the opportunity. I was here when we voted on this Bill and my memory is no better than anybody else's. We did grant a tax exemption to these people so that they would relocate here in Maine and keep their business here and I definitely and distinctly remember doing it, but I also remember it seems to me that the Bill had an emergency on it, but they couldn't pass it under the emergency and consequently they then passed it under the normal procedure and it took ninety days for it to become law. This is where it becomes a little confusing and a little binding because somebody had to draw up the agreement, some legal mind, and I don't think they did a very good job. Somebody should have recognized what the problem might be in the future. Perhaps they did and perhaps they didn't, but it is so perplexing at this point because now the case is in court and now what do you do? The case is in court, should be interfere with the court procedure at this time? Should be interfere where the state is involved with a million dollar of taxes that they are suppose to be collecting? It seems to me that we are not really qualified at this point to make a decision on this. It seems to me the court should be making the decision and honestly, I don't know how I am going to vote on this subject. I know we want to give them the benefit and I know we wanted

to grant them the opportunity to have the tax exemption, but now we are into another sphere, we are into another area. I don't know how I am going to vote on this. Thank you.

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

Senator BALDACCI: Thank you Mr. President. Mr. President, men and women of the Senate. The bottom line reason that this legislation is before the Legislature is that the cards are stacked against the company. The cards are stacked against the company in court because the Tax Department is making an interpretation that the lease began before the legislation became effective. They made that determination, that is the bottom line. Going into court without the benefit of this amendment, the company is going to lose. There is no question about that. They approached the Legislature in January to make the changes to reflect what we had voted on. The cards are stacked against them. If we do not pass this the company will lose, there is no question in my mind. The outcome will be opposite of what we voted on in this Legislature to allow to have happen.

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

Senator ANDREWS: Thank you Mr. President. Mr. President, men and women of the Senate. There is an honest disagreement about the intention of the Legislature back in 1984. I can accept that and I can respect that. We have disagreements all the time. On the face of it, the facts, there is not a piece of tangible evidence, whether the fiscal note or the Bill or the Committee deliberations or the Legislative Record that indicates at all that this Legislature considered what is now called a demonstration agreement, or a demonstration project. Nor is it anywhere evident that we intended to have this retroactive. If we did intend to have this Bill take effect before these lease agreements occurred, then the Legislative staff would have drafted the Bill accordingly and the effective date in 1984 would have been January 1, 1984 and we wouldn't be debating what we did or didn't do on April 20, 1988. I don't believe the cards are stacked against the company, there are in a court of law. They have the opportunity to provide that court with the evidence, with their point of view to present the court with every single stitch of argument that they can. So does the Bureau of Taxation and so does the Attorney General and the court will decide. The cards are not stacked up against a Maine company. Ladies and gentlemen of the Senate, if we do not Indefinitely Postpone this amendment, I fear that the cards will be stacked against all other Maine taxpayers who did pay their taxes in 1984 and have paid their taxes since. The cards will certainly be stacked against the state of Maine in this particular case. While in 1984 the fiscal note talks about a prospective loss of one million, two hundred and fifty thousand dollars, we today are talking about an actual loss of one million, two hundred and fifty thousand dollars. So the cards are stacked against anybody, program or individual who might otherwise used those funds. I believe that his case belongs in the court, both sides have the opportunity to make their case and let the court decide. Then if we have a problem, if we want to help a Maine corporation in trouble, whether it be Bar Harbor Airlines or anybody else, let them come before us and if we want to pass an appropriation for them, if we want to pass a bill, consider it, deliberate, and provide them with some funds to help them through a bad situation, okay, lets consider that and make our judgment. But let's

not change our tax law in such a way, at such an hour with a court case pending. It just isn't fair.

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

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

Senator TWITCHELL: Thank you Mr. President. Mr. President, men and women of the Senate. I would just like to say one more time that the Committee was fully aware of the presence of the aircraft in the state and fully intended that these aircraft be exempt from the tax under the legislation which we enacted.

THE PRESIDENT: The pending question before the Senate is the motion of Senator ANDREWS of Cumberland to INDEFINITELY POSTPONE Senate Amendment "A" (S-506) to Committee Amendment "A" (H-496). A Roll Call has been Ordered.

A vote of Yes will be in favor of the motion to INDEFINITELY POSTPONE.

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, BRANNIGAN, BUSTIN, CAHILL, DILLENBACK, ESTES, GAUVREAU, KERRY, RANDALL, SEWALL, TUTTLE, WEBSTER, WHITMORE

NAYS: Senators BALDACCI, BLACK, BRAWN, CLARK, COLLINS, DOW, DUTREMBLE, EMERSON, ERWIN, GILL, GOULD, KANY, LUDWIG, MATTHEWS, MAYBURY, PEARSON, PERKINS, THERIAULT, TWITCHELL, USHER, THE PRESIDENT - CHARLES P. PRAY

ABSENT: Senator BERUBE

13 Senators having voted in the affirmative and 21 Senator having voted in the negative, with 1 Senator being absent, the motion of Senator ANDREWS of Cumberland, to INDEFINITELY POSTPONE the Senate Amendment "A" (S-506) to Committee Amendment "A" (H-496), FAILED.

On motion by Senator PEARSON of Penobscot, Senate Amendment "A" (S-506) to Committee Amendment "A" (H-496) ADOPTED.

Committee Amendment "A" (H-496) as Amended by Senate Amendment "A" (S-506) thereto, ADOPTED in NON-CONCURRENCE.

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

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

Senate at Ease

Senate called to order by the President.

On motion by Senator DOW of Kennebec, the Senate removed from the SPECIAL HIGHWAY TABLE the following:

An Act to Create a Single Point of Contact for the Operators of Commercial Vehicles

S.P. 796 L.D. 2093

(H "A" H-498 to C "A" S-332)

Tabled - March 24, 1988, by Senator DOW of Kennebec.

Pending - ENACTMENT

(In House, March 24, 1988, PASSED TO BE ENACTED.)

(In Senate, March 21, 1988, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A"

(S-332) AS AMENDED BY HOUSE AMENDMENT "A" (H-498) thereto, in concurrence.)

Senator BUSTIN of Kennebec requested a Roll Call. Subsequently, the same Senator requested and received Leave of the Senate to withdraw her request for a Roll Call.

Which was PASSED TO BE ENACTED, in concurrence.

Senator CLARK of Cumberland moved to RECONSIDER whereby the Bill was PASSED TO BE ENACTED, in concurrence.

On motion by Senator DUTREMBLE of York, Tabled Unassigned, pending the motion of Senator CLARK of Cumberland, to RECONSIDER ENACTMENT.

On motion by Senator DOW of Kennebec, the Senate removed from the SPECIAL HIGHWAY TABLE the following:

Emergency

An Act to Make Supplemental Allocations from the Highway Fund for the Fiscal Years Ending June 30, 1988, and June 30, 1989

H.P. 1788 L.D. 2449

(C "A" H-584)

Tabled - April 11, 1988, by Senator DOW of Kennebec.

Pending - ENACTMENT

(In House, April 8, 1988, PASSED TO BE ENACTED.)

(In Senate, April 6, 1988, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-584), in concurrence.)

Which was PASSED TO BE ENACTED, in concurrence.

Senator CLARK of Cumberland moved to RECONSIDER whereby the Bill was PASSED TO BE ENACTED, in concurrence.

On further motion by same Senator, Tabled Unassigned, pending the motion of the same Senator to RECONSIDER ENACTMENT.

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

ENACTORS

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

Emergency

An Act to Fund a Supplemental Highway Program and to Establish a Program to Fund the Construction of Extraordinary Bridges

H.P. 1799 L.D. 2463

(C. C. "A" H-762)

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

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

Senator CAHILL: Thank you Mr. President. Mr. President, men and women of the Senate. I know it is late and I am not going to take a lot of time this morning, but because I was unable to debate this last night I just wanted to make several explanations for the Record. Like the good Senator from Aroostook, Senator Ludwig, the Committee that I serve on, the Transportation Committee is comprised of thirteen rugged individualists. The pot hole gang as we are commonly referred to has a reputation for jealously guarding those dedicated highway funds because we believe in the dedicated highway concept. Sometimes the Transportation Committee reminds me of mother birds guarding a nest of eggs until those eggs hatch and they are able to fly on their own, we guard the programs of the Transportation Department. While individualists I believe every member of that Committee shares the common belief that the way to

the economic growth and the general well being of Maine is through its infrastructure.

Last week when this issue was debated I said that I was philosophically opposed to taking money from the Rainy Day fund and spending it on highways. I still am philosophically opposed to taking money out of the Rainy Day fund to pay for highways. Opinions change and ideas change, but philosophies if they are really philosophies don't change at least not in one week. Besides my philosophical disagreement I oppose taking the money from the Rainy Day account because like the good Senator from Lincoln, Senator Sewall, said, what happens if we have another flood like the flood of April 1, 1987? Regarding the two cents five cents the differential for diesel fuel, I think there can probably be a good argument made for the differential. I know that more states have a differential between gas and diesel then don't. I know the federal government has a differential. I know that many people here believe that the trucks are the vehicles that most damage our roads and maybe they are, but they already pay more than automobiles through registration fees. If you want to know exactly how much I suggest you look at L.D. 2491, page nine and ten, and it will give you the fee schedules for the trucks on our roads. Then we have the Cost Allocation Committee, which I am proud to serve on, which will finally determine what the trucks really do to our roads and if they do already pay their fair share. I think we should make no mistake that the cost of the increased gas tax and the nickel on diesel will be ultimately paid by the consumer through an increase in a loaf of bread, or a cord of wood, or fuel oil or any of the other consumer products.

If Commissioner Connors is keeping track of all the people in the Legislature in the last week who said what a good guy he is, he shouldn't have to buy lunch for the next year. But I would like to add my two cents too because I think Dana, Jane, Gary and Alden have done a remarkable job with this program that is before us today. It has something for every part of Maine and unlike some I applaud the twenty year concept. Finally we are planning for Maine's future growth. I have heard it said around the Halls in the past couple of days that we really don't have any choice but to vote for this measure tonight because there is no alternative. This package we have before us is all there is, it is either this or nothing. Well, I sort of disagree with that also. There is always an alternative, ladies and gentlemen, but I will spare you tonight because of the hour is late, my alternative. Suffice to say, there are other options to this. After this speech and everything, when all the dust is lifted and the Senate saw what occurs, I am going to be voting yes for this package, not because my philosophy has changed. It hasn't. Not because the Governor asked me. He didn't. Not because my constituents have put up a fuss, I received two phone calls today after my negative vote yesterday. I can probably sell my vote to my constituents either way I vote. I am voting yes this morning because as the mother bird I do jealously guard and protect our highway systems because of the overall investment it provides in Maine's future.

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

Senator KERRY: Thank you Mr. President. Mr. President, men and women of the Senate. The process of making legislative decisions, it seems to me, has dwindled down to the fact of how can we stone grind the Legislators to such fatigue, lack of spontaneity and creativity to the point where they are just a

group of automatons that we just have to make decisions on the basis of what is before us? I feel somewhat like the Senator from Sagadahoc, Senator Cahill, that one does not change ones philosophy, one may change ones opinions, one may even adjust to the various programs that are presented to us. I think most and everybody in this Senate would like to maintain that philosophy and that, if you will, decision making processes they employ each day in this Senate throughout the term. I know there are many Senators here from both parties who feel that this particular package pleases no one and I am sure it doesn't. I am sure it doesn't please the Governor, I am sure it doesn't please the members of the majority or the minority party. It is in essence a compromise and much like making sausages the legislative process has once again proven it is a very unsavory process when all is said and done.

As we review and look around the Chamber we see that there are members of the various interests groups here tonight because they have the tenacity and the interest to stay here and protect their interest. They have a reason, whether they work for state government in the Transportation Department, or they work for various interests that build our roads and run our factories and, if you will, take care of the trucking industries. That is legitimate and I think a very positive concern. There are many of us who spoke, it seems to me eons ago, that this particular measure was ill-advised. We were talking at that time about a straight five cent gas tax and now it has been broken down into an array of financial mechanisms that will at least accommodate in some fashion the twenty year planning horizon and a longitudinal planning that the good Senator from Sagadahoc, Senator Cahill, referred to. I might add, Mr. President and ladies and gentlemen of the Senate, that at the vast majority of my constituents from southern Maine who responded to my questionnaire and who have responded on daily and weekly conversations regarding increasing the gas tax, the most optimistic of them had skeptical views as to whether or not we should increase the gas tax mainly because they believed as consumers the cost would be borne by them, by which it will be. The cost of trucking goods and services throughout the state of Maine, whether it is the northern part, the western part, or the southern part is going to increase because it is just a natural provision of business to do so. Therefore I would submit to you that I don't really believe that the vast majority of the citizens of the state of Maine would vote to have the taxes increased because they may not and I think justifiable so, view the situation in the state of Maine as being so critical that this emergency late hour session, as we always talk about, is going to address the emergency needs of our highway system.

I think everybody has said here and everyone believes that if we do have a critical bridge problem, if we have a critical road problem in certain circumstances that they should be addressed. It could have been addressed, I think, with the maximum of a two to three cent increase in the gas tax to address those issues and no more. Then we could come back with more time to assess the overall planning structure of the state system in a regular session. Mr. President, ladies and gentlemen of the Senate, I think it is important that we should not give into our fatigue, that we should not give into various lobbying efforts by a number of people, or that we should even trade for other measures that we may feel that are important to us to accept this gas tax or this package. As you know I voted against the democratic proposal because I felt that the funding

mechanisms, taking funds from the Rainy Day Fund, were imprudent. In fact, as the good Senator from Sagadahoc, Senator Cahill, indicated that if we are going to have a transportation system that has the longitudinal concept, you don't take money out of the Rainy Day Fund to address that issue. Even though it may be compelling and even though it may be expedient, if I may use that proper term. As I remember, the good Senator from Aroostook, Senator Collins, spoke very persuasively to the fact that he considered it voodoo economics to use the Rainy Day Fund, not to refer to a person who might have used that term many years ago in the Presidential campaign, but he was referring to the fact the financial mechanism would not address the issue in a substantive fashion over time. I honestly agree and I would suggest to you, ladies and gentlemen of the Senate, that it is an inappropriate way to fund our highway system.

Finally, I realize that we are confronted with addressing priorities in this state and I said it before I think it is more important to invest our funds in the people of the state of Maine and that which would distinguish us from other states and certainly from other political priorities of other groups, legitimate legislative bodies, is that the infrastructure does not come first, the people come first. I think the priorities of this state, not withstanding emergency needs, must address the peoples needs first. I think in this particular case we have moved too quickly and I think we should have waited until the regular session where we may have addressed this in a more forthright fashion with more analysis and I think for those of us from southern Maine we would like to have a greater and I think a more clearer explanation of the impact of this particular program in our area. More importantly, Mr. President, ladies and gentlemen of the Senate, I think it is going to have an adverse impact on the consumers of this state. From many of the consumers who I represent I certainly place their interests first. I realize this may not change the votes but I think it is important to note that it should be said and I hope we do not pass this ill-advised package.

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

Senator WEBSTER: Thank you Mr. President. Mr. President, men and women of the Senate. I feel rather proud to stand here tonight, I reached a milestone in my life. In thirty-two years I have never in my life been up until three o'clock in the morning, and I am proud to say that this is a good place to do it as any. I have also never made a speech at three o'clock in the morning so I have done two things here at once and for that reason I rise.

I would like to say in all seriousness that this has been a very difficult issue for me. Most of you know that I am adamant against a five cent gas tax and I feel very strongly that I could not support that measure. This is a difficult issue for me for a lot of reasons, one of the reasons is, as many of you know, I am not well known as being an advocate for taxing and as a matter of fact, I don't think I have ever spoke for a tax in my life except for tonight so I am really setting some personal records here on this evening. I have always felt and most of us have felt and I have stated time and time again over the years that the government should work within its budget. I guess what has really changed my mind on this issue is the compromising process. I really have some concerns about taxing trucks in my district at five cents, while vehicles are being taxed at two cents. I have some real concerns about the Rainy Day Fund, but I guess I am looking at this coming from

rural Maine. coming from an area in the state that probably has as bad roads as anywhere. Over the years my constituents have complained about the fact that there are not enough jobs and the roads are not making it any easier. I am hopeful and I have met with the Commissioner and talked about these issues. I have tried to figure out exactly what was going to happen. I don't stand to benefit a lot from this issue within the next couple of years, but over the next few years it is nice to see we do have a plan. A plan that I think will improve some of the economic corridors in Maine, Route 4, Route 201 in my district, routes in Washington County and elsewhere in the state for whatever reason have not been fixed. For these reasons I rise tonight to ask you to consider this compromise. Several hours ago we debated and we have debated here for the last several days a number of issues that came out in compromise. I for one would have been more than willing to completely oppose the Bill on AIDS that went through here earlier because there are many things within the Bill that I didn't agree with, but I realize the intricate process and how it works here. There was a compromise that was reached, it was the best we could do. In my opinion this is the best we can do, it is probably the best thing we can do today for the infrastructure in the state. For those reasons I would ask you to join with me and support this compromise measure before you. Thank you.

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

Senator DOW: Thank you Mr. President. Mr. President, men and women of the Senate. I just wanted to get up on a little lighter note. The good Senator from Franklin, Senator Webster, just reaffirms to me that there is difference between the Republicans and the Democrats because I have made some of my best speeches at three o'clock in the morning. But, I am not going to do one of them tonight, I am just going to ask for your support on this compromise that nobody likes but is needed. I ask you will all of my sincerity.

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

Senator BRAWN: Thank you Mr. President. Mr. President, men and women of the Senate. Even though I am a freshman Legislator and I don't have a long eloquent speech and I am sure you are glad of that, I am too. I rise because I really think it is necessary for the Record to explain my voting from the beginning. I want to start by saying when I ran for the Senate I distinctly remember in several of my speeches saying I am not running to go over there and be popular. I am running to go over there and do what is right and that is the reason when the gas tax first came before us that I had the courage to stand up and vote yes. I thought that was the best plan that we had, I thought it was a good one. It didn't pass, as we all know, and the Committee of Conference brought back another plan, which I voted against for the reason that you have already heard here tonight. I am philosophically opposed to taking money out of the Rainy Day Fund. I am. But I also am a compromiser, I think the bottom line here in my mind is no doubt, I am going to be voting yes tonight because there is a very dear project in the mid-coast area, the Route 1 Corridor project and I think it is very necessary in the Rockland, Camden, Thomaston area that we deal with this and we have got to get started on it. I hope that you will be joining me in voting yes. Not doing what is popular, but what is right for the citizens in the state of Maine. If I could just end by saying to my good friend, the good Senator from York, Senator Kerry, I also believe that

we are here representing the people. I think safety is the bottom line in this and with economic growth you are going to see a lot more people moving here particular in Camden and my area we have a lot of people and we need to have these roads safe for our people to travel on. Thank you.

THE PRESIDENT: The pending question before the Senate is ENACTMENT. A Roll Call has been Ordered.

A vote of Yes will be in favor of ENACTMENT.

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators BALDACCI, BLACK, BRAWN, CAHILL, CLARK, COLLINS, DILLENBACK, DOW, EMERSON, ERWIN, GAUVREAU, GILL, GOULD, KANY, MATTHEWS, MAYBURY, PEARSON, PERKINS, RANDALL, THERIAULT, TWITCHELL, WEBSTER, WHITMORE

NAYS: Senators ANDREWS, BRANNIGAN, BUSTIN, DUTREMBLE, ESTES, KERRY, LUDWIG, SEWALL, TUTTLE

ABSENT: Senators BERUBE, USHER

The Chair exercised prerogative not to vote.

This being an Emergency Measure and having received the affirmative vote of 23 Members of the Senate, with 9 Senators having voted in the negative, and 23 being less than two-thirds of the entire elected Membership, the Bill FAILED OF ENACTMENT in NON-CONCURRENCE.

Sent down for concurrence.

On motion by Senator DUTREMBLE of York, ADJOURNED until Thursday, April 21, 1988, at 10:00 in the morning.