

# 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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### **SECOND CONFIRMATION SESSION**

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### **HOUSE & SENATE LEGISLATIVE SENTIMENTS**

December 3, 1986 to December 6, 1988

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

Representative DEXTER of Kingfield) which was tabled earlier in the day and later today assigned pending passage to be engrossed.

Representative Michaud of East Millinocket offered House Amendment "A" (H-794) and moved its adoption.

House Amendment "A" (H-794) was read by the Clerk and adopted.

The Bill was passed to be engrossed as amended by House Amendment "A" and sent up for concurrence.

In Senate Chamber  
Wednesday  
May 4, 1988

Senate called to Order by the President.

At this point, the rules were suspended for the purpose of removing jackets for the remainder of today's session.

(At Ease)

Prayer by the Honorable Edwin C. Randall of Washington.

SENATOR RANDALL: Let us pray. Oh Lord Who has brought us to the beginning of another day we give You thanks that we are here at this time and are assembled to do the work which lies before us. We would ask that at the close of this a reflection might be made, reflection being well done Thy good and faithful servants. In His name we pray. Amen.

Reading of the Journal of Thursday, April 21, 1988.

The House was called to order by the Speaker.

The following item appearing on Supplement No. 29 was taken up out of order by unanimous consent:

PASSED TO BE ENGROSSED  
WITHOUT REFERENCE TO COMMITTEE

Bill "An Act Correcting Additional Errors and Inconsistencies in the Laws of Maine" (Emergency) (H.P. 1962) (L.D. 2657) (Presented by Representative PARADIS of Augusta) (Cosponsor: Senator BRANNIGAN of Cumberland) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27)

(The Committee on Reference of Bills had suggested reference to the Committee on Judiciary.)

Under suspension of the rules, without reference to any committee, the Bill was read twice, passed to be engrossed and sent up for concurrence.

By unanimous consent, was ordered sent forthwith to the Senate.

(At Ease)

The House was called to order by the Speaker.

The following item appearing on Supplement No. 24 was taken up out of order by unanimous consent:

PASSED TO BE ENACTED

An Act to Amend the Law Relating to the Land for Maine's Future Board (S.P. 1011) (L.D. 2653)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed, passed to be enacted, signed by the Speaker and sent to the Senate.

(Off Record Remarks)

On motion of Representative Lebowitz of Bangor, Adjourned until Thursday, May 5, 1988, at nine o'clock in the morning in memory of Lloyd E. Littlefield of Hermon, a former legislator.

Off Record Remarks

COMMUNICATIONS

The Following Communication:  
THE COMMISSION TO STUDY HEALTH SERVICES  
IN PUBLIC SCHOOLS  
April 22, 1988

President Pray  
Speaker Martin  
State House  
Augusta, ME 04333

Dear President Pray and Speaker Martin:

The Commission to Study School Based Health Services is pleased to submit its report to the Legislature pursuant to P.L. 1987, c.66.

Sincerely,  
S/Sen. Mary-Ellen Maybury  
Chair

Which was READ and with Accompanying Papers ORDERED PLACED ON FILE.

The Following Communication:  
STATE OF MAINE  
OFFICE OF THE GOVERNOR  
AUGUSTA, MAINE 04333

TO: The Honorable Members of the 113th Maine Legislature

I am returning without my signature or approval, S.P. 947, L.D. 2501, AN ACT to Clarify and Correct Errors and Omissions and to Improve the Laws Relating to Education."

A Conference Committee amendment was added to this bill which significantly delays full implementation of the 1984 teacher certification laws and related rules for presently employed teachers. This is, in my judgment, a dramatic step backward in the intent of the legislation passed by the 111th Legislature and in the rules promulgated by the State Board of Education.

The current teacher certification law upgraded and strengthened the requirements for teacher certification in Maine in many substantive ways. It provided a four-year time period for the State Board of Education to pilot several aspects of the law and to promulgate rules to implement the law. Those tasks have been successfully completed and the rules were adopted by the Board on March 30, 1988. They are the result of four years of study, piloting,

public hearings and revisions. They are complete and they are in place. We must now, in my opinion, give the law and rules a chance to work, and not delay their implementation by three years of further study.

If this amendment were to become law, the following are only samples of the serious impact it would have:

1. Fifteen thousand Maine teachers would be exempted from the teacher certification law and the new rules in Chapter 502. That is 90% of the entire teaching force. Until July 1, 1991, each teacher would be allowed to renew under the old rules in Chapter 501 one more time for a period of five years. The same would apply to administrators and other professional personnel for whom certification is a requirement.
2. New teachers coming into teaching in Maine would still be required to be certified under the new law, thereby creating a double standard and a dual system of certification in every school unit.
3. Two hundred and eighty-three local support systems would be substantially weakened because current, experienced teachers and administrators would not have to be involved. This would seriously weaken the guidance and assistance that experienced teachers would otherwise be expected to offer a new or less experience teacher. The concept of local teacher and administrator support systems is a key point of the new law.
4. The four-year process of piloting new certification standards, holding public hearings, working with task forces and committees by the State Board of Education would be all but negated by the amendment.
5. The current principal's certificate requirement will continue to be one of the weakest in the nation. Currently, Chapter 501 requires a certified teacher to obtain only six hours of additional academic credit to be initially certified as a building principal in Maine.
6. A far-reaching retrenchment is created by this amendment using an inappropriate vehicle--at the "eleventh hour"--with no input from the public that it affects.
7. Finally, the amendment shifts the focus away from implementing the new law to benefit children in the classroom and focuses instead on the convenience of teachers in the classroom.

The Educational Reform Act of 1984 set in motion the direction needed to address the current and future needs of Maine students. The new certification law and rules address a central part of the reform effort and subsequently the education needs of Maine students. Maine's school age children deserve no less. The Conference Committee amendment to L.D. 2501 would impede our efforts on their behalf.

The other provisions of L.D. 2501 are good and necessary changes, but because of the significant adverse impact of the amendment, I am forced to veto the entire bill, and I respectfully urge you to sustain my veto.

Sincerely,  
S/John R. McKernan, Jr.  
Governor

Which was READ and ORDERED PLACED ON FILE.

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.

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

After Recess

Senate called to order by the President.

Off Record Remarks

ORDERS OF THE DAY  
Unfinished Business

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

The President laid before the Senate the Accompanying Bill:

Bill "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)

THE PRESIDENT: The pending question before the Senate is: "Shall this Bill become Law notwithstanding the objections of the Governor?"

The Chair recognizes the Senator from York, Senator Estes.

Senator ESTES: Thank you Mr. President. Mr. President, men and women of the Senate. We are dealing with the issue that was a product of a Conference Committee to deal with an original amendment to an Errors and Omissions Bill. I have read through the Communications from the Governor and feel that there are possibly some either misunderstandings or misrepresentations as to what the impact of the Conference Committee's recommendations were for the changes in that Errors and Omissions Bill. I would like to refer to the reasons given by the Governor as to why passing this into law would have a serious impact on teacher and administrator certification. The first argument he uses is that under the Conference recommendations it would be until July of 1991 that each teacher or administrator holding a professional certificate would be allowed to renew under the old rules in Chapter 501 one more time for a period of five years. That is accurate, but I would like to bring to your attention and most of you have been made familiar of the questions and answers about the new certification law that was distributed by the Department. Currently anyone renewing this year prior to July 1, will be renewing under 501 through the Department, with Department approval. Also, those who's certificates expire as of July 1, 1989, will also not be required to use the support systems, which is part of Chapter 502, but all activities that they conduct that meet Chapter 501 guidelines would be accepted. Furthermore, those who's certificates would be expiring the following year, July 1, 1990, would only need prior approval from their support systems and if they had completed any professional activities under the 501 guidelines prior to the approval being required they would also be allowed to use the 501 guidelines.

In the second argument it says that it would create a double standard and a dual system of certification in every school unit. I do contend

that even under the current law, if that was to go into effect, that there would be a dual standard that exists and there will remain a dual standard. The reason for the support teams is to work with your conditional certificate holders, those people entering new to the profession, to give them the assistance that they need to become experienced teachers and to qualify for a professional certificate. Also, the support team would be working with those people who would be applying for a master teacher certificate or a renewal of the master teacher certificate.

Another argument that was used is that the concept of local teacher and administrator support systems is a key point of the new law. That has not changed under the recommendations. The support systems and the support teams would go into effect as of July 1 this year. They would be working primarily with those new teachers under conditional certificates, those individuals with transitional certificates and those individuals who would be applying for the master teacher certificate or renewing for the master teacher certificate.

The fourth argument is that there has been a four-year process of piloting the new certification standards, holding public hearings, working with task forces and committees by the State Board of Education and that these would all but be negated by the amendment. I contend that is one of the problems that led to this alternative being proposed and the reason that it is before us today. If we go back to the spring of 1984, when the teacher certification law was passed, it called for the setting up for pilots and the pilots began in September of 1985 and in the spring of 1985 the administrator certification was passed. These are all subsequent to the reform act of 1984 and were acts and laws within themselves. The piloting process went on from September of 1985, the administrator certification pilots just completed last fall and one of the problems that we found on the Education Committee last year when the Department and the State Board of Education came before the Committee in February was that much of the material was still incomplete on the assessment of the successes and failures of the pilot programs. There was initially a recommendation that certification be delayed for one year, which would have put it off to July 1, 1989. In the Bills that we considered at the end of the session last year, although the controversy of the Bills centered on the third tier of the master teacher level what was part of both the Majority and Minority Reports out of the Education Committee was to recommend that one year extension and also to hold the State Board and the Department accountable to reporting back on what was happening with the formulation of the rules and regulations and to come up with a proper assessment as to what the costs were going to be.

I think that one thing that has been overlooked and I am very sorry that it has been overlooked is the promulgation of the rules and regulations began after we adjourned last June and the first hearing, which was monitored by members of the Education Committee, was in August. It wasn't until December that the second public hearing on the rules and regulations was held and that was a very, very controversial one where there was a great concern of alarm that was sounded by the representatives of all the Education interest groups as to how far those rules and regulations had gone, particularly centering around the so-called endorsements for middle school and secondary school teachers. The process was sped up even more for the month of January, February and March as the State Board

attempted to complete the rule making process and to get its final review and acceptance before April 1 of this year. Beginning in late January the Education Committee monitored the progress almost on a weekly basis and a workshop where we had members of the State Board and members of the Department and members of the Education family in talking about what the concerns were, what kind of movement had been made and the end result has led to a lot of concern as to where we will be next year as to whether we will be doing some major reconstructive surgery of the teacher and administrative certification law if it is allowed to go into effect as it presently is.

The last section of the recommendation that I think has been overlooked and is unfortunately, has been the Legislative review that would setup in a very timely manner beginning in January of 1989 a report back to the Joint Standing Committee on Education as to the final educator certification rules, what has happened with the support system plans and how well they are working or what changes need to be done. In April of 1989, there would be a preliminary cost assessment of what the cost was going to be for compliance with Chapter 502. The Department has estimated that those costs are going to be approximately one hundred dollars per teacher while others, the Maine Teachers Association, has estimated that those costs may be as high as six hundred dollars per teacher and the real question is who is going to bear those additional costs. It is my contention that those additional costs will be borne by the local school unit.

The April report back date by the Board and Department would also take a look at what was happening with the support systems, not only what the costs were of educators in terms of their time out of the classroom and the need for substitute teachers, but the stipends for those members who are serving on the support systems and support teams as well as the costs of educators for meeting the endorsement course requirements. In May of 1989, the University of Maine System would be reporting to the Committee on its progress and providing the preservice and in-service requirements that will be needed under Chapter 502. In January of 1990, the Committee would do a complete analysis of the impact of Chapter 502 and in February would report its findings to the Legislature and make any recommended legislative changes. That would allow an additional year for the Department and the State Board to conduct informational briefings on the certification law. What is being requested here is a staggered implementation, the essential ingredients of the certification laws would be put into place and it would be just a relaxing of the requirements of the present professional certificate holders until we can get a clear handle on just what the impact is going to be on the local systems and what the impact is going to be on the profession. I would be glad to answer any questions that members of this Body might have. I thank you for being patient with my lengthy explanation and I urge you to vote to support this Bill with the Committee Conference recommendations in it for the certification law. Thank you.

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

Senator RANDALL: Thank you Mr. President. Mr. President, men and women of the Senate. I want to take only a short time this afternoon, but I feel that it is important to look carefully at the concerns expressed in regard to teacher certification and also to look at the reasons as to why we should vote this afternoon for sustaining on this vote. First of all I would like to point out that this

proposal were it to become law would allow about fifteen thousand Maine teachers to be exempt from teacher certification laws and the new rules in Chapter 502 that have been in effect now since April 1. Until July 1, 1991 each teacher would be allowed by the alternative proposal to be reviewed under the old rules. Now certainly the difference between 1988 and 1991 is a considerable amount of time and a very lengthy amount of time and I think our concern this afternoon is whether or not this is too much time to delay or whether we should posthaste, go forward with what we have before us, the good work of the State Board of Education and the Department of Education since the process of looking at the certification review came into place in 1981, or 1982 the discussion began, in 1984 the law was passed and for four years now it has been looked at. It is 1988 and I would submit that it is time to go ahead and as has been pointed out in the veto message that we have before us on our desks this afternoon, this is an eleventh hour action with no input from the public in regard to the effect of stopping this educational innovation. Stopping it for at least a three year period which is a substantial length of time and I think it could be argued that rather than simply allowing for a time of discussion for the process it is almost like a gutting of the ongoing process. So, I think it really is more than simply postponing for a period of time, it is much more like a disemboweling or a gutting of the educational certification proposal that we have been looking at over the last few years.

A second point to be made and needs to be brought to our attention is that new teachers coming into the teaching profession in Maine would still be required to be certified under the new law, 502, while we would be exempting people that were covered under 501. So I think by setting up two different types of certification rules for teachers we would be inaugurating a double standard and we would be perpetuating confusion rather than trying to simplify a process that is now almost in place and ready to be moved forward with.

Another point to be made are the support systems that local educational units have established in their local units around the state are in the process of talking about establishing over the next period of one year. Representing a rural county, Washington County, as I do, I suspect there are many school administrative districts in my area that may not have fully assessed the impact of certification reform. They may be in a position of thinking that we really haven't got involved, we haven't been a pilot project yet, but over the process of the next year which is what the current law in effect would allow, over the process we are really going to get in there, sink our teeth into this certification change and accomplish something. Whereas what we would be doing this afternoon by voting to override is we would be saying to these people well you have three more years now to settle back, don't necessarily feel that the Legislature has taken the posture or that the Department is real serious about this, you have three more years now to work on this process, you do have for your new teachers the new law, 502, but for all of those existing in the profession you will have 501. I just think this really sends a very confusing and wrong message out there to those areas of the state which might be more prone to be a little less innovative and perhaps more inclined to let the status quo stay as it is until somebody really comes down there and tells us we have to change it a bit. I think by maintaining the ongoing momentum of certification reform and proceeding ahead and in the

next session of the Legislature if problems arise with certain aspects of certification, we are here to deal with those problems that do arise and I think we send a much clearer message today if we proceed and support the continuation of certification reform. I thank you for your time this afternoon.

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

Senator MAYBURY: Thank you Mr. President. Mr. President, men and women of the Senate. Having supported the Conference Committee amendment to delay the certification process I want to site my reasons for supporting the Governor in voting to sustain the veto of L.D. 2501. I have followed the progress on recertification throughout its rocky journey. I was concerned over the lack of teacher input in the early stages of the rule-making. Persistence by the teaching community brought about a number of changes which I feel will benefit the students and ease the transition for recertification to be handled by the local districts. My concerns included the undue hardship placed on teachers who teach in an area for which they have not received formal training. I have been assured by the Department that they will allow flexibility in implementing the recertification of those people who are effected. I was concerned with the ability of districts to meet the requirements of having a recertification plan in place. Again, the Department has indicated a willingness to work with districts. The Commissioner has indicated a desire to explain the plan to teachers throughout our state when they have concerns and need a better or more thorough explanation. I was also concerned about the inflexibility of the earlier rules by the Department. I am assured now that the Department will be willing to exercise some common sense in ruling on the recertification of teachers. My concerns of rigid and inflexible rules and extreme hardships on the teachers has been addressed by the Commissioner, it is my understanding that the Commissioner and the State Board of Education have heard the various concerns that were raised. They have tried to meet those concerns.

Lastly, a number of schools within my district have completed their recertification plans. These men and women have devoted many hours of hard work. To override the veto today would be a slap in the face for those dedicated professionals. Our children are most precious, we all want quality professional teachers. I have struggled long and hard to reach this decision, therefore, I urge the members of this Chamber to sustain the Governor's veto. Thank you.

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. The Education Reform Act of 1984 set forth Maine as one of the leaders in the areas of education and although I personally did not support the Education Reform package in 1984, I recognized even then that some of the ideas were both innovative and progressive. At the time of the passage of that Reform Act it was my understanding that along with the increase in the minimum of teachers salaries and the hotly debated two thousand dollar stipend would come tougher certification laws. I believe that if we allow this Bill to continue along its way today we are renegeing on that commitment. We have had four years to plan for this legislation, there have been reports, there have been twenty odd meetings I believe, there have been rule changes. The Committee of Conference Amendment, which has caused this veto, was passed with virtually no or very little public input, certainly not a public hearing. The Bill would do

nothing to deal with special education, the shortages of teachers in special education, because the shortages would continue to increase under Chapter 501 by preventing the existing categorical certifications to be collapsed into two general certificate categories under Chapter 502. The Bill as far as the local support system is concerned, as the good Senator from York, Senator Estes stated, the support system is estimated to cost 1.6 million dollars, or one hundred dollars per teacher, that money has been provided for. Money above and beyond that would be reimbursed by the state through the funding formula. This Bill would not continue what I believe is the primary focus of the Education Reform package passed back in 1984 which was a better education for my children. For these reasons I am asking you to vote no and sustain Governor McKernan's veto.

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 perhaps we have all heard too often during the course of this Legislative Session, I had not planned to speak on this measure this afternoon. However, having heard the very articulate and well reasoned presentations by my colleagues I do want to share a few thoughts and concerns with this Body. I have decided over the past few days that I am not going to vote to sustain the Governor's veto. In fact, I am going to vote to override this afternoon. I would point out to some of you who may not have been here, I served on the Joint Standing Committee on Education and I was certainly a very vocal and ardent supporter and I believe I still am of the cause of educational reform in our state and in our society. I believe that we all appreciate the imperative of a firm and insistent policy to upgrade continually quality in our public and private school systems in order that we can produce new generations of Americans and Mainers who can compete successfully in this country and abroad. I have not heard this afternoon from those who have argued in support of sustaining the Governor's veto commentary addressing the structural flaws we now have in our recertification process and I believe that there are genuine and legitimate concerns which have been brought forth that we simply do not have the resources in place at the present time to fully accommodate the certification process were it to go into effect as originally proposed some four years ago. I think these concerns are legitimate and meritorious. I was concerned as I believed many of you were when an effort was made initially to append to a routine Errors Bill a far reaching and major change in teacher certification. I did not support then nor do I support now an outright elimination of the certification process. I have really not heard from those who urge us to sustain the veto today an explanation of what will be done in the intervening six months or twelve months to address the very real problems which exist as far as the lack of appropriate resources. I have some very serious concerns that we will be putting some districts at a very real disadvantage if we were to insist at this time for implementation of the certification process. I must confess I have some concerns that what we are hearing today is simply a precursor of discussion and dialogue which might occur next fall on the campaign trail. But, I think all of us would agree that the needs of our children far transcend the interests of any particular election. I have two young daughters in the public schools, obviously, I will work hard and insist that they have the highest quality education possible to them. So, I certainly

would do nothing to eviscerate the high standard of education we all seek. I don't see anything in the compromise legislation which was approved that would in fact water down or weaken the movement for educational reform in our state and unless I can hear a strong argument that the structural flaws existing today in our recertification process will be addressed, if I don't hear that, I certainly will go forward and vote today to override. I would urge you to do as well. Thank you.

THE PRESIDENT: The pending question before the Senate is: "Shall this Bill become Law notwithstanding the objections of the Governor?"

In accordance with Article 4, Part 3, Section 2, of the Constitution, the vote will be taken by the Yeas and Nays.

A vote of yes will be in favor of the Bill.

A vote of no will be in favor of sustaining the veto of the Governor

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

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

NAYS: Senators BLACK, CAHILL, COLLINS, DILLENBACK, EMERSON, GILL, GOULD, LUDWIG, MAYBURY, PERKINS, RANDALL, SEWALL, TWITCHELL, WEBSTER

ABSENT: Senators BRAWN, DOW, WHITMORE  
18 Senators having voted in the affirmative and 14 Senators having voted in the negative, with 3 Senators being absent, and 18 being less than two-thirds of the Membership present and voting, the Veto was SUSTAINED.

The Secretary has so informed the Speaker of the House.

Off Record Remarks

The Following Communication:

STATE OF MAINE  
OFFICE OF THE GOVERNOR  
AUGUSTA, MAINE 04333

May 3, 1988

TO: The Honorable Members of the 113th Maine Legislature:

I am returning, without my signature or approval, S.P. 956, L.D. 2531, "AN ACT to Promote the Prompt and Peaceful Settlement of Labor Disputes." This legislation, in my opinion, continues to leave unaddressed the very real concerns which forced me to reject its two predecessors, L.D. 1690 and L.D. 1919.

This bill, as was the case with its predecessors, regulates hiring practices of companies without regard to their corporate purpose. It would prohibit the hiring of employees of any firm which, in the ordinary course of business during a previous five year period, has offered 100 or more employees on three or more occasions to a company involved in a labor dispute. This restriction would apply without consideration given to the intent or primary business purpose of the corporation. Thus, this bill is unacceptably over-inclusive.

As I stated last June, and again last January, I would accept so-called "anti-strikebreaker" legislation if such legislation were narrowly defined to address a company's business purpose or intent,

and if, in addition, the Maine Supreme Judicial Court ruled or advised that such legislation did not violate federal law. I stated on those occasions, and I repeat once again, the key consideration for such a prohibition ought to relate to the business purpose of the firm. While I respect this bill's attempt to address my original concern, the hiring proscriptioin, in my opinion, remains unacceptably overbroad.

I and my staff have offered legislative language which adequately addresses my concerns as well as those raised regarding hiring practices by Maine employers of out-of-state employees. I pledge to continue to work with you to adopt legislation which will satisfy the intent to prohibit corporate strikebreaking activity without running afoul of our Constitution or of federal law. I cannot, however, endorse legislation which mandates improper state intervention in the private collective bargaining process at the expense not only of the principals but also of potentially innocent third parties, which this bill does.

Because of the reservations and objections outlined above, I am in opposition to L.D. 2531 and respectfully urge you to sustain my veto.

Sincerely,  
S/John R. McKernan, Jr.  
Governor

Which was READ and ORDERED PLACED ON FILE.

The President laid before the Senate the Accompanying Bill:

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

S.P. 956 L.D. 2531  
(H "A" H-777)

THE PRESIDENT: The pending question before the Senate is: "Shall this Bill become Law not withstanding the objections of the Governor?"

The Chair recognizes the Senator from York, Senator Dutremble.

Senator DUTREMBLE: Thank you Mr. President. Mr. President, men and women of the Senate. I would just like to say a few words about this Bill before we vote to override or not to override the Governor's veto. Unfortunately on the Strikebreaker issue we couldn't come to an agreement on language that would deal with activities that have gone on and at least in one place in the state of Maine. There were two different versions if you remember, one was offered by the Republicans and the other was offered by the Democrats, and apparently some people felt that one went to far and the other didn't go far enough and there was questions of constitutionality in one and questions as to how effective the other one would be. The were questions that one was too vague and the other was too specific, but I think we have all come to the realization that everyone agrees that there is a problem with hiring out-of-state strikebreakers in the state of Maine and that something has to be done. So, whereas I think this Bill is going to get defeated, I think the Governor's veto will be sustained, I do want to make it very clear that I think the Governor and the Legislature and the people of the state of Maine are generally all in harmony as to opposing the sort of activity that went on at International Paper Company, so I would ask you today as one last final resort to try to support legislation of this manner by voting to override the Governor's veto, but even if the veto is not overridden, I would just like to make it very clear that I think that if not this year, everybody is in harmony and if this sort of practice continues in the state of Maine that it won't be too long before the Legislators in this Body and the Governor

will agree on language to make sure that something like this never happens again in the state of Maine. Thank you.

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

Senator COLLINS: Thank you Mr. President. Mr. President, men and women of the Senate. The good Senator from York, Senator Dutremble, has very accurately described our dilemma in trying to write legislation concerning strikebreaking. Unfortunately we have a difference of opinion as to how specific or how general the language should be and I guess that the Bill that I might have preferred, and did vote for a couple of weeks ago, was L.D. 2124. As you may recall this was an attempt to define the purpose of the entity that was involved in the business of supplying workers during a labor dispute. It seemed to me that this methodology was far superior to the one that is in the legislation we are looking at today. It may be in the future that we can arrive at an accommodation that we can all agree on, but today I hope that you will join me in sustaining the Governor's veto by voting no. Thank you Mr. President.

THE PRESIDENT: The pending question before the Senate is: Shall this Bill become Law not withstanding the objections of the Governor?

In accordance with Article 4, Part 3, Section 2, of the Constitution, the vote will be taken by the Yeas and Nays.

A vote of yes will be in favor of the Bill.

A vote of no will be in favor of sustaining the veto of the Governor

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

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

NAYS: Senators BLACK, CAHILL, COLLINS, DILLENBACK, EMERSON, GILL, GOULD, LUDWIG, MAYBURY, PERKINS, RANDALL, SEWALL, WEBSTER

ABSENT: Senators BRAWN, DOW, WHITMORE

19 Senators having voted in the affirmative and 13 Senators having voted in the negative, with 3 Senators being absent, and 19 being less than two-thirds of the Membership present and voting, the Veto was SUSTAINED.

The Secretary has so informed the Speaker of the House.

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

The Following Communication:  
STATE OF MAINE  
OFFICE OF THE GOVERNOR  
AUGUSTA, MAINE 04333

May 3, 1988

To the Honorable Members of the 113th Maine Legislature:

I am returning, without my signature or approval,



S.P. 975, L.D. 2589, "AN ACT to Ensure Confidential and Reliable Substance Abuse Testing of Employees and Applicants." This bill, while addressing some of the concerns enumerated in my objections to its two predecessors, L.D. 1400 and L.D. 1788, nonetheless unacceptably restricts the ability of employers to ensure that their employees are free from the influence of substances of abuse while on the job. As I have stated in my earlier vetoes, I remain deeply committed to the State's strong public policies against drug abuse and workplace safety and cannot endorse any legislation which, in my judgment, weakens that stance.

I repeatedly have expressed support for legislation which would require written testing policies, probable cause for the testing of employees who do not hold safety-sensitive positions, reliable testing procedures and the confidential treatment of test results. Additionally, I have agreed to accept a requirement that employers provide employee assistance programs for employees testing positive, and have been willing to accept additional restrictions, via regulation, on the designation of safety-sensitive positions. I will not, however, accept any restrictions other than those enumerated above.

I continue to be firm in my resolve to preserve employers' rights to ensure workplace safety. That, indeed, remains my primary concern. The safety of fellow workers and fellow citizens ought to be, in my judgment, of paramount importance and should, therefore, be the State's first priority.

For the foregoing reasons, I respectfully request that you sustain my veto of L.D. 2589.

Sincerely yours,  
S/John R. McKernan, Jr.  
Governor

Which was READ and ORDERED PLACED ON FILE.

The President laid before the Senate the Accompanying Bill:

Bill "An Act to Ensure Confidential and Reliable Substance Abuse Testing of Employees and Applicants"  
S.P. 975 L.D. 2589  
(S "A" S-519)

THE PRESIDENT: The pending question before the Senate is: "Shall this Bill become Law not withstanding the objections of the Governor?"

The Chair recognizes the Senator from York, Senator Dutremble.

Senator DUTREMBLE: Thank you Mr. President. Mr. President, men and women of the Senate. When I used to coach football and we used to get beat, sometimes badly, we used to say we were shell shocked or gun shy, sometimes when I get up here to talk against vetos I am a little gun shy. I am certainly shell shocked, maybe this is the one. The drug testing Bill that has been around for two years if you remember last year was quite an emotional issue and at the time that Bill was vetoed we went through quite a go around and a lot of things were said and maybe a lot of the emotions have died down, but the issue hasn't. It is still an important issue and it is important enough so that the Labor Committee has felt it important enough to work on it for the past two years. Our Committee has dealt with a lot of important issues as your Committees have and whenever we came up with difficult issues it seems that as political and as combative that the Committee always got down to business and worked out our problems. This is such a Bill. It is very emotional and it tore this Legislature apart last year and our Committee got down to it and worked out a compromise time and time again to meet what we thought anyway was the concerns of all the people involved. In

those discussions, the Democrats and Republicans worked together, we had business and labor working together, we had the experts come in and help us out and we were able to work out an incorporate into that Bill all the good points that everybody brought to us. So much so that on this divisive issue, the issue that was divisive last year came out of the Committee unanimous. There is a reason for that. The reason is that we came out with a good Bill. Thirteen members of the Committee, after hearing two years of testimony, would not have come out with it unanimously if it was not a good Bill. That is one of the reasons, to say the very least, that I was very disappointed in this veto. If there is one issue that we tried over and over and over again to address the concerns that the Governor had it was this issue. As a matter of fact, I listed ten items that we felt, as a Committee, was absolutely important to have in this Bill and some of those ten items are the same ones that the Governor felt that he had to have in his Bill so that he wouldn't veto it and I sort of wonder where we missed the boat there. I again would ask you respectfully to vote to override the Governor's veto. On the last veto message on the Bill that is no longer before us we talked about constitutionality and I really question the double standard that we are going to apply here. If we say we can't vote for one because of the constitutionality, how we can vote for this particular one when we know that drug testing in court after court after court case has been thrown out because of constitutionality. I sort of wonder if that is a double standard. I would hope in due respect to all of the work that the Committee did and to all the people who gave us all the information that helped us to draft this good Bill that you would vote to override the Governor's veto. Thank you.

THE PRESIDENT: The pending question before the Senate is: "Shall this Bill become Law not withstanding the objections of the Governor?"

In accordance with Article 4, Part 3, Section 2, of the Constitution, the vote will be taken by the Yeas and Nays.

A vote of yes will be in favor of the Bill.

A vote of no will be in favor of sustaining the veto of the Governor

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators ANDREWS, BALDACCI, BERUBE, BRANNIGAN, BUSTIN, CLARK, COLLINS, DUTREMBLE, ERWIN, ESTES, GAUVREAU, KANY, KERRY, MATTHEWS, PEARSON, THERIAULT, TUTTLE, TWITCHELL, USHER, THE PRESIDENT - CHARLES P. PRAY

NAYS: Senators BLACK, CAHILL, DILLENBACK, EMERSON, GILL, GOULD, LUDWIG, MAYBURY, PERKINS, RANDALL, SEWALL, WEBSTER

ABSENT: Senators BRAWN, DOW, WHITMORE  
20 Senators having voted in the affirmative and 12 Senators having voted in the negative, with 3 Senators being absent, and 20 being less than two-thirds of the Membership present and voting, the Veto was SUSTAINED.

The Secretary has so informed the Speaker of the House.

The Following Communication:  
STATE OF MAINE  
OFFICE OF THE GOVERNOR  
AUGUSTA, MAINE 04333

May 3, 1988

TO: The Honorable Members of the 113th Maine Legislature

I am returning, without my signature or approval, S.P. 1003 L.D. 2637, "AN ACT Concerning Storage of Radioactive Material in Public Buildings." This bill, in my judgment, fails to provide a funding mechanism which is either adequate or appropriate for the purposes of the bill, and seeks to remedy a situation which has not been scientifically linked to the storage of radioactive materials used at the state calibration facility.

L.D. 2637 would direct the Director of the Maine Emergency Management Agency (MEMA) to file a report by January 1, 1989, with the U.S. Nuclear Regulatory Commission to remove radiation calibration materials from their present location in the Department of Educational and Cultural Services building to a new facility, with the intent to subsequently construct a new facility. However, rather than offering a fiscal note whereby this bill could be considered along with other items requiring an appropriation, L.D. 2637 identifies Title 22, Section 680, the permanent fund for radiation protective services, as the only immediate source of funding for this bill. This fund derives its revenues from a license fee from the Maine Yankee Atomic Power Plant, and from fees on x-ray equipment and other sources of radioactive material. Currently, these funds are sufficient only to cover the salaries and expenses of three full-time staff members under the Division of Health Engineering, whose function is to provide environmental surveillance of the area surrounding Maine Yankee, emergency response capabilities, and x-ray inspection services. I believe these responsibilities should not be jeopardized by the use of this fund for the purposes outlined in L.D. 2637.

Second, while I can appreciate the concern over the storage of radioactive materials in the Department of Educational and Cultural Services building, I cannot support a proposal that is based on health considerations, but for which there currently exists no scientific justification; in fact, the facility in question meets all nationally-recognized health and safety standards. Absent a direct link between incidents of illness or disease among state employees working near the calibration facility and the limited amount of radioactive material used at this facility, it would be imprudent at this time to endorse the expenditure of funds necessary to decommission the current facility and construct a new one.

I am, however, willing to commit to the undertaking of a comprehensive assessment and planning activity designed to identify potential sites that may be more appropriate locations for the storage of such materials. I am, therefore, submitting legislation that will direct the Maine Emergency Management Agency and the Department of Human Services to conduct such an assessment and to submit a relocation plan to the 114th Legislature.

For the foregoing reasons, I respectfully request that you sustain my veto of L.D. 2637.

Sincerely,  
S/John R. McKernan, Jr.  
Governor

Which was READ and ORDERED PLACED ON FILE.

The President laid before the Senate the Accompanying Bill:

Bill "An Act Concerning Storage Of Radioactive Material in Public Buildings"

S.P. 1003 L.D. 2637

THE PRESIDENT: The pending question before the Senate is: "Shall this Bill become Law not

withstanding the objections of the Governor?"

The Chair recognizes the Senator from Cumberland, Senator Usher.

Senator USHER: Thank you Mr. President. Mr. President, men and women of the Senate. L.D. 2637 is in regards to the storage of radioactive material in the Department of Education building. This building right outside the window which everybody is familiar with. I received a lot of concern from the workers in the building about the radioactive material, they are concerned about their health and we have great concern also. There was a Bill put in, this Bill, to ask that they move the radioactive material to another location for health reasons. The Bill that was passed by the Legislature did three things. It directed the Maine Emergency Management Agency to remove the radiation calibration materials from the building. It also directed that they file with the N.R.C. of their intent and it also directed that funds be taken from Title 22, which is the Maine Yankee Fund, which is funds from the fees on X-ray equipment and other sources of radioactive material. Finally, it requires that they report back to the Legislature with the Committee involved, which would be the Energy and Natural Resources Committee.

The Energy and Natural Resources Committee met this morning and discussed this Bill and received a copy of the Executive Office's new proposal and the new proposal is that they have a study and report back to the 114th Legislature of the new location where materials should be stored and an estimated cost of the project. The Committee was in agreement, unanimously, and therefore we will vote for to sustain the veto.

Just to let you know what is over there, there are two machines that do the calibrating, these machines are used when they want to get them activated. They are stored under the roadway, the storage area is in front of the building, under the roadway in a steel encasement. The area was tested and it was found clean. So, that is what is under there, everybody has been wondering what is under there. It is these two machines and they are only activated when they are used for the calibration of the little machines.

THE PRESIDENT: The pending question before the Senate is: "Shall this Bill become Law not withstanding the objections of the Governor?"

In accordance with Article 4, Part 3, Section 2, of the Constitution, the vote will be taken by the Yeas and Nays.

A vote of yes will be in favor of the Bill.

A vote of no will be in favor of sustaining the veto of the Governor

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators ANDREWS, BALDACCI, BERUBE, BUSTIN, ESTES, KANY, KERRY, MATTHEWS, THERIAULT, THE PRESIDENT - CHARLES P. PRAY

NAYS: Senators BLACK, BRANNIGAN, CAHILL, CLARK, COLLINS, DILLENBACK, DUTREMBLE, EMERSON, ERWIN, GAUVREAU, GILL, GOULD, LUDWIG, MAYBURY, PEARSON, PERKINS, RANDALL, SEWALL, TUTTLE, TWITCHELL, USHER, WEBSTER

ABSENT: Senators BRAWN, DOW, WHITMORE

10 Senators having voted in the affirmative and 22 Senators having voted in the negative, with 3 Senators being absent, and 10 being less than two-thirds of the Membership present and voting, the Veto was SUSTAINED.

The Secretary has so informed the Speaker of the House.

The Following Communication:

STATE OF MAINE  
OFFICE OF THE GOVERNOR  
AUGUSTA, MAINE 04333

May 3, 1988

TO: The Honorable Members of the 113th Maine Legislature

I am returning, without my signature or approval, S.P. 889 L.D. 2301, "AN ACT to Enhance Outdoor Recreation Opportunities." Specifically, I have reservations about those sections of L.D. 2301 which detail the composition and functions of the proposed Maine Advisory Commission on Outdoor Recreation. After careful consideration, I have determined that my concerns outweigh the positive aspects contained in other sections of this bill.

I support the concept of an advisory commission to review and assess outdoor recreational opportunities in Maine; however, the Commission established by Sections 5 and 6 of L.D. 2301 goes far beyond that role. The Commission's involvement with the Land For Maine's Future Board and the Bureau of Parks and Recreation, its role in assessing public access issues and serving as liaison between special interest groups and state agencies, and the numerous other responsibilities with which the Commission has been charged, unnecessarily overextend and complicate the purpose of an advisory commission. In its current form, L.D. 2301 creates a commission which will be incapable of developing broad recommendations due both to the detailed tasks it has been assigned and to the limited resources allocated for this purpose. In my judgment, an advisory commission with less specific—but still no less important—responsibilities would serve the best interests of the people of this State.

In regard to the other sections of L.D. 2301, I would accept the provisions included in Section 1 through 4, and Section 7. In fact, I support the change which calls for the substitution of the Commissioner of Marine Resources in place of the Commissioner of Transportation as a permanent member of the Board, and can accept the addition of two more public members on the Board. I am, therefore, submitting legislation now that will accomplish these changes.

Further, assuming that my veto of L.D. 2301 is sustained, I will direct the Commissioner of Conservation, the Commissioner of Inland Fisheries and Wildlife, the Commissioner of Marine Resources, and the Director of the State Planning Office to develop a proposal for an advisory commission on outdoor recreation for consideration by the 114th Legislature.

For the foregoing reasons, I respectfully request that you sustain my veto of L.D. 2301.

Sincerely,  
S/John R. McKernan, Jr.  
Governor

Which was READ and ORDERED PLACED ON FILE.

The President laid before the Senate the Accompanying Bill:

Bill "An Act to Enhance Outdoor Recreation Opportunities"

S.P. 889 L.D. 2301  
(S "A" S-524 to C  
"A" S-363)

THE PRESIDENT: The pending question before the Senate is: "Shall this Bill become Law not

withstanding the objections of the Governor?"

The Chair recognizes the Senator from Aroostook, Senator Ludwig.

Senator LUDWIG: Thank you Mr. President. Mr. President, men and women of the Senate. I would urge you to sustain the Governor's veto of L.D. 2301, by voting no. In the Governor's message he indicates his support for a portion of the Bill and a willingness to come forward with the legislation today if his veto is sustained. He also expressed the support for the concept of an Advisory Commission to review and assess outdoor recreation opportunities in Maine, but clearly states his opposition to the Advisory Commission as proposed in L.D. 2301. In the present form the Advisory Commission would be directly involved with the Land For Maine's Future Board and state agencies responsible for administrative recreational programs. This overextends and complicates the purpose of the Advisory Commission. The legislation also specifies detailed tasks with limited resources to fulfill this purpose. During the appropriations process the fiscal note was deleted from this portion of the legislation. If the Governor's veto is sustained he will direct the Commissioner on Conservation, the Commissioner of Inland Fisheries and Wildlife, the Commissioner of Marine Resources and the Director of the State Planning Office, to develop a proposal for consideration by the 114th Legislature. Again I urge you to sustain the Governor's veto by voting no. Thank you Mr. President.

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

Senator MATTHEWS: Thank you Mr. President. Mr. President, men and women of the Senate. I urge this Body to override the Governor's veto and I am very surprised, quite concerned by the Governor's veto of this Bill. As we all remember, the whole study of outdoor recreation started not under Governor Brennan a few years ago, but started from the oval office in Washington by this current President, President Ronald Reagan, who issued an executive order to the states in this country to take a look at the opportunities for outdoor recreation, to look at the issues involved with land usage and to make a commitment to try to preserve some of the heritage that we have in Maine and others enjoy in other states similar to ours. So, this issue started from a Republican President in Washington.

I am surprised today that we are faced with a veto from the second floor because the Governor doesn't agree with the Outdoor Commission on Recreation. He doesn't agree to have the input of citizens in this state. The Governor would rather leave the decision making to the Commissioners and the bureaucracy. Ladies and gentlemen, I think that flies in the face of the President's executive order on outdoor recreation. It flies in the face of the work done by Governor Brennan's Commission on Outdoor Recreation and I think it flies in the face of the study and the hard work done by a bipartisan committed group of individuals on outdoor recreation over the last year. The issues involved in outdoor recreation are complex and many and they are not going to get any easier as time goes on and they are not going to be solved by bureaucrats in Augusta. They are going to be solved by citizens of the state, land owners, outdoor enthusiasts, sportsmen, recreationists, those are the individuals who are going to solve these problems. Ladies and gentlemen, we went through that Commission on outdoor recreation through the tough issues as a Commission it was a good example to see how those complicated issues can really divide your time and really get at the

substance of what we are trying to do. So the intent is to create a citizen group and obviously have some input from the Executive Branch and the Legislative Branch, but to devise a group that could work on these issues on an ongoing basis. All the land owner outdoor recreation issues we are all well acquainted with here, public assess and all the rest. Ladies and gentlemen, I am appalled by this veto and I would urge this Body to make a stand for Maine's future, to make a stand for Maine's heritage, to make a stand much like we did with comprehensive land use planning. This is part of it. This is protecting the god given resources we are so fortunate to have. So, I would urge this Body to override this veto today.

THE PRESIDENT: The pending question before the Senate is: "Shall this Bill become Law not withstanding the objections of the Governor?"

In accordance with Article 4, Part 3, Section 2, of the Constitution, the vote will be taken by the Yeas and Nays.

A vote of yes will be in favor of the Bill.

A vote of no will be in favor of sustaining the veto of the Governor

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, CLARK, DUTREMBLE, ESTES, GAUVREAU, KANY, KERRY, MATTHEWS, PEARSON, THERIAULT, TUTTLE, USHER, THE PRESIDENT - CHARLES P. PRAY

NAYS: Senators BALDACCI, BERUBE, BLACK, CAHILL, COLLINS, DILLENBACK, EMERSON, ERWIN, GILL, GOULD, LUDWIG, MAYBURY, PERKINS, RANDALL, SEWALL, TWITCHELL, WEBSTER

ABSENT: Senators BRAWN, DOW, WHITMORE

15 Senators having voted in the affirmative and 17 Senators having voted in the negative, with 3 Senators being absent, and 15 being less than two-thirds of the Membership present and voting, the Veto was SUSTAINED.

The Secretary has so informed the Speaker of the House.

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

SENATE PAPERS

Bill "An Act to Return Certain Positions within the Department of Environmental Protection to Classified Service under the Civil Service Law"

S.P. 1009 L.D. 2648

Presented by Senator TUTTLE of York

Cosponsored by: Representative CARROLL of Gray, Senator RANDALL of Washington, Representative LOOK of Jonesboro

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

Committee on STATE AND LOCAL GOVERNMENT suggested.

Which was, under suspension of the Rules, READ TWICE 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

Pursuant to the Statutes Committee on FISHERIES AND WILDLIFE

The Committee on FISHERIES AND WILDLIFE, pursuant to the Maine Revised Statutes Annotated, Title 12 section 7035, subsection 4, paragraph B ask leave to submit its findings and to report that the accompanying Bill "An Act to Reimburse the Department of Inland Fisheries and Wildlife for Search and Rescue Operations"

H.P. 1949 L.D. 2642

Be referred to the Joint Standing Committee on APPROPRIATIONS AND FINANCIAL AFFAIRS for Public Hearing and printed pursuant to Joint Rule 18.

Comes from the House with the Report READ and ACCEPTED and the Bill referred to the Committee on APPROPRIATIONS AND FINANCIAL AFFAIRS and ORDERED PRINTED, pursuant to Joint Rule 18.

Which Report was READ and ACCEPTED, in concurrence.

The Bill referred to the Committee on APPROPRIATIONS AND FINANCIAL AFFAIRS and ORDERED PRINTED, pursuant to Joint Rule 18, in concurrence.

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

SENATE PAPERS

Bill "An Act to Repeal from the Budget Bill the Provisions Concerning Municipal Shellfish Licenses"

S.P. 1010 L.D. 2650

Presented by Senator CLARK of Cumberland

Cosponsored by: Representative MITCHELL of Freeport, Representative RYDELL of Brunswick, Representative PRIEST of Brunswick

Approved for Introduction by a Majority of the Legislative Council pursuant to Joint Rule 27 Committee on MARINE RESOURCES suggested.

Which was, under suspension of the Rules, READ TWICE 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

Joint Resolution

The Following Joint Resolution: H.P. 1942

JOINT RESOLUTION IN HONOR OF JUSTICE

DAVID A. NICHOLS OF THE MAINE SUPREME JUDICIAL COURT WHEREAS, according to Socrates, "Four things belong to a judge: To hear courteously, to answer wisely, to consider soberly, and to decide impartially"; and

WHEREAS, it is these qualities and the high degree to which they are performed which mark the tenure of Justice David A. Nichols of Lincolnville; and

WHEREAS, this successful country lawyer has served the State well as a jurist, first on the Superior Court and, for the last decade, on the Maine Supreme Judicial Court; and

WHEREAS, Justice Nichols is an outstanding citizen and a dedicated public servant who has given much to the bench and bar of this State; now, therefore, be it

RESOLVED: That We, the Members of the 113th Legislature of the State of Maine now assembled in Second Regular Session, take this opportunity, on the eve of his announced retirement, to commend the Honorable David A. Nichols on behalf of the people of the State for his years of distinguished service; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of

State, be transmitted to the Honorable Justice David A. Nichols for presentment to this honored friend and jurist in token of our thanks and best wishes for the future.

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:

PAPERS FROM THE HOUSE

Joint Order

The following Joint Order: H.P. 1955  
ORDERED, the Senate concurring, that "RESOLVE, to Establish the Commission to Study the Management of Water Resources in Maine," H.P. 1822, L.D. 2497, and all its accompanying papers, be recalled from the legislative files to the House.

Comes from the House READ and PASSED.  
Which was READ.

Pursuant to Joint Rule 15, this Joint Order requires the affirmative vote of two-thirds of the Members present and voting. 28 Senators having voted in the affirmative and 2 Senators having voted in the negative, and 28 being more than two-thirds of the Members present and voting, the Joint Order was PASSED, in concurrence.

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

ORDERS

Joint Resolution

On motion by Senator ANDREWS of Cumberland (Cosponsored by: Representative KILKELLY of Wiscasset, Senator SEWALL of Lincoln) the following Joint Resolution:

S.P. 1012

JOINT RESOLUTION EXPRESSING THE SENTIMENT OF THE MAINE STATE LEGISLATURE THAT YOUTH CONNECTIONS BETWEEN THE UNITED STATES AND OTHER NATIONS SHOULD BE ENCOURAGED AND SUPPORTED BECAUSE THEY PROMOTE INTERNATIONAL PEACE AND UNDERSTANDING

WHEREAS, international youth connections permit young people of different nations to interact through exchanges, meetings and conferences; and

WHEREAS, international youth connections allow young people to gain a greater awareness and understanding of global issues; and

WHEREAS, in their December 1987 post-summit addresses, both President Reagan and General Secretary Gorbachev acknowledged that young people must be informed about and involved with the issues affecting the world today; and

WHEREAS, Maine competes in an international economy linking our prosperity with our knowledge and understanding of the world and our ability to compete in the international marketplace; and

WHEREAS, a more comprehensive understanding of global issues will inspire young people to become more involved and concerned citizens; and

WHEREAS, given the increasingly interdependent economic, political and social nature of the world, young people need a global perspective to make informed decisions on issues affecting their generations; now, therefore, be it

RESOLVED: That We, the Members of the 113th Legislature, now assembled in the Second Regular Session, consider it the policy of this State to encourage and support, at all levels of government, youth connections among Maine, the United States and other nations; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of

State, be transmitted forthwith to the Honorable John R. McKernan, Jr., Governor of the State of Maine, and to the Maine Congressional Delegation.

Which was READ.

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. Just a very brief explanation. This Resolution is one that is being presented to the United States Congress as well as states across the United States recognizing a group of forty young people from across the United States who are right as we speak on their way to Finland to meet with students from the Soviet Union to discuss issues of international peace and corporation. This trip was inspired during the summit of 1987 between the Secretary Gorbachev and President Reagan and there was a strong feeling that the young people of this country should become directly involved in the process of corporation and dialogue between nations. Perhaps from these young people as we found with our own Samantha Smith some new breakthrough's in the area of world understanding and peace might be achieved. We are very honored to have one of those young people from the state of Maine who is on his way to be engaged in these dialogues, Thor Erickson from Newcastle. It is for this reason both for the honor of having such a young person from Maine engaged in this activity and for the activity itself, that I and the Senator from Lincoln, Senator Sewall, present this Joint Order.

Which was ADOPTED.

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

House Papers

Bill "An Act to Clarify Milk Pricing Laws as They Relate to Over-Order Premiums" (Emergency)

H.P. 1952 L.D. 2645

Committee on AGRICULTURE suggested and ORDERED PRINTED.

Comes from the House, under suspension of the Rules, READ TWICE and PASSED TO BE ENGROSSED, without reference to a Committee.

On motion by Senator CLARK of Cumberland, Tabled until Later in Today's Session, pending REFERENCE.

Bill "An Act to Make Necessary Changes to Implement Comprehensive Land Use Planning" (Emergency)

H.P. 1950 L.D. 2643

Committee on ENERGY AND NATURAL RESOURCES suggested and ORDERED PRINTED.

Comes from the House, under suspension of the Rules, READ TWICE and PASSED TO BE ENGROSSED, without reference to a Committee.

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

The Bill LATER TODAY ASSIGNED FOR SECOND READING.

Bill "An Act Concerning Relocation of the Maine Emergency Management Agency Radiological Calibration Facility"

H.P. 1956 L.D. 2649

Committee on ENERGY AND NATURAL RESOURCES suggested and ORDERED PRINTED.

Comes from the House, under suspension of the Rules, READ TWICE and PASSED TO BE ENGROSSED, without

reference to a Committee.

Which was, under suspension of the Rules, READ TWICE and PASSED TO BE ENGROSSED, without reference to a Committee, and ORDERED PRINTED, in concurrence.

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

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

PAPERS FROM THE HOUSE

Bill "An Act to Change the Effective Date for HIV Counseling"

H.P. 1954 L.D. 2647

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

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. This Bill deals with one facet of a comprehensive AIDS Bill which the Human Resources Committee voted unanimously Ought to Pass and which was subsequently enacted by this Legislature and signed by the Governor. The subject of this Bill deals with pretest and post-test counseling for those individuals who applied for health insurance and then at the request of an insurance company have to submit to HIV testing to determine whether they are zero positive for the AIDS virus. This matter was informally considered at some length this morning by the Joint Standing Committee on Human Resources and after about two hours of rather productive and thoughtful discussion the Committee voted twelve to one to oppose this legislation during this session. It can be fairly said that under our law as current structured there will be some additional financial costs to insurance companies which require individuals who have applied for life insurance to submit to HIV testing. The cost primarily will be in the area of insurance companies would have to pay for counseling both before and after the testing to properly apprise the applicant of the consequences of the aspects related to AIDS. We feel as a Committee strongly that the public interest of making sure that all individuals who are tested are properly counseled and properly advised of what the appropriate behavior would be given either a negative or positive test result far outweighs the costs which insurance companies would realize. I would further point out that it is the insurance companies themselves who are taking the initiative and are questioning that the applicant undergo the HIV testing. We feel that when we balance all the issues in this case it makes more sense for us to remain to our original position and require pre and post-test counseling and for that reason I would urge today that we support my motion to Indefinitely Postpone this legislation. Thank you.

On motion by Senator GAUVREAU of Androscoggin, the Bill and Accompanying Papers INDEFINITELY POSTPONED in NON-CONCURRENCE.

Sent down for concurrence.

Resolve, to Revise the Kennebec County Budget to Reflect an Increase the the Surplus Account (Emergency)

H.P. 1951 L.D. 2644

Committee on STATE AND LOCAL GOVERNMENT suggested and ORDERED PRINTED.

Comes from the House, under suspension of the Rules. READ TWICE and PASSED TO BE ENGROSSED, without reference to a Committee.

Which was, under suspension of the Rules, READ

TWICE and PASSED TO BE ENGROSSED, without reference to a Committee, and ORDERED PRINTED, in concurrence.

ORDERS OF THE DAY

On motion by Senator CLARK of Cumberland, the Senate removed from the Tabled and Later Today Assigned the following:

Bill "An Act to Clarify Milk Pricing Laws as They Relate to Over-Order Premiums" (Emergency)

H.P. 1952 L.D. 2645

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

Pending - REFERENCE

(Committee on AGRICULTURE suggested and ORDERED PRINTED.)

(In House, May 4, 1988, under suspension of the Rules, READ TWICE and PASSED TO BE ENGROSSED, without reference to a Committee.)

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

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

Senator BLACK: Thank you Mr. President. Mr. President, men and women of the Senate. This Bill is actually a technical clarification so the Milk Commission can adjust the price back to the consumer if the R.C.M.A. price when it is balanced it would remain the same as the Hood Company or any other dairy without the order to be paid and they could use this money which is quite essential for their own use. It is better to give back to the consumer it they haven't the authority to give it the farmer. It is pretty technical in milk pricing, it is always a month behind.

Which was, under suspension of the Rules, READ A SECOND TIME and PASSED TO BE ENGROSSED, without reference to a Committee, and ORDERED PRINTED, in concurrence.

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

Off Record Remarks

On motion by Senator USHER of Cumberland, RECESSED until the sound of the bell.

After Recess

Senate called to order by the President.

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

COMMUNICATIONS

The Following Communication:

H.P. 1947

STATE OF MAINE  
HOUSE OF REPRESENTATIVES

AUGUSTA 04333

April 26, 1988

John L. Martin  
Speaker of the House  
113th Legislature  
Charles P. Pray  
President of the Senate  
113th Legislature

Dear Mr. Speaker and Mr. President:

On April 26, 1988, one Bill was received by the Clerk of the House.

Pursuant to the provisions of Joint Rule 14, this bill was referred to the Joint Standing Committee on April 26, 1988 as follows:

Taxation

Bill "An Act to Clarify the Sales Tax Exemption

on Scheduled Airlines" (H.P. 1946) (L.D. 2641)  
(Presented by Representative CASHMAN of Old Town)  
(Cosponsors: Senator TWITCHELL of Oxford,  
Representatives JACKSON of Harrison and ZIRNKILTON of  
Mount Desert) (Approved for introduction by a  
majority of the Legislative Council pursuant to Joint  
Rule 27)

Sincerely,  
S/Edwin H. Pert  
Clerk of the House  
S/Joy J. O'Brien  
Secretary of the Senate

Comes from the House READ and ORDERED PLACED ON  
FILE.

Which was READ and ORDERED PLACED ON FILE, in  
concurrence.

Out of order and under suspension of the Rules,  
the Senate considered the following:  
PAPERS FROM THE HOUSE  
Joint Resolution

The Following Joint Resolution: H.P. 1948

IN MEMORIAM

WHEREAS, the Legislature has learned with deep  
regret of the death of Louise Berliawsky Nevelson,  
formerly of Rockland, one of the world's best known  
artists and a pioneer creator of environmental  
sculpture; and

WHEREAS, known mainly for her wall sculptures,  
she built an empire as an artist and sculptor,  
resulting in a following not found elsewhere in  
modern art; and

WHEREAS, it was her command of darkness and deep  
shadow that captured the public imagination and  
brought mystery into sculpture; and

WHEREAS, "her creative spirit has transformed the  
fragments of a familiar world into sculptured wholes  
surprising, beguiling, demanding our visual  
appreciation" for generations to come; now,  
therefore, be it

RESOLVED: That, We the Members of the 113th  
Legislature of the State of Maine, now assembled in  
Second Regular Session, pause in our deliberations to  
reflect on the life of the late Louise Berliawsky  
Nevelson, a major artist with deep roots in Maine  
whose "reach far exceeded her grasp" and whose  
marvelous contributions have enriched the world; and  
be it further

RESOLVED: That suitable copies of this  
resolution, duly authenticated by the Secretary of  
State, be transmitted forthwith to the family and to  
the William A. Farnsworth Library and Art Museum, be  
made available for display, in token of sympathy and  
condolence to all who share this great loss and with  
further stipulation that, when the Legislature  
adjourns this date, it do so in honor and lasting  
tribute to the deceased.

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

Off Record Remarks

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

PAPERS FROM THE HOUSE  
Non-concurrent Matter

JOINT RESOLUTION - Requesting the Honorable John  
R. McKernan, Jr., Governor of Maine to Call a Special  
Session to Provide for Property Tax Relief

H.P. 1944

In House, April 21, 1988, READ and ADOPTED.  
In Senate, April 21, 1988, INDEFINITELY POSTPONED  
in NON-CONCURRENCE.

Comes from the House that Body INSISTED.  
Senator PERKINS of Hancock moved to ADHERE.  
Senator CLARK of Cumberland moved to RECEDE and  
CONCUR.

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

The Chair will order a Division.

Will all those Senators in favor of the motion by  
Senator CLARK of Cumberland, to RECEDE and CONCUR,  
please rise in their places and remain standing until  
counted.

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

14 Senators having voted in the affirmative and 5  
Senators having voted in the negative, the motion by  
Senator CLARK of Cumberland, to RECEDE and CONCUR,  
PREVAILED.

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

SENATE PAPERS

Bill "An Act to Amend the Law Relating to the  
Land for Maine's Future Board"

S.P. 1011 L.D. 2653

Presented by Senator LUDWIG of Aroostook  
Cosponsored by: Representative DEXTER of  
Kingfield, Senator USHER of Cumberland,  
Representative MICHAUD of East Millinocket  
Committee on ENERGY AND NATURAL RESOURCES  
suggested.

Which was, under suspension of the Rules READ  
TWICE and PASSED TO BE ENGROSSED, without reference  
to a Committee, and ORDERED PRINTED.

Sent down for concurrence.

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

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

COMMUNICATIONS

The Following Communication:  
ADMINISTRATIVE OFFICE OF THE COURTS  
PO BOX 4820 DOWNTOWN STATION  
PORTLAND, MAINE 04112

May 2, 1988

President Charles P. Pray  
State House Station 3  
Augusta, Maine 04333  
Dear President Pray:

It is my honor and personal pleasure to transmit  
to you and each of the other Senators of the 113th  
Legislature a copy of the Twelfth Annual Report of  
the Judicial Department, pursuant to the provisions  
of 4 MRSA §17.10.

Sincerely,  
S/Dana R. Baggett  
State Court Administrator  
Which was READ and with Accompanying Papers  
ORDERED PLACED ON FILE.

Out of order and under suspension of the Rules,  
the Senate considered the following:  
PAPERS FROM THE HOUSE

House Papers

Bill "An Act to Amend the Shoreland Property Transfer Law" (Emergency)

Committee on ENERGY AND NATURAL RESOURCES suggested and ORDERED PRINTED.

Comes from the House, under suspension of the Rules, READ TWICE and PASSED TO BE ENGROSSED, without reference to a Committee.

Which was, under suspension of the Rules, READ TWICE and PASSED TO BE ENGROSSED, without reference to a Committee, and ORDERED PRINTED, in concurrence.

Off Record Remarks

Senate at Ease

Senate called to order by the President.

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

SECOND READERS

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

House

Bill "An Act to Make Necessary Changes to Implement Comprehensive Land Use Planning" (Emergency)

H.P. 1950 L.D. 2643

Which was READ A SECOND TIME.

On motion by Senator USHER of Cumberland, Senate Amendment "A" (S-547) READ and ADOPTED.

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

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

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

COMMUNICATIONS

The Following Communication:

STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
AUGUSTA 04333

May 4, 1988

Honorable Joy J. O'Brien  
Secretary of the Senate  
113th Legislature  
Augusta, Maine 04333  
Dear Madam Secretary:

House Paper 1612, Legislative Document 2205, AN ACT to Establish Child Care Availability for Individuals in the Substance Abuse Treatment System, having been returned by the Governor together with his objections to the same pursuant to the provisions of the Constitution of the State of Maine, after reconsideration the House proceeded to vote on the question: 'Shall this Bill become a law notwithstanding the objections of the Governor?'

81 voted in favor and 61 against, and accordingly it was the vote of the House that the Bill not become a law and the veto was sustained.

Respectfully,  
S/Edwin H. Pert  
Clerk of the House

Which was READ and ORDERED PLACED ON FILE.

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

PAPERS FROM THE HOUSE  
Non-concurrent Matter

Bill "An Act Concerning Relocation of the Maine Emergency Management Agency Radiological Calibration Facility"

H.P. 1956 L.D. 2649

In Senate, May 4, 1988, PASSED TO BE ENGROSSED, without reference to a Committee, in concurrence.

Comes from the House PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-791) in NON-CONCURRENCE.

The Senate RECEDED and CONCURRED.

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

PAPERS FROM THE HOUSE  
House Papers

Bill "An Act Concerning Intermediate Care Facilities for the Mentally Retarded"

H.P. 1960 L.D. 2655

Committee on APPROPRIATIONS AND FINANCIAL AFFAIRS suggested and ORDERED PRINTED.

Comes from the House, under suspension of the Rules, READ TWICE and PASSED TO BE ENGROSSED, without reference to a Committee.

Which was, under suspension of the Rules, READ TWICE and PASSED TO BE ENGROSSED, without reference to a Committee, and ORDERED PRINTED, 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 Clarify Milk Pricing Laws as They Relate to Over-Order Premiums

H.P. 1952 L.D. 2645

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

Emergency Resolve

Resolve, to Revise the Kennebec County Budget to Reflect an Increase the Surplus Account

H.P. 1951 L.D. 2644

This being an Emergency Measure and having received the affirmative vote of 26 Members of the Senate, with No Senators having voted in negative, and 26 being more than two-thirds of the entire elected Membership of the Senate, was FINALLY PASSED 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:

PAPERS FROM THE HOUSE  
House Papers

Bill "An Act to Clarify the Issuance of Securities by the Maine Court Facilities Authority" (Emergency)

H.P. 1953 L.D. 2646

Committee on APPROPRIATIONS AND FINANCIAL AFFAIRS suggested and ORDERED PRINTED.



Comes from the House, under suspension of the Rules, READ TWICE and PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "B" (H-789), without reference to a Committee.

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

House Amendment "B" (H-789) READ and ADOPTED, in concurrence.

Which was, under suspension of the Rules, READ A SECOND TIME and PASSED TO BE ENGROSSED, as Amended, without reference to a Committee, and ORDERED PRINTED, in concurrence.

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

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

PAPERS FROM THE HOUSE

House Papers

Bill "An Act to Amend the Education Laws"

H.P. 1959 L.D. 2654

Committee on EDUCATION suggested and ORDERED PRINTED.

Comes from the House, under suspension of the Rules, READ TWICE and PASSED TO BE ENGROSSED, without reference to a Committee.

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

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

Senator WEBSTER: Thank you Mr. President. I would like to pose a question through the Chair. I would like to address the question to a member of the Education Committee as to whether the Committee has reviewed L.D. 2654 and as to whether it has unanimous support from the members of the Education Committee?

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

The Chair recognizes the Senator from York, Senator Estes.

Senator ESTES: Thank you Mr. President. I would respond to both questions in the affirmative.

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

Senator COLLINS: Thank you Mr. President. Mr. President, I would like to pose a question. The Statement of Fact indicates that this would make all of the governing units subject to the same law with respect to removal for absence of meetings. I wonder if the original law related only to those instances where the person serving on the governing board might be appointed rather than elected from a municipality?

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

The Chair recognizes the Senator from York, Senator Estes.

Senator ESTES: Thank you Mr. President. In response to the question from the good Senator from Aroostook, in the Statement of Fact the reference here is to the fact that the subject of removal would be the same in all three instances, whether it was a Director of a C.S.D., a Director of a S.A.D. or a member of a school board. This reference is not to the original law, but what this does is create the uniformity within this particular Bill here.

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

Senator COLLINS: Thank you Mr. President. Mr. President, men and women of the Senate. I think there is a little distinction here that we ought to be aware of. I think that the original law did in

fact relate to those instances where there were a governing unit that had somebody appointed to it from a municipal unit where they were in fact elected, but they were appointed to the other one. I think that in those instances that is where the original removal theme came from and my concern in this instance is that we are really talking about elected officials and removing them without any other vehicle other than that the fact that they have missed meetings. I suggest that is a rather substantial departure from the general rule relating to removal of elected officials where they are subject in instances for recall or different instances where they may be removed but not on the basis of a statute that arbitrarily removes them on the basis of an absence of meetings.

For example, if you start removing municipal officials whether they are elected to the city council or the town council or your elected school board for absence of meetings, it seems to me that is a very substantial movement away from accepted law. I have a little uneasy feeling about it. I know that there are situations that exist where you would like your member of the school board to resign because he doesn't come to the meetings, but it seems to me that the fact that he has been elected ought not to allow the simple removal because he is in fact an elected official. I think that is a rather serious concern that some of us have. I understand the reasoning that many in the education field where they are upset because John Jones doesn't come to the meetings and they would like to get rid of him, but I am not sure this is the appropriate way to do it. It seems to me that if the governing officials would say to John Jones who doesn't attend the meetings, John why don't you resign. We are talking about removal of an elected official for being absent from meetings. I think that is a very severe sort of a statute to be getting involved with.

Under suspension of the Rules, READ A SECOND TIME.

Senator WEBSTER of Franklin requested a Division.

THE PRESIDENT: The pending question before the Senate is PASSAGE TO BE ENGROSSED.

A Division has been requested.

Will all those Senators in favor of the motion of PASSAGE TO BE ENGROSSED, please rise in their places and remain standing until counted.

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

11 Senators having in the affirmative and 15 Senators having voted in the negative, the Bill FAILED of PASSAGE TO BE ENGROSSED, in NON-CONCURRENCE.

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:

COMMITTEE REPORTS

House

Divided Report

The Majority of the Committee on TAXATION on Bill "An Act to Clarify the Sales Tax Exemption on Scheduled Airlines"

H.P. 1946 L.D. 2641

Reported that the same Ought to Pass.

Signed:

Senator:

TWITCHELL of Oxford

Representatives:

CASHMAN of Old Town  
 DUFFY of Bangor  
 WHITCOMB of Waldo  
 ZIRNKILTON of Mount Desert  
 JACKSON of Harrison  
 SEAVEY of Kennebunkport  
 SWAZEY of Bucksport

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

Signed:

Representatives:

NADEAU of Saco  
 DORE of Auburn  
 MAYO of Thomaston

Comes from the House the Majority OUGHT TO PASS Report READ and ACCEPTED and the Bill PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "B" (H-793).

Which Reports were READ.

Senator TWITCHELL of Oxford moved to ACCEPT the Majority OUGHT TO PASS Report, in concurrence.

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. This is the piece of legislation that we discussed at one-thirty in the morning last week that deals with the sales tax exemption that effects one particular airline and that is Bar Harbor Airlines. I wouldn't like to repeat the entire debate that we had a couple of weeks ago, that is bringing smiles to everyone's face, but for those of you who might not have been fully with us at that hour of the morning, let me just highlight some of the issues that we discussed.

I want to say first and foremost, men and women of the Senate, that what this issue is not. This issue is not whether we like or dislike a particular airline, a particular corporation. The issue also is not transportation services to the state of Maine. After the Senator from York, Senator Kerry, gave out his awards the week before last one of our colleagues in the Senate came up to me and told me that I was about to receive a very special award and that was the flying high award from Bar Harbor Airlines and it was going to be a one-way ticket, it didn't say quite where it was, but it was made clear that it was going to be made one-way. That Airline is not an issue and the issue of whether we support air transit is not at issue. What is at issue is tax policy and whether or not we believe that this piece of legislation, this approach to this problem, makes good sound tax policy for the state of Maine. Do we really feel good about the way that we are addressing this problem? I for one do not feel good about this, I think it is bad tax policy. I think that if a company is in trouble, if there is an economic concern, if there is some way we can address the problem out there, let's do it and do it up front and do it with prospective legislation. But let us not do it by rewriting tax law dating back to January 1, 1984, particularly when this is an issue that is before the court.

There seems to be three principle arguments and I know them quite well, I spent all afternoon with the Taxation Committee who had a public hearing on this yesterday and I am grateful for that. It gave us a chance to at least air this thing as openly as we possibly could. Three major issues, number one, the legislative intent of 1984. What did the Legislature intend back then? Did we in fact intend to make what we did retroactive in such a way as to include the aircraft that were leased before this Bill took effect? Some argued from their recollection that in fact it was our intention. I argued from my recollection that it was not our intention, but I suggest, ladies and gentlemen of the Senate, that we

put recollection of four years ago aside and we look again at the record and see what the record shows. I would contend that if you look at the record, any of the record, whether it be in the Committee or in the Senate or debate in the other Body, or if you talk to staff people who didn't take a side either way and ask them for their objective assessment and you ask them if this in fact was what we intended to do to make this retroactive or to include these planes that were leased before the Bill was passed, they will tell you indeed not. So, I think at the very least there is a strong argument to be made that indeed it was not our intent back in 1984.

The second issue is whether or not this so-called demonstration agreement that was signed back then constitutes a taxable activity under Maine law. As we found out yesterday in the hearing that demonstration agreement was for aircraft that was used by this Airline, people did fly on those planes, there was considerable amount of money involved in this arrangement and in the judgment of the Bureau of Taxation it did in fact constitute a taxable activity under the law. My suggestion to us is that we should at least admit that there is the distinct possibility that it was in fact a taxable activity, but that we not try to be judge and jury on a issue of Maine tax law that is so particular, that is trying to define this particular area of tax law whether or not this demonstration agreement is taxable, but we allow the body that is proper to decide this issue, namely the courts, which is exactly where the Bill is right now.

Finally, the issue that we heard about yesterday was the Airline itself, its importance to the economy. We had employees come, pilots and mechanics, we had officials from the Airline to talk about how important and vital that Airline is. I have no argument with any of those people who testified. I have no argument against the Airline itself, what I am saying, ladies and gentlemen of the Senate, is that there is a right way to do things and there is a wrong way to do things and this is the wrong way to do what we are attempting to do. If we want to assist someone or a company or an area, let's assist that company or area or individual on the merits assessing the problem and doing it on the basis of a piece of legislation that provides them with the help that they need. But let us not rewrite Maine tax history back to January 1, 1984, when a case is pending in court. It is just the wrong thing to do. The plot of course thickens with all of this and the plot thickens if you read the amendment that would be attached to this Bill if in fact it passes. I won't debate that at this point because it is not before us, but the further this Bill flies, the murkier and more questionable it becomes in my mind. So, I would hope, ladies and gentlemen of the Senate, that we will not accept the Majority Ought to Pass Report and that we will in fact do the greatest bit of justice that we can to this approach to Maine tax law and defeat this piece of legislation. Thank you.

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

Senator BALDACCII: Thank you Mr. President. Mr. President, men and women of the Senate. To be very brief with this particular matter is something that I am going to attempt to do. The arguments that have been made in opposition to this Bill have been one, that it is bad tax policy. Two, that we shouldn't get involved with a case that is pending before court and the demonstration agreements if in fact become a lease then they should be treated as a taxable entity. The question of a tax policy is something that is an argument before this Legislature that doesn't make sense before we changed it. It was a

sales tax law that said that if you bought the airplane you did not pay the sales tax on it, but if you leased the airplane you paid the sales tax as if you had bought it. Texas Air has merged with Bar Harbor Air and they wanted to make their location in Maine. but Maine had a law that was different than New Hampshire, different than Massachusetts, different than New York, different than anywhere else they could have gone. This is the issue, we changed that law before any money exchanged hands to make Maine as competitive a level playing field that Bar Harbor and Texas Air would be able to compete with other airlines. It was a competitive level playing field that we were making. We made that change in 1984, Bar Harbor and Texas Air kept their commitment to the state, they went up to almost five hundred and fifty employees in just Bangor, sixteen hundred and fifty state wide. Those jobs are on average of between eight and fifteen dollars a hour. We heard of a mechanic who loved to stay in Maine, wanted to stay in Maine, it was a tremendous opportunity in the Taxation Committee yesterday. We heard from the Pilots Association representative that spoke in favor of the legislation. He is happy with Bar Harbor Airlines and their commitment to the state of Maine and to the people in Maine. It means a lot not just to Bangor but to the state of Maine as far as sales tax, income tax and other taxes. Not to say what it meant to the airlines and the airports themselves that handle the fuel for different airlines.

So, it is a good tax policy, it is one that makes Maine in sync with the rest of the country and that any airlines here in the state of Maine have to be Maine based in order to receive that. We were so careful when we did it, we passed it in a sunset. That is why we continually vote on it because it has been continually sunsetted. It applies to Maine based airlines and they are not just one in particular, there are two, Bar Harbor Airlines and Valley Airlines, and it is sunsetted so that it is reviewed constantly to make sure that those companies are Maine based and they are a benefit to the community. We continually vote on it and we will be voting on it because of a protection to make sure. That is a good tax policy. What happened is that because of that demonstration agreement being convoluted into a lease and because of the Tax Department wanting to prove its case that it was right when it opposed it in the public hearing and having the issue gone to court, we have a situation here by saying hey, those were the ten planes in the demonstration agreement that they came to the Committee with, those were the ones that we were talking about and in fact it is our intent that the promise that we made to Bar Harbor that they kept that we should be keeping our commitment to them. That is all it is, it is very simple. Why did you pass the Bill in the first place if it wasn't to give them the commitment?

The third point, the telling point, is the court, that it is in court and we shouldn't disturb it. As the good Senator from Cumberland will note in yesterday's hearing it was pointed out that there was an insurance case that was in court and the Insurance Department, while the case was in court, submitted legislation that would effect the court case. I can submit to you there are many other issues involving public utilities and the like that have legislation submitted while there is a case pending. The problem here is that it was the Legislature that developed the legislation. There is a question as to its intent, what better Body to determine what the intent is than the Legislature? I would hope that we would be able to support the Majority of the Committee on

Taxation. Thank you Mr. President.

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. We aren't talking about a good solid tax policy here tonight. We are talking about a commitment that we made four years ago. I for one am going to be here voting on that commitment which I made four years ago. I hope that you will support my motion.

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 just like to respond for the Record before we have this Division. First of all, every time we debate this Bill someone says look, let's not re-debate the 1984 act. That happened, that is not an issue and I agree with that. But, it seems that every time we do it, we get that old 1984 debate again of how good this airline is, what a service it provides, the number of people who are employed, ladies and gentlemen of the Senate, that is not the issue here tonight. There is no one who disagrees with those points. As far as this being in the court of law and as far as this issue being adjudicated right now, I believe that is the proper way for these questions of law to be decided, in a court of law. Yes, indeed, we are a Legislative Body, but ladies and gentlemen of the Senate, we are not the Legislative Body who sat in this Chamber in 1984. The members of the Taxation Committee in 1988 are not the members in 1984. So, it makes a difference. If, indeed, we should be deciding policy and law, yes we should effecting this Legislature and effecting policy that goes before us. But I want to say this, if you accept that we, as a Legislature in 1988, should make the decision of what we intended in 1984 I simply want to make this suggestion to you. Did we intend to include these aircraft in this lease agreement as a non-taxable item? One, there is no evidence that we did, it doesn't show up anywhere. This demonstration agreement that we have heard so much about in this debate never appears in any debate in any Chamber on this issue. Number two, a demonstration agreement does not show up in any of the records of that Taxation Committee in any shape, form or manner. Number three, the staff people who I have talked to, who were intimately involved in that issue, who did not take a position either way, have no recollection whatsoever of this demonstration agreement being discussed and having it be the intention of any Legislative Body whether it be the Committee or either Body in 1984. If you look at the fiscal note you might get a clue. The original Bill had a fiscal note that included fiscal year 1984 that ended July 1. The Bill was changed and the new Bill was submitted, the emergency was dropped off so it wouldn't become effective until after July 1, 1984 and any reference to fiscal impact before July 1, 1984 was dropped. The only mention about aircraft is that this Airline is considering somewhere down the line purchasing these aircraft. So, we intended to provide an exemption on aircraft that was leased in the future, not aircraft that had been engaged in a taxable lease agreement in the past. The fact of the matter is that these aircraft were engaged flying people at a cost in a deal that was worth money, it was worth substantial amounts of money. This is where you have to pay attention to the language. Perhaps no money "changed hands", but that is not unusual in a business deal. When agreements are made, when contracts are signed, cash may not be handed from one to the other, but an agreement worth

money, worth real money, is signed and if this agreement was changed it would have meant a substantial amount of money. In fact, it was this agreement in fact created aircraft flying around the state of Maine, flying passengers, generating income. The Bureau of Taxation in its judgment and I think acting sincerely has determined that was taxable and they have done the proper thing in enforcing the law as they see it. The point I am trying to make here, ladies and gentlemen of the Senate, that there was never a reference in any shape, form or manner to a demonstration agreement and there was never a recognition by this Body or the other Body that there was any aircraft being used under this kind of an agreement before this Bill was passed. So activity that did occur before this Bill was passed was determined to be taxable, fairly, straightforwardly. We didn't break our promise, we promised a tax exemption starting July 25, 1984 and that is exactly what we have done. Anything that went on before that law was in effect there was no promise there, there was no deal. Thank you very much.

THE PRESIDENT: The pending question before the Senate is the motion of Senator TWITCHELL of Oxford, to ACCEPT the Majority OUGHT TO PASS Report, in concurrence.

The Chair will order a Division.

Will all those Senators in favor of the motion of Senator TWITCHELL of Oxford, to ACCEPT the Majority OUGHT TO PASS Report, please rise in their places and remain standing until counted.

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

19 Senators having voted in the affirmative and 9 Senators having voted in the negative, the motion by Senator TWITCHELL of Oxford, to ACCEPT the Majority OUGHT TO PASS Report, in concurrence, PREVAILED.

The Bill READ ONCE.

House Amendment "B" (H-793) READ.

The Chair moved the INDEFINITE POSTPONEMENT of House Amendment "B" (H-793).

Senator PERKINS of Hancock requested a Division.

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. House Amendment "B" (H-793), which I came aware of about twenty minutes ago, requires money taken from the General Fund Rainy Day Fund to the tune of one million, three hundred, fifty-seven thousand, six hundred and sixty-three dollars. If that is the case, Mr. President, does that require a two-thirds vote?

THE PRESIDENT: The Chair would answer in the negative.

The Chair recognizes the same Senator.

Senator PEARSON: If that were attached to the Bill and it were in final enactment, would it need a two-thirds vote? In order to remove money from the Rainy Day Fund it requires a two-thirds vote.

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Senate at Ease

Senate called to order by the President.

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THE PRESIDENT: In response to the inquiry of the Senator from Penobscot, Senator Pearson, as to rather or not the enactment of this Bill would require a two-thirds vote, the Chair would answer in the negative, the Bill not being an emergency measure. Line twenty-six through twenty-nine removes the two-thirds requirement of the Legislature in dealing

the with Rainy Day Fund.

The Chair recognizes the Senator from Penobscot, Senator Pearson.

Senator PEARSON: Mr. President, after I asked the question I sat down and read that section and I realized what had happened. This is called the "notwithstanding any other provision of the law" type of clause. The original intent of the Rainy Day Fund, and I was there at its birth and a lot of us were, was that if money were to be taken out of the Rainy Day Fund it would require a two-thirds vote. This of course circumvents that two-thirds requirement by including this language. I must say that with some disappointment since I supported Bar Harbor Airlines in every single solitary Bill that it ever has had and I find myself reluctantly opposed to this amendment and will vote against it.

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. This amendment dealing with the monies from the Rainy Day Account and I do not argue with the good Senator from Penobscot, Senator Pearson, in his accuracy of description of that account, but the fact of the matter and reality here today in order for something to be accomplished and have the support of all branches of government. I think in that regard in order to help this particular situation and one that would ultimately be successful I think this is the only approach that is left before us. It is one that I think if we all had to do it we all would do something maybe differently, but in order to be successful it has to be put in this particular position. I think that the point and the concern of the good Senator will note that it is a one time assessment from the Rainy Day Account, that it is not something that would be continually done. It is only a one time situation and I would hope in the interest of this session that we would be able to support this amendment. Thank you Mr. President.

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 have sat here listening to the debate first on the original Bill and now the amendment which is before us and I have had a great deal of concern regarding this legislation since it was first introduced in another form about a week and a half ago and I was trying to put my finger on what the concern I really had was. It isn't so much on the actual merits of the tax break being given to this particular company, in fact, I did have occasion in the interlude between this special veto day and the last prior day of the Legislative Session to review the legislative record and found that in fact I had supported the tax break to Bar Harbor Airlines when it was opposed and when I was a member of the other Body some four years ago. So, it wasn't so much the actual substance of the issue. What it really is clearly is the way we are going about doing this and I find this to be repugnant to my sense of civility and decency. In this Bill we have language which would effectively provide this tax break retroactive to a date certain, I believe it is the first day of January, 1984. That is intriguing in itself because the measure failed the two-thirds vote of the membership of this Legislature some four years ago and would ordinarily have not secured enactment as an emergency measure. We see now by simply appending to legislation language according retroactivity one can easily circumvent the two-thirds requirement. So, we wonder is that sound legislative policy to pursue. The plot

does thicken as the Senator from Cumberland, Senator Andrews, mentioned. We now have an amendment before us which would effectively circumvent the two-thirds requirement on tapping into the Rainy Day Fund to fund legislative measures. Once again what we are doing is we are always findings these intricacies of our law, we are not following sound legislative policy and I think that is what really fundamentally disturbs me about this whole process. The question has to be asked to all of us would we really vote against a legislative measure because we are offended by the legislative tactics which are deployed. I suppose that is a very personal judgment for all of us. But, for myself given the fact that hopefully this is the last day this Legislature will adjourn in regular session this year, I find myself unpersuaded that I should grant my support to this legislation in the form in currently takes. For that reason I will be voting in support of the motion 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 agree with the speakers that this is getting confusing particularly when you take money out of the Rainy Day Fund. But I would like to direct a question to anybody who could answer. Do we not put the money back into the full amount of the Rainy Day Fund in July? Isn't it reimbursed up to that amount of money that we usually and normally carry in it?

THE PRESIDENT: The Senator from Cumberland, Senator Dillenback, 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. In response to the question from the Senator from Cumberland, Senator Dillenback, the answer is yes. On July first it is replenished to its full amount.

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. Very briefly, this is a bad Bill in my view. It is bad tax policy and we are now trying to patch up a problem that it creates for us with now a bad fiscal policy. I know the Rainy Day Fund, the intention of the Rainy Day Fund in terms of a two-thirds vote, well yes we intended to have it be two-thirds so that we only used Rainy Day Funds in emergency situations. That issue aside, it seems to me that when I think if the Rainy Day Fund and when I supported the creation of the Rainy Day Fund and when I vote to put money into the Rainy Day Fund this is not what I intended this Rainy Day Fund to be. So, not only are we walking down a dark murky path of tax policy, but now an even darker and murkier path of fiscal policy. Pretty soon we are going to find ourselves lost if we keep trying to patch up bad bills with bad fiscal policy. I would support the motion on the floor to Indefinitely Postpone this amendment.

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. I was here four years ago when we passed the tax break for Bar Harbor and I also remember what the intent was. There is no question in my mind that it was that they receive those tax breaks, but I also remember the intent of the Rainy Day Fund, which was at that time that we need two-thirds to spend the money. So let's stick to the intent of the original legislation four

years ago, I also think we should stick to the intent of what the Rainy Day Fund was supposed to be used for and the manner it was to be used for. I will also be voting to Indefinitely Postpone this amendment and I hope you would join me. Thank you.

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

Senator WEBSTER: Thank you Mr. President. I would like to pose a question through the Chair as to the position of this legislation assuming that we Indefinitely Postpone this amendment. I would like to ask as to whether the Bill has any value without a fiscal note on it? If someone could explain to me because I too have some concern about taking money from the Rainy Day Fund for this purpose which is not its intention, at least not the intention I have for the Rainy Day Fund. I would like to know what happens if we kill this amendment? What use is the Bill without a fiscal note on it? Where does the money come from? Can somebody give me some idea as to what this vote will be doing to this legislation? Thank you.

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

The Chair recognizes the Senator from Penobscot, Senator Baldacci.

Senator BALDACCII: Thank you Mr. President. Mr. President, men and women of the Senate. If this amendment doesn't prevail it is my understanding that the entire effort will be fore naught.

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 was not here yesterday when the hearing was held on this and frankly I arrived sometime around nine-thirty this morning and one of the first questions I asked the Office of Fiscal Affairs downstairs was does this Bill need a fiscal note? The answer I got at that time was yes it does, but no it doesn't. It was very cloudy. So, just before this debate began when I first found out that there was a Rainy Day amendment put on it in the other Body I asked the fiscal people again, I need to know does this Bill need a fiscal note? The answer was yes. I said how do you know it needs a fiscal note? The answer was well what we understand is that the Department of Taxation has counted this money as an asset. I said do you know that for sure that they did do that? The response came well no, but you have to take their word for it. So, the answer to the question is I don't know. The Senator from Franklin has posed a question of what would happen if this were passed with Rainy Day money. There is another avenue, but I think it is more dangerous than this one. The other avenue is of course to push the Bill through and put it on the Governor's desk and he would have to up revenue estimates in order to fit the Bill. If that were done in this case it probably would be done in cases in years to come at the end of the session. You would say, well we don't have enough money for the Bill but we will shove it down to the Governor's desk and let him deal with it. So, I don't think that is a good alternative either. Those are the alternatives I see, you use the Rainy Day Fund or you pass a Bill and send it on its way or you don't pass it.

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

The President then took a seat on the floor of the Senate.

Senate called to order by the President Pro Tem.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Cumberland, Senator Brannigan.

Senator BRANNIGAN: Thank you Mr. President. Mr. President, men and women of the Senate. I would like to pose a question through the Chair. For those of us who don't understand fiscal matters as well as others here, what if the courts were to decide that there was no debt here because they decided as many of us have decided that the intention of the Taxation Committee four years ago was that those planes were not to be taxed. Would the Judiciary have to give up the money from their budget to cover this?

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

Senator PEARSON: Thank you Mr. President. Mr. President, men and women of the Senate. The response to the question from the Senator from Cumberland is that this is not a new thing, we have had court cases before and what happens is in the next budget that comes before the Senate, which will be the Supplemental Budget in January, if the court were to decide that way, we would have to appropriate the money to pay the bill.

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

THE PRESIDENT PRO TEM: The pending question before the Senate is the motion to INDEFINITELY POSTPONE House Amendment "B" (H-793).

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

A vote of No will be opposed.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Penobscot, Senator Pray.

Senator PRAY: Thank you Mr. President. Mr. President, men and women of the Senate. I, similar to the Senator from Penobscot, Senator Pearson, really have some difficulties with the amendment that is presently before us. I also was one of those who have advocated and supported the tax proposal that is before us and was here when the original legislation was passed. I have as late as last week stood here in opposition to the Senator from Cumberland, Senator Andrews, in reference to his discussion and debate on this issue. The present amendment that is before us I have a great deal of difficulties with. I have difficulties because I was a cosponsor of the Rainy Day Fund and when I saw the amendment I had heard a rumor earlier today that this might possibly arise before the end of the day and I express my concern and opposition to using the Rainy Day Fund.

Now I find myself with a little bit more concern as to the process of this entire Legislature. What we are now voting on and the adoption of this amendment is not whether or not we are going to assist and reinterpret the Bar Harbor tax issue that we had discussed in the past, but we are talking about the utilization and the intent of the Rainy Day Fund. It is totally a separate issue from the Legislative Document itself. We are now talking about the amendment and about amending Title 5, Subsection 1513, the Maine Rainy Day Fund. We established that Fund because we saw coming from the administration in Washington and from the House and Senate in Congress an attempt to balance the budget, to make the deficit not look so bad. What they were doing were cutting funds that were coming back to the states in revenue sharing monies, education, social service programs, we saw that coming so we decided

that we were going to set aside an amount of money to be prepared for that. We have used that money in the past for a number of issues, all of which I think were emergency situations. I believe the first time we use it was the flood disaster that happened a little bit over a year ago. We used four million of it, I believe, to help fund the flood disaster that hit Maine people. We used that because we looked at the track record of FEMA and we had seen in previous instances around the country that FEMA failed to live up to its expectations, so we used the Rainy Day Fund to help that emergency situation, clearly unexpected, unprepared for and a call of state dollars to help many individuals who lost their homes, lost their businesses and many of their goods, we found that FEMA didn't cover all of those costs and all of those losses.

The second day we used the Rainy Day Fund we used it last year when the Chief Executive submitted a proposal in removing the asbestos situation from the Cultural Building, the State Museum, we used that because that was an emergency. We all know the hazards of asbestos and we all know the concerns about it and we used the Rainy Day Fund for that. We set up the Fund last year, we changed the dollar amount so that we could set monies aside and use it for the Retirement System because we were looking at a shortfall, we were looking at an unbalanced commitment from the state of meeting our obligations in the Retirement System and we changed that and we increased the cap of the Rainy Day Fund to be able to cover the expectation, I think we went from twenty-five to forty-five million. We have in this session already dealt with that money, the cap has been lowered back to twenty-five million, we used that money for the Retirement System and now we are at the present level. Again we are being asked to use the money to fund another situation, but it is nothing that meets the requirement, the criteria which we, the Legislature, as to what it was intended for. It was intended to meet emergencies and unexpected costs that were pushed upon the state that nobody had foreseen. Clearly as we debate this issue and we talk about the legislative intent, we talk about the past record, we see that this is something that was not totally unexpected and I don't think it is the proper use of the money.

What we are now voting on in this Roll Call vote is not the Bar Harbor situation. We are talking about the utilization of the money, a prostitution of the process, of circumventing the two-thirds requirement to make sure the money was not used for every little pet project that came down the pike, and I am not referring to this particular legislative document as a pet project, but we know there are many of them out there. We just got done a little over a week ago on having on the Appropriations Table roughly sixty-five million dollars worth of programs. We funded a little over three million of those. So, we killed the other sixty-two million dollars. They were all good programs, they made it through the Legislative process and pending enactment in this Body, but we didn't have the money. We established priorities and we killed sixty-two million dollars worth of programs.

If we had this proposal floating around at that time, then all you have to do is put an amendment on there by a majority vote and take the money out of the Rainy Day Fund, then you can kiss the two-thirds requirement good-bye. You talk about fiscal responsibility until you are blue in the face, you can talk about the accountability and responsibility of setting monies like this aside for a real true emergency and you might just as well say that this

here is a little fund that just sits there for the innovative individual who remembers that there is a way to circumvent the process. I think that as we are recorded on this vote that we are expressing more than our support for the legislative proposal itself, but the entire legislative process that is available to it. I say that recognizing that clearly because this amendment before us and when I was asked earlier as I was presiding, by the Senator from Penobscot, Senator Pearson, as to whether this requires a two-thirds vote as to what my opinion was. I stand before you here today on the floor not as a Presiding Officer, but as the Senator from Senate District #5, who has a great deal of interest because my county residence is Penobscot and Bar Harbor Airlines is an important intricate part of the transportation and infrastructural system that we have and I think that it is important that this legislation pass, but I also think that it is far more important that it pass without this amendment. I don't have an answer as to how we get around the situation that has been expressed by others as to the concern of the necessity of this amendment, I don't have an answer to that problem, but I don't think that we should go down the wrong road, I don't think we should take the wrong approach in trying to respond to that particular problem.

There are concerns by some as to whether we adjourn Sine Die tonight or whether we adjourn Sine Die tomorrow, I think that this is an important enough issue that we go back to the drawing boards and try to resolve that difficulty and that problem, but it is not by adopting this amendment. I would hope that the colleagues in this Chamber who are here at this hour of the evening would see that wisdom and vote to Indefinitely Postpone the amendment that is before us. Thank you.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

Senator KERRY of York who would have voted YEA requested and received Leave of the Senate to pair his vote with Senator KANY of Kennebec who would have voted NAY.

Senator DUTREMBLE of York who would have voted YEA requested and received Leave of the Senate to pair his vote with Senator CLARK of Cumberland who would have voted NAY.

Senator WEBSTER of Franklin who would have voted YEA requested and received Leave of the Senate to pair his vote with Senator CAHILL of Sagadahoc who would have voted NAY. Subsequently, the same Senator requested and received Leave of the Senate to withdraw his motion to Pair with the Senator from Sagadahoc, Senator Cahill.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators ANDREWS, BERUBE, BRANNIGAN, BUSTIN, ERWIN, ESTES, GAUVREAU, MATTHEWS, PEARSON, PRAY, TUTTLE, THE PRESIDENT PRO TEM - RONALD E. USHER  
 NAYS: Senators BALDACCI, BLACK, COLLINS, DILLENBACK, EMERSON, GILL, GOULD, LUDWIG, MAYBURY, PERKINS, RANDALL, THERIAULT, TWITCHELL, WEBSTER  
 ABSENT: Senators BRAWN, CAHILL, DOW, SEWALL, WHITMORE  
 PAIRED: Senators CLARK, DUTREMBLE, KANY, KERRY

12 Senators having voted in the affirmative and 14 Senators having voted in the negative, with 4 Senators having paired their votes and 5 Senators being absent, the motion of the Senator from Penobscot, Senator PRAY to INDEFINITELY POSTPONE House Amendment "B" (H-793), FAILED.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Penobscot, Senator Pray.

Senator PRAY: Thank you Mr. President. I would request that some member of this Chamber move that this item be Tabled until either Later Today or 1 Legislative Day so that an amendment can be prepared for House Amendment "B" (H-793) that may make it more palatable to some of us.

Senator BUSTIN of Kennebec moved to TABLE the Bill for 1 Legislative Day.

Senator WEBSTER of Franklin requested a Division.

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

Senate at Ease

Senate called to order by the President Pro Tem.

Subsequently, Senator BALDACCI of Penobscot requested and received Leave of the Senate to withdraw his motion for a Roll Call.

On motion by Senator WEBSTER of Franklin, Tabled until Later in Today's Session, pending ADOPTION OF HOUSE AMENDMENT "B" (H-793).

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 Repeal from the Budget Bill the Provisions Concerning Municipal Shellfish Licenses  
 S.P. 1010 L.D. 2650

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

Emergency

An Act to Amend the Shoreland Property Transfer Law

H.P. 1958 L.D. 2652

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

RECALLED FROM LEGISLATIVE FILES

Resolve, to Establish the Commission to Study the Management of Water Resources in Maine

H.P. 1822 L.D. 2497

RECALLED from the Legislative Files, pursuant to Joint Order H.P. 1955, in concurrence.

Comes from the House Bill and Accompanying Papers INDEFINITELY POSTPONED.

On motion by Senator KERRY of York, the Bill and Accompanying Papers INDEFINITELY POSTPONED, in concurrence.

Senate at Ease

Senate called to order by the President Pro Tem.

On motion by President PRAY of Penobscot, RECESSED until the sound of the bell.

After Recess

Senate called to order by the President Pro Tem.

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

ENACTORS

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

An Act Concerning Relocation of the Maine Emergency Management Agency Radiological Calibration Facility

H.P. 1956 L.D. 2649  
(H "A" H-791)

An Act Concerning Intermediate Care Facilities for the Mentally Retarded

H.P. 1960 L.D. 2655

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

Emergency

An Act to Clarify the Issuance of Securities by the Maine Court Facilities Authority

H.P. 1953 L.D. 2646  
(H "B" H-789)

This being an Emergency Measure and having received the affirmative vote of 24 Members of the Senate, with No Senators having voted in negative, and 24 being two-thirds of the entire elected Membership of the Senate, was PASSED TO BE ENACTED and having been signed by the President Pro Tem, 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:

PAPERS FROM THE HOUSE

House Papers

Bill "An Act to Clarify the Application of the Resource Protection Law and the Site Location Law"

H.P. 1957 L.D. 2651

Committee on ENERGY AND NATURAL RESOURCES suggested and ORDERED PRINTED.

Comes from the House, under suspension of the Rules, READ TWICE and PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-794), without reference to a Committee.

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

House Amendment "A" (H-794) READ and ADOPTED, in concurrence.

Which was, under suspension of the Rules, READ A SECOND TIME and PASSED TO BE ENGROSSED, as Amended, without reference to a Committee, and ORDERED PRINTED, in concurrence.

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

COMMITTEE REPORTS

House

Ought to Pass As Amended

The Committee on APPROPRIATIONS AND FINANCIAL AFFAIRS on Bill "An Act to Reimburse the Department of Inland Fisheries and Wildlife for Search and Rescue Operations"

H.P. 1949 L.D. 2642

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-795).

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

AMENDED BY COMMITTEE AMENDMENT "A" (H-795).

Which Report was READ and ACCEPTED, in concurrence.

The Bill READ ONCE.

Committee Amendment "A" (H-795) READ and ADOPTED, in concurrence.

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

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

PAPERS FROM THE HOUSE

House Papers

Bill "An Act Correcting Additional Errors and Inconsistencies in the Laws of Maine" (Emergency)

H.P. 1962 L.D. 2657

Committee on JUDICIARY suggested and ORDERED PRINTED.

Comes from the House, under suspension of the Rules, READ TWICE and PASSED TO BE ENGROSSED, without reference to a Committee.

Which was, under suspension of the Rules, READ TWICE and PASSED TO BE ENGROSSED, without reference to a Committee, and ORDERED PRINTED, 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:

An Act to Amend the Law Relating to the Land for Maine's Future Board

S.P. 1011 L.D. 2653

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

ORDERS OF THE DAY

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

Bill "An Act to Clarify the Sales Tax Exemption on Scheduled Airlines"

H.P. 1946 L.D. 2641

Tabled - May 4, 1988, by Senator WEBSTER of Franklin.

Pending - ADOPTION OF HOUSE AMENDMENT "B" (H-793), in concurrence

(In House, May 4, 1988, PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "B" (H-793).)

(In Senate, May 4, 1988, House Amendment "B" (H-793) READ. Subsequently, motion to INDEFINITELY POSTPONE House Amendment "B" (H-793) FAILED.)

On motion by Senator DUTREMBLE of York, Tabled 1 Legislative Day, pending ADOPTION OF HOUSE AMENDMENT "B" (H-793), in concurrence.

On motion by Senator GILL of Cumberland, ADJOURNED until Thursday, May 5, 1988, at 8:30 in the morning.