

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred And Fourteenth Legislature

OF THE

State Of Maine

VOLUME I

FIRST REGULAR SESSION

December 7, 1988 to May 10, 1989

ONE HUNDRED AND FOURTEENTH MAINE LEGISLATURE
FIRST REGULAR SESSION
12th Legislative Day
Tuesday, February 7, 1989

The House met according to adjournment and was called to order by the Speaker.

Prayer by Reverend E. Lamar Robinson, Christ Church, Kennebunk and Church on the Cape, Kennebunkport.

National Anthem by Livermore Falls High School Band.

The Journal of Thursday, February 2, 1989, was read and approved.

Quorum call was held.

PAPERS FROM THE SENATE

The following Communication:

Maine State Senate
Augusta, Maine 04333

February 2, 1989

The Honorable John L. Martin
Speaker of the House
114th Legislature
Augusta, Maine 04333

Dear Speaker Martin:

Please be advised that the Joint Standing Committee on Fisheries and Wildlife was unable to complete its consideration of the Governor's nomination of Frank A. Gross of Cherryfield for appointment to the Inland Fisheries and Wildlife Advisory Council within the 20 day statutory period required by 3 MRSA, section 151.

The Governor nominated Mr. Gross on January 10, 1989.

Sincerely,
S/Joy J. O'Brien
Secretary of the Senate

Was read and ordered placed on file.

At this point, a message came from the Senate, borne by Senator CLARK of Cumberland, proposing a Joint Convention to be held in the Hall of the House at 11:00 a.m. for the purpose of extending to Chief Justice Vincent L. McKusick and the Supreme Judicial Court an invitation to attend and to make such communication as they may be pleased to make.

Thereupon, the House voted to concur in the proposal for a Joint Convention to be held at 11:00 a.m. and the Speaker appointed Representative GWADOSKY of Fairfield to convey this message to the Senate.

Subsequently, Representative GWADOSKY of Fairfield reported that he had delivered the message with which he was charged.

The following Communication:

Maine State Senate
Augusta, Maine 04333

February 2, 1989

The Honorable John L. Martin
Speaker of the House
114th Legislature
Augusta, Maine 04333

Dear Speaker Martin:

In accordance with Joint Rule 38, please be advised that the Senate today confirmed, upon the recommendation of the Joint Standing Committee on Judiciary, the Governor's nomination of Ellen A. Gorman of Cumberland for appointment as Judge-at-Large of the Maine District Court.

Ellen A. Gorman is replacing Peter Goranites.

Sincerely,
S/Joy J. O'Brien
Secretary of the Senate

Was read and ordered placed on file.

The following Communication:

Maine State Senate
Augusta, Maine 04333

February 2, 1989

The Honorable John L. Martin
Speaker of the House
114th Legislature
Augusta, Maine 04333

Dear Speaker Martin:

In accordance with Joint Rule 38, please be advised that the Senate today confirmed, upon the recommendation of the Joint Standing Committee on Judiciary, the Governor's nomination of Bernard C. Staples of Bar Harbor for appointment as Judge of the Maine District Court, District V.

Bernard C. Staples is replacing Jane Bradley.

Sincerely,
S/Joy J. O'Brien
Secretary of the Senate

Was read and ordered placed on file.

The following Communication:

Maine State Senate
Augusta, Maine 04333

February 2, 1989

The Honorable John L. Martin
Speaker of the House
114th Legislature
Augusta, Maine 04333

Dear Speaker Martin:

In accordance with Joint Rule 38, please be advised that the Senate today confirmed, upon the recommendation of the Joint Standing Committee on Marine Resources, the Governor's nomination of David B. Turner of Eastport for reappointment to the Marine Resources Advisory Council.

Sincerely,
S/Joy J. O'Brien
Secretary of the Senate

Was read and ordered placed on file.

Bill "An Act to Authorize a General Fund Bond Issue in the Amount of \$1,000,000 for Private, Individual Sewerage Facilities Construction" (S.P. 73) (L.D. 63)

Came from the Senate, referred to the Committee on Appropriations and Financial Affairs and Ordered Printed.

Was referred to the Committee on Appropriations and Financial Affairs in concurrence.

Resolve, Authorizing the Director of Parks and Recreation to Convey by Deed the Interests of the State in Certain Unlocated Rights-of-way (S.P. 77) (L.D. 67)

Came from the Senate, referred to the Committee on Energy and Natural Resources and Ordered Printed.

Was referred to the Committee on Energy and Natural Resources in concurrence.

Bill "An Act to Adopt New Life Safety Requirements for Adult Boarding Care Facilities" (S.P. 76) (L.D. 66)

Bill "An Act to Save Medicaid Funds by Expanding the Ability of the Department of Human Services to Recover Funds from Prior Owners of Boarding and Nursing Homes" (S.P. 87) (L.D. 89)

Came from the Senate, referred to the Committee on Human Resources and Ordered Printed.

Were referred to the Committee on Human Resources in concurrence.

Bill "An Act to Delay Implementation of the 1989 Increase in Minimum Lobster Size" (Emergency) (S.P. 85) (L.D. 85)

Came from the Senate, referred to the Committee on Marine Resources and Ordered Printed.

Was referred to the Committee on Marine Resources in concurrence.

Later Today Assigned

Resolve, Authorizing the Director of Parks and Recreation to Convey by Deed the Interest of the State in Certain Parcels of Real Property (S.P. 78) (L.D. 68)

Came from the Senate, referred to the Committee on State and Local Government and Ordered Printed.

On motion of Representative Mayo of Thomaston, tabled pending reference in concurrence and later today assigned.

Bill "An Act to Facilitate the Collection of Educational and Professional Loans" (S.P. 79) (L.D. 69)

Came from the Senate, referred to the Committee on Taxation and Ordered Printed.

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

Was referred to the Committee on Taxation in concurrence.

Bill "An Act to Make Minor Changes in the Motor Vehicle Laws" (S.P. 75) (L.D. 65)

Came from the Senate, referred to the Committee on Transportation and Ordered Printed.

Was referred to the Committee on Transportation in concurrence.

Bill "An Act to Clarify the Law Authorizing the Use of Warning Devices on Department of Corrections' Vehicles" (S.P. 74) (L.D. 64)

Came from the Senate, referred to the Committee on Transportation and Ordered Printed.

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

Was referred to the Committee on Transportation in concurrence.

Reported Pursuant to Private and Special Law Tabled and Assigned

Report of the Commission on Manufactured Housing, pursuant to Private and Special Law 1987, chapter 139 ask leave to submit its findings and to report that the accompanying Resolve, to Direct the Manufactured Housing Board to Provide Information to Purchasers of Manufactured Housing (S.P. 70) (L.D. 59) be referred to the Joint Standing Committee on Housing and Economic Development for public hearing and printed pursuant to Joint Rule 18.

Came from the Senate with the report read and accepted and the bill referred to the Committee on Housing and Economic Development and ordered printed.

Report was read and accepted.

On motion of Representative Mayo of Thomaston, tabled pending reference in concurrence and specially assigned for Thursday, February 9, 1989.

Reported Pursuant to Private and Special Law Tabled and Assigned

Report of the Commission on Manufactured Housing, pursuant to Private and Special Law 1987, chapter 139 ask leave to submit its findings and to report that the accompanying Bill "An Act to Implement the Interim Recommendations of the Manufactured Housing Commission" (S.P. 71) (L.D. 60) be referred to the Joint Standing Committee on Housing and Economic Development for public hearing and printed pursuant to Joint Rule 18.

Came from the Senate with the report read and accepted and the bill referred to the Committee on Housing and Economic Development and ordered printed.

Report was read and accepted.

On motion of Representative Mayo of Thomaston, tabled pending reference in concurrence and specially assigned for Thursday, February 9, 1989.

COMMUNICATIONS

The following Communication:
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF INSURANCE
State House Station 34
Augusta, Maine 04333

February 1, 1989

The Honorable John L. Martin
Speaker of the House
State House Station 2
Augusta, Maine 04333

Dear Speaker Martin:

Attached are copies of reports delivered to your office on this date. These reports are as follows:

Report of the Superintendent of Insurance on the Lack of Availability of Coverage in Any Line of Insurance for the Year 1988. Pursuant to Public Law Chapter 627.

Report of the Superintendent of Insurance on Workers' Compensation Service Carriers and Servicing Fees for the Year 1988. Pursuant to Public Law Chapter 559, page 18.

Report of the Superintendent of Insurance on Mandatory Rating Threshold for the Year 1988. Pursuant to Public Law Chapter 559, page 19.

Report of the Superintendent of Insurance on Merit Rating for the Year 1988. Pursuant to Public Law Chapter 559, page 14.

Report of the Superintendent of Insurance on the Feasibility of Including Self-Insurers in "Fresh Start" for the Year 1988. Pursuant to Public Law Chapter 559, page 24.

If you should have any questions, please do not hesitate to contact me.

Sincerely,
S/ Joseph A. Edwards
Superintendent

Was read and with accompanying reports ordered placed on file.

The following Communication:
DEPARTMENT OF CONSERVATION
State House Station 22
Augusta, Maine 04333

January 31, 1989

The Honorable John L. Martin
Speaker of the House
Station #2
Augusta, ME 04333
Dear Speaker Martin:

We are pleased to submit the 1988 Annual Report for the Forest for the Future Program and the Citizens' Forestry Advisory Council. The Forest for the Future Program was established to study the future supply of forest resources and to address important forestry issues. This report is submitted pursuant to Public Law 1985, Chapter 488.

We look forward to continuing to work with you on these important matters.

Sincerely,
S/C. Edwin Meadows, Jr.
Commissioner

Was read and with accompanying report ordered placed on file.

The following Communication:

Department of
ECONOMIC AND COMMUNITY DEVELOPMENT
State House Station 59
Augusta, Maine 04333

January 31, 1989

The Honorable Charles P. Pray
President of the Senate
State House Station #3
Augusta, Maine 04333
The Honorable John L. Martin
Speaker of the House
State House Station #2
Augusta, Maine 04333
Dear President Pray and Speaker Martin:

It is my pleasure to present the Department of Economic and Community Development's first biennial report, prepared to satisfy the requirements set forth in 5 MRSA section 13058. This report reflects the emphasis which has been placed on economic and community development activities in the State of Maine over the past two years. It chronicles the inception, endorsement and implementation of a new consolidated delivery approach to Maine's business and municipal communities.

The report highlights the programs within the Department of Economic and Community Development. Although the new Department of Economic and Community Development was not created until October 1987, it absorbed many existing programs, whose performance is reported over a two year period (January 1987 through December 1988). The integration of new and existing programs was a goal identified by the Legislature and addressed in the establishment of the Department. These programs' achievements reflect that commitment to quality services and program delivery.

I would welcome the opportunity to discuss the report with you at your convenience.

Sincerely,
S/Nathaniel H. Bowditch
Commissioner

Was read and with accompanying report ordered placed on file.

The following Communication: (H.P. 83)

STATE OF MAINE
PUBLIC UTILITIES COMMISSION
242 State Street
State House Station 18
Augusta, Maine 04333

February 1, 1989

The Honorable John L. Martin
Speaker of the House
State House Station #2
Augusta, Maine 04333
Dear Speaker Martin:

In accordance with Title 35-A of the Maine Statutes, I am enclosing the Annual Report of the Maine Public Utilities Commission.

Please do not hesitate to call if you have any questions regarding the materials contained in the report.

Sincerely,
S/Charles A. Jacobs
Administrative Director

Was read and with accompanying report ordered placed on file and sent up for concurrence.

The following Communication:

DEPARTMENT OF ADMINISTRATION
State House Station 74
Augusta, Maine 04333

January 30, 1989

House Speaker John Martin
114th Legislature
State House
Augusta, ME 04333

Dear Speaker Martin:

I am pleased to transmit to you a copy of the Indoor Air Quality Report prepared by the Division of Safety and Environmental Services pursuant to 5 MRSA, 1742, adopted by the 113th Legislature. The report has been delivered to the Joint Committee on State and Local Government and to Senate President Pray.

Should you have any general questions, please give me a call. Specific questions should go to Hank Warren at 289-4509.

Sincerely,
S/Charles A. Morrison
Commissioner

Was read and with accompanying report ordered placed on file.

PETITIONS, BILLS AND RESOLVES REQUIRING REFERENCE

The following Bills and Resolves were received and, upon the recommendation of the Committee on Reference of Bills, were referred to the following Committees, Ordered Printed and Sent up for Concurrence:

Aging, Retirement and Veterans

Bill "An Act to Allow Additional Veterans to be Eligible for Veterans' Preference for State Positions" (H.P. 75) (L.D. 106) (Presented by Representative PARADIS of Old Town) (Cosponsored by Representative RUHLIN of Brewer, Representative JALBERT of Lisbon and Senator THERIAULT of Aroostook)

Ordered Printed.
Sent up for Concurrence.

Appropriations and Financial Affairs

Bill "An Act to Establish a Matching Grant Program for Removal of Hazardous Chemicals from Schools" (EMERGENCY) (H.P. 71) (L.D. 102) (Presented by Representative WHITCOMB of Waldo) (Cosponsored by Representative SMALL of Bath, Representative AULT of Wayne and Senator ESTES of York)

Ordered Printed.
Sent up for Concurrence.

Tabled and Assigned

Bill "An Act to Define Taxation of Natural Resource Protection Areas" (H.P. 73) (L.D. 104) (Presented by Representative ROLDE of York)

(Committee on Appropriations and Financial Affairs had been suggested.)

On motion of Representative Carter of Winslow, tabled pending reference and specially assigned for Thursday, February 9, 1989.

Appropriations and Financial Affairs

Bill "An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund, and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 1990 and June 30, 1991" (EMERGENCY) (H.P. 69) (L.D. 93) (Presented by Representative CARTER of Winslow) (Cosponsored by Senator PEARSON of Penobscot, Senator PERKINS of Hancock and Representative HIGGINS of Scarborough)

Ordered Printed.

Sent up for Concurrence.

Business Legislation

Resolve, Establishing the Commission to Study the Regulation of Welders (H.P. 78) (L.D. 109) (Presented by Representative TRACY of Rome) (Cosponsored by Representative ALLEN of Washington, Representative MARSTON of Oakland and Senator BALDACCI of Penobscot)

(Committee on Appropriations and Financial Affairs had been suggested.)

Ordered Printed.

Sent up for Concurrence.

Education

Bill "An Act to Alter the Method of Approving Equivalent Instruction in Home Schools" (H.P. 77) (L.D. 108) (Presented by Representative HOLT of Bath) (Cosponsored by Representative HANDY of Lewiston, Representative KILKELLY of Wiscasset and Representative BURKE of Vassalboro)

Ordered Printed.

Sent up for Concurrence.

Fisheries and Wildlife

Bill "An Act to Increase the Number of Moose Hunting Permits" (H.P. 70) (L.D. 101) (Presented by Representative HEPBURN of Skowhegan) (Cosponsored by Representative JACKSON of Harrison and Senator WEBSTER of Franklin)

Ordered Printed.

Sent up for Concurrence.

Human Resources

Bill "An Act to Amend the Law Regarding Food Services Operated by the Blind in Public Buildings" (H.P. 72) (L.D. 103) (Presented by Representative DELLERT of Gardiner) (Cosponsored by Senator GILL of Cumberland, Senator GAUVREAU of Androscoggin and Representative FARNSWORTH of Hallowell) (Submitted by the Department of Human Services pursuant to Joint Rule 24.)

Ordered Printed.

Sent up for Concurrence.

Labor

Bill "An Act to Curtail Fraud in the Workers' Compensation System" (H.P. 74) (L.D. 105) (Presented

by Representative HANLEY of Paris) (Cosponsored by Representative REED of Falmouth, Senator ESTY of Cumberland and Senator WHITMORE of Androscoggin) (Submitted by the Workers' Compensation Commission pursuant to Joint Rule 24.)

Ordered Printed.

Sent up for Concurrence.

Taxation

Bill "An Act to Amend the Real Estate Lien Discharge Law" (H.P. 76) (L.D. 107) (Presented by Representative MARSANO of Belfast) (Cosponsored by Representative MAYO of Thomaston and Representative WHITCOMB of Waldo)

Bill "An Act to Clarify the Blueberry Tax Laws" (H.P. 79) (L.D. 110) (Presented by Representative TARDY of Palmyra) (Cosponsored by Representative FARREN of Cherryfield, Senator PERKINS of Hancock and Representative HUSSEY of Milo)

Ordered Printed.

Sent up for Concurrence.

Transportation

Bill "An Act to Extend the Reporting Deadline on the Casco Bay Ferry Service Study" (EMERGENCY) (H.P. 82) (L.D. 113) (Presented by Representative WEBSTER of Cape Elizabeth) (Cosponsored by Senator TWITCHELL of Oxford, Representative CLARK of Millinocket and Representative FOSS of Yarmouth) (Submitted by the Department of Transportation pursuant to Joint Rule 24.)

Bill "An Act to Make Additional Allocations from the Highway Fund for the Fiscal Year Ending June 30, 1989" (EMERGENCY) (H.P. 81) (L.D. 112) (Presented by Representative McPHERSON of Eliot) (Cosponsored by Senator TWITCHELL of Oxford, Senator GOULD of Waldo and Representative MOHOLLAND of Princeton)

Bill "An Act to Require Motor Vehicle Registration for Island Automobiles" (H.P. 85) (L.D. 114) (Presented by Representative RAND of Portland) (Cosponsored by Representative SKOGLUND of St. George, Representative CARROLL of Southwest Harbor and Senator TWITCHELL of Oxford)

Resolve, to Name the Bridge over the Carrabassett River in North Anson the "Robert Garland Bridge" (H.P. 80) (L.D. 111) (Presented by Representative ROTONDI of Athens) (Cosponsored by Senator WEBSTER of Franklin)

Ordered Printed.

Sent up for Concurrence.

Reported Pursuant to Public Law

Representative CASHMAN for the Special Commission to Study School Funding and State Tax Law, pursuant to Public Law 1987, chapter 848 ask leave to submit its findings and to report that the accompanying Resolve, to Establish a Commission to Study Problems with the Municipal Assessment and Collection of Property Taxes (EMERGENCY) (H.P. 67) (L.D. 91) be referred to the Joint Standing Committee on Taxation for Public Hearing and printed pursuant to Joint Rule 18.

Report was read and accepted, and the bill referred to the Committee on Taxation, ordered printed and sent up for concurrence.

Study Report—The Municipal Solid Waste Management Study Committee

Representative RIDLEY from The Municipal Solid Waste Management Study Committee to which was

referred by the Legislative Council the Study Relative to Municipal Solid Waste Management have had the same under consideration and ask leave to submit its findings and to report that the accompanying Bill "An Act to Create Tax Incentives for the Use of Recycled Packaging" (H.P. 68) (L.D. 92) be referred to the Joint Standing Committee on Business Legislation for public hearing and printed pursuant to Joint Rule 19.

Report was read and accepted.

On motion of Representative Allen of Washington, was referred to the Committee on Taxation, ordered printed and sent up for concurrence.

ORDERS

On motion of Representative HANLEY of Paris, the following Joint Resolution: (H.P. 84) (Cosponsors: Representative SMALL of Bath, Representative CROWLEY of Stockton Springs and Senator TWITCHELL of Oxford)

JOINT RESOLUTION RECOGNIZING

MAINE SCHOOL COUNSELORS DURING NATIONAL

SCHOOL COUNSELING WEEK FEBRUARY 6 TO 10, 1989

WHEREAS, school counselors are employed in public and parochial schools to help students reach their fullest potential as human beings; and

WHEREAS, school counselors are concerned with students being better able to understand themselves, their abilities, strengths and talents as they relate to career development and awareness; and

WHEREAS, counselors help parents to focus on ways to further the positive educational, personal and social growth of their children; and

WHEREAS, counselors care about uniting teachers, parents, administrators, special service personnel, mental health professionals and college admission counselors to form an effective guidance program for students; and

WHEREAS, counseling is seen as an essential part of the educational process for all students as they adjust to our very complex society; now, therefore, be it

RESOLVED: That We, the Members of the 114th Legislature of the State of Maine, now assembled in the First Regular Session, take this opportunity to commend all those who provide school counseling throughout the State and offer our support and encouragement for their dedicated efforts; and be it further

RESOLVED: That suitable copies of this Joint Resolution, duly authenticated by the Secretary of State, be transmitted to the Department of Educational and Cultural Services for use in their recognition of National School Counseling Week, February 6 to 10, 1989.

Was read and adopted and sent up for concurrence.

On motion of Representative McSWEENEY of Old Orchard Beach, the following Order:

ORDERED, that Representative Joseph A. Garland of Bangor be excused January 26 for personal reasons.

AND BE IT FURTHER ORDERED, that Representative Jeanne F. Begley of Waldoboro be excused February 6 through 10 for personal reasons.

AND BE IT FURTHER ORDERED, that Representative John Telow of Lewiston be excused February 8, 9 and 10 for legislative business.

AND BE IT FURTHER ORDERED, that Representative John Jalbert of Lisbon be excused February 14, 15 and 16 for personal reasons.

Was read and passed.

REPORTS OF COMMITTEES

Unanimous Leave to Withdraw

Representative TARDY from the Committee on Agriculture on Bill "An Act Concerning Membership on the Maine Blueberry Commission" (H.P. 25) (L.D. 20) reporting "Leave to Withdraw"

Was placed in the Legislative Files without further action pursuant to Joint Rule 15 and sent up for concurrence.

CONSENT CALENDAR

First Day

In accordance with House Rule 49, the following item appeared on the Consent Calendar for the First Day:

(H.P. 30) (L.D. 30) Bill "An Act to Amend the Medical Practice Laws" (EMERGENCY) Committee on Business Legislation reporting "Ought to Pass"

There being no objections, under suspension of the rules, Second Day Consent Calendar notification was given, the House Paper was passed to be engrossed and sent up for concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

ORDERS OF THE DAY

TABLED AND TODAY ASSIGNED

The Chair laid before the House the first tabled and today assigned matter:

Bill "An Act Concerning Payments in Lieu of Taxes to Municipalities with State-owned Property" (H.P. 52) (L.D. 73)

(Committee on Taxation suggested)

TABLED - February 2, 1989 by Representative CARTER of Winslow.

PENDING - Reference.

Was referred to the Committee on Taxation, ordered printed and sent up for concurrence.

The Chair laid before the House the second tabled and today assigned matter:

Resolve, Directing the Office of Comprehensive Land Use Planning to Prepare a Guide to the Manufactured Housing Laws (EMERGENCY) (H.P. 47) (L.D. 61)

(Committee on Housing and Economic Development suggested)

TABLED - February 2, 1989 by Representative GWADOSKY of Fairfield.

PENDING - Reference.

On motion of Representative Nadeau of Lewiston, was referred to the Committee on Appropriations and Financial Affairs, ordered printed and sent up for concurrence.

The Chair laid before the House the third tabled and today assigned matter:

Resolve, to Require the Manufactured Housing Board to Develop a Manufactured Housing Installation Standard (EMERGENCY) (H.P. 48) (L.D. 62)

(Committee on Housing and Economic Development suggested)

TABLED - February 2, 1989 by Representative GWADOSKY of Fairfield.

PENDING - Reference.

On motion of Representative Gwadosky of Fairfield, tabled pending reference and specially assigned for Thursday, February 9, 1989.

The Chair laid before the House the fourth tabled and today assigned matter:

Bill "An Act Dealing with Coastal Search and Rescue" (H.P. 35) (L.D. 35)
(Committee on Appropriations and Financial Affairs suggested)

TABLED - February 2, 1989 by Representative CARTER of Winslow.

PENDING - Reference.

On motion of Representative Gwadosky of Fairfield, tabled pending reference and later today assigned.

FARNSWORTH of Hallowell
MacBRIDE of Presque Isle
HANLEY of Paris
HASTINGS of Fryeburg
RICHARDS of Hampden

Senator Hobbins, for the Committee, subsequently reported that the Committee had delivered the message with which it was charged and the Honorable Chief Justice and Associate Justices of the Supreme Judicial Court were pleased to say that they would forthwith attend the Convention.

The Chair laid before the House the fifth tabled and today assigned matter:

Bill "An Act to Restrict State Grants for Community Mental Health Services to Agencies which Provide Salaries Comparable to Equivalent State Positions" (H.P. 43) (L.D. 54)
(Committee on Human Resources suggested)

TABLED - February 2, 1989 by Representative CARTER of Winslow.

PENDING - Reference.

On motion of Representative Carter of Winslow, tabled pending reference and specially assigned for Thursday, February 9, 1989.

At this point, the Honorable Chief Justice Vincent L. McKusick and the Associate Justices of the Supreme Judicial Court entered the Convention Hall amid the applause of the Convention, the audience rising.

The Chairman then welcomed the Associate Justices of the Supreme Judicial Court, the Honorable David G. Roberts, the Honorable Daniel E. Wathen, the Honorable Robert W. Clifford, the Honorable D. Brock Hornby, the Honorable Samuel W. Collins and the Honorable Elmer H. Violette, Active Retired Supreme Court Justice.

The Chairman also welcomed the Chief Justice of the Superior Court, the Honorable Morton A. Brody, Chief Judge of the District Court, the Honorable Bernard M. Devine and the Deputy Chief Judge of the District Court, the Honorable Alan C. Pease. (applause)

The Chair laid before the House the sixth tabled and today assigned matter:

Bill "An Act Appropriating Funds to the Department of Educational and Cultural Services for Early Childhood Education" (H.P. 23) (L.D. 18)
(Committee on Education suggested)

TABLED - February 2, 1989 by Representative CARTER of Winslow.

PENDING - Reference.

Was referred to the Committee on Education, ordered printed and sent up for concurrence.

The Honorable Chief Justice of the Supreme Judicial Court, Vincent L. McKusick, then addressed the Convention as follows:

Mr. President, Mr. Speaker, Ladies and Gentlemen of the 114th Legislature, my judicial colleagues and friends:

I last stood at this podium at this same hour exactly 52 weeks ago. As the head of the Judicial Department, I always welcome your annual invitation to report on the state of the Third Branch. The past year has, in general, been a good one in the court -- thanks in no small part of the working together of the three great branches of government in the spirit of the three C's -- comity, communication and cooperation. That is not to say that the courts don't have serious problems or that they don't have substantial needs but the good news is that we are identifying and addressing those problems and needs. I will have more to say about that side of things a little later.

In the last year, the Supreme Judicial Court has kept on top of its appellate work load. In 1988, the Law Court set a record in the average number of opinions issued by each justice, nearly 50, a total of 348 opinions. The Law Court also had to review on some 70 petitions for discretionary review in workers' compensation cases and post-conviction cases. The Law Court has a very heavy work load. During the year, the Law Court continued its "road show" by sitting in for oral argument in four more counties, Knox, Androscoggin, and Sagadahoc Counties for the first time ever and in Franklin County, for the first time since 1851. We are sitting in Ellsworth in May to help celebrate the 200th anniversary of the incorporation of Hancock County.

In the last year, the trial courts -- particularly the District Court -- have again experienced an extraordinary increase in their already heavy caseloads. I am proud the judges and clerks and other personnel of our trial courts have met that demanding challenge as well as they have,

(At Ease)

The House was called to order by the Speaker.

At this point, the Senate entered the Hall of the House and a Joint Convention was formed.

In Convention

The President of the Senate, Charles P. Pray, in the Chair.

On motion of Senator CLARK of Cumberland, it was

ORDERED, that a Committee be appointed to wait upon the Honorable Vincent L. McKusick, Chief Justice of the Supreme Judicial Court and the Associate Justices of the Supreme Judicial Court to inform them that the two branches of the Legislature are in Convention assembled ready to receive such communication as pleases them.

The Chairman appointed:

Senators: HOBBS of York
GAUVREAU of Androscoggin
HOLLOWAY of Lincoln

Representatives: PARADIS of Augusta
COTE of Auburn
CONLEY of Portland
STEVENS of Bangor
ANTHONY of South Portland

but we must get help for them. I will have more to say about that urgent need in a moment.

In the last year, with legislative support, the trial courts have broadened and strengthened existing innovative programs for improving their service to the public.

1. Only three months before his death in October, Lincoln Clark, the Director of the Court Mediation Service, issued an impressive 10-year report. That program started in 1977 with a small group of volunteers mediating 61 small claims cases in Portland. By 1988, a statewide network of paid mediators were handling mandatory mediation of contested divorces involving minor children and providing voluntary mediation of small claims and other civil cases — in all, well over 4,000 cases last year. The Court Mediation Services stands as a distinguished memorial to Lincoln Clark, the Father of Maine Mediation.

2. 1988 was a year of commendable growth in the CASA program — the Court Appointed Special Advocates program. In this one year, CASA volunteers have been appointed guardians ad litem for children at risk in 263 new child protection cases in 16 District courts around the state. One hundred sixty-two dedicated and specially trained volunteers from the local communities continue to perform this immensely valuable, long-term service to our children.

3. The Medical Malpractice Screening Panels, created by statute and placed under the administrative direction of Chief Justice Brody of the Superior Court, has completed a second year of operation. Those panels have proved themselves a success. They have disposed finally of nearly half of the 200-plus malpractice cases filed in 1987 and 1988.

In the last year, the Trial Courts have also instituted other innovative programs, better serving the public:

1. The indigency screening program with legislative funding became operative in Portland in January 1988 and in seven other locations in July. Both the Maine and the U.S. Constitutions require the state to pay for counsel for indigent criminal defendants. For the protection of the public treasury, however, we must assure that only a criminal defendant in financial need gets a free attorney. Figures already show that the indigency screening program is working, as it should, to identify unqualified applicants and to deter others from even applying. You will have before you a proposal to extend that worthwhile program statewide.

2. With legislative funding, the Superior Court, on September 1st, started a pilot Alternative Dispute Resolution Program in York and Knox Counties. By this ADR program, specially selected and trained attorney mediators, working under the supervision and control of the court, will seek to resolve substantial civil cases in order to avoid the delays and costs of full pretrial and trial proceedings. This program results from a study sponsored by the Maine State Bar Association, which was headed last year by your colleague, Representative Francis Marsano.

3. A grant from the Maine Bar Foundation has provided the Superior Court with a juror orientation video. This video, running about 13 minutes, is being shown to jurors to supplement the preliminary instructions given by the presiding justice. The video program gives a good view of how a case proceeds in court. We have copies available to lend to civic organizations and schools. We are studying the possible use of similar videos for instructions

for the grand jury and for basic information on arraignments in the District Court.

In the last year, with your help, we continued to upgrade or replace overcrowded and inefficient court facilities. The District Courts in Bridgton and Calais are moving into new quarters, and the grossly inadequate Kittery District Court facility has been replaced by a new court building adjacent to Turnpike Exit 1 in York. With the opening of the new Bridgton District Court, all 49 trial court locations, with the sole exception of Presque Isle, are fully accessible to handicapped persons — and a new Presque Isle District court is in the planning stage right now. Thus, with your support, we have nearly finished the handicapped-access program started in 1985. We also have made good progress in planning a new District Court building to serve the fast-growing Bath-Brunswick area. Chief Judge Devine and I have given top priority to that facility, which we expect will be located at the West Bath Exit from U.S. Route 1.

One event in 1988 was of particular long-term significance for housing the courts of this state. Last summer the legislatively created Maine Court Facilities Authority became operational under the chairmanship of Colin Hampton, former President of UNUM Corporation. One big advantage of using the Authority for financing court buildings by revenue bonds is that the state will own the facilities after 20 years rather than paying rent forever. The Authority has already raised the monies for a portion of the addition to the Cumberland County Courthouse, the balance coming from the bond issue. Groundbreaking on that project has been delayed by the fact the bids came in substantially above the architects' estimates, but I am confident that redesign and rebidding will permit us to break ground this year on that urgently needed facility.

Last year, you created and funded the Supreme Judicial Court Plan and Design Commission. That Commission under the chairmanship of your colleague, Representative Ruth Foster, is now engaged in the second phase of the planning necessary to bring the Supreme Judicial Court to Augusta, to join the other two branches of state government. I again remind you that the Maine Constitution reads: "Augusta is hereby declared to be the seat of government of this state."

In the last year, we have made steady progress on the very large and the very difficult job of computerizing the trial courts. All 32 District Court locations now have their criminal cases and traffic infractions on computer, and work is under way to do the same to handle the criminal cases at the 17 Superior Court locations across the state. All of us, including our highly competent computer officer, Ben Crites, wish that computerization could be completed faster. It's a very big job. It is made so by the location of our 49 trial courts all across the state and by the complexity of court operations. But, I can say with confidence that our computer system is of high quality. We are getting full-money for every dollar. We are also fully supporting the work of the commission to computerize criminal history records that is chaired by Senator Joseph Brannigan. The proposed computer system will interconnect the courts with the State Bureau of Identification, the Motor Vehicle Division, and law enforcement agencies at all levels. The Senator, for some reason, calls it the "McJustice Program."

I proudly report that the joint Annual Meeting of the National Conferences of Chief Justices and of State Court Administrators, held at the Samoset at Rockport the first week of August, was a huge

success. The midsummer beauty of the Maine coast drew the largest gathering of top state court officials ever to be assembled anywhere. The Maine State Bar Association sponsored an opening reception for our guests. No public appropriation was required to bring these major national conferences to Maine. The same is true of the American Bar Association Appellate Judges Seminar that drew many judges from all over the country to Portland in late September.

I now want to turn to a discussion with you where the courts of Maine find themselves today and where they should be going -- I want to discuss some of the problems and needs of the Maine courts.

The number one need of the Maine courts right now is for additional personnel in the clerks' offices at many of our 49 different trial court locations. I hope you will give favorable consideration to our request to add 50 new people in our clerks' offices in three steps over the next year and a half. We have kept our request to a bare minimum. The total number 50 may seem large at first blush; but, remember, these new people will be assigned according to need across the state at 49 different locations.

This urgent need for help in our clerks' offices is driven by the dramatic increase in trial court caseloads. Each year now, starting with 1985, I have reported from this podium that a record number of cases has been filed in the courts of Maine. 1988 was no different, with more than 340,000 cases filed statewide, 340,000.

Let me put that 340,000 figure in perspective. It took our courts from statehood in 1820 to 1977 -- over one hundred and fifty years -- to reach 200,000 cases annually. Then, by 1984, our trial courts had reached less than 240,000 cases, an average yearly increase in seven years of about 5,000 cases per year. In adding more than 100,000 cases in the last four years, we have witnessed a five-fold jump in the annual growth rate of our caseload.

There are many reasons for this explosion in the use of the courts of Maine. The reasons include, I believe, accelerated economic activity; increased criminal law enforcement; heightened concern for children and others needing protection against neglect or sexual or other abuse; increased land use regulation in the face of an expanded rate of real estate development; and growing highway traffic.

The increase of 100,000 cases in only four years can be put in perspective in another way. In terms of work load, it is as if we added in these last four years four new courts of equal size to the four District Courts now operating in Biddeford, Lewiston, Augusta, and Bangor. If we had duplicated those four courts, we would have needed 8 new courtrooms, about 8 additional judges, and 50 additional clerks. In fact, in the last four years, we have added only two new District Court judges and virtually no additional clerks.

The tremendous work load thrown upon the people in our clerks' offices is quantified dramatically in another way. This fiscal year, our clerks will collect in cash and checks over \$21 million at 49 different court locations. Those collections are almost double the \$11.2 million collected only four years ago. As an aside, I would note that the \$21 million collected in fines and fees and turned over to the State Treasury, will this year as usual cover about three-fourths percent of all the state costs of running the courts.

Also, it is not only increased numbers of cases and increased dollars to be collected that multiplies work for our clerks, increased work load also comes along with every one of the valuable innovative programs we have instituted for improving the courts'

service to the public. Mandatory mediation for divorce, the CASA program, the medical malpractice screening panels, the Superior Court's expedited caseflow system, and so on -- every one of these commendable programs places additional administrative and scheduling burdens on our clerks. Better service to the public comes only at the price of more work for the clerks' offices.

We are most fortunate to have highly dedicated competent court clerks -- and I mean all those who work in the offices of the clerks of court. They are the front-line soldiers of the Judicial Department, and they are "good soldiers." Every day, they undertake a variety of roles and responsibilities in operating the courts and in dealing with the public that rivals Superman and Superwoman. I am proud of the way they have responded to the deluge of new cases in the past four years, but we cannot expect them to continue to carry their steadily increasing load without help. Getting for our hard-pressed court clerks the additional help they urgently need, I consider simply a matter of common fairness to them.

We are also asking for two additional judges for the District Court and two for the Superior Court. The increased number of cases in our trial courts is not the only reason for needing more judges. Cases are becoming more complex and are taking longer to try. For example, trials of several hours and even days have become commonplace in the District Court -- for example, in divorce, child protection, and parental rights termination cases. Maine has only 49 active judges, putting it at the bottom of the scale in number of judges per 100,000 population when compared with either the other New England states or with other rural states across the country.

In this coming year, we will continue to work on our needs for more adequate court facilities at several locations around the state. We hope very much to see groundbreaking this year for the new District Court facilities I have already mentioned at Bath-Brunswick and at Presque Isle. We also are studying facilities problems in the District Courts in Dover-Foxcroft and Machias. Capital funds to meet those needs we propose to raise through the Maine Court Facilities Authority.

We are also giving special study to the facilities needs of both the District Court and the Superior Court in York County. All the courts there have experienced a particularly dramatic increase in caseload. The Biddeford District Court is simply running out of room to perform its basic functions. The Superior Court in Alfred has only one adequate jury courtroom and could use at least two more. I hope my report next year will be able to suggest a solution to the York County facilities problem. The Superior Courts also has serious space problems in Androscoggin and Kennebec, as well as most other counties. We will be addressing those needs on a priority basis.

You have before you the final report of the Joint Select Committee on Corrections now chaired by your colleagues, Senator Beverly Bustin and Representative Rita Melendy. L.D. 44, proposed by the Committee, would create a system for enhanced review of criminal sentences by the Law Court. My colleague, Justice Wathen, after studying the long-time experience in Great Britain with sentence appeals, has suggested in a recent Maine Law Review article that a thorough review of sentences by the Law Court with written opinions could develop sentencing standards -- or guidelines, if you like -- through a case-by-case evolutionary process. These standards would of course be controlled by the maximums or any minimums set by the statutes for particular crimes. The

guidelines thus developed by case law could prove a helpful tool for trial judges in discharging their difficult sentencing responsibility. They also could assist in reducing sentencing disparity and produce greater fairness in the system. The enhanced sentence review would place an additional burden on the Law Court, but that burden is one my colleagues and I are prepared to assume and one, that on balance we believe, is worthwhile to make a place for.

Three years ago, the Legislature created the Maine Commission to Commemorate the Bicentennial of the U.S. Constitution. That Commission, under the leadership originally of former University of Maine President Arthur M. Johnson and now of attorney Hugh Calkins of Dover-Foxcroft, has done, and continues to do, a splendid job of reminding us of our constitutional heritage. The Commission is distributing to each of you today a copy of the volume entitled "A Rising Sun." This is a collection of speeches that were made under the Commission auspices. I am pleased to recognize its editor, Professor Neal W. Allen, in the gallery -- won't you rise to be recognized? (Applause)

Continuing in this bicentennial year in 1989, our nation commemorates the convening of the First Congress and the inauguration of the first President of the United States. In September, we should take special note of two events 200 years ago that carry great significance for all state courts, including those of Maine. On September 24, 1789, Congress enacted the Judiciary Act of 1789 setting up the federal court system. The very next day, Congress voted to submit the Bill of Rights to the 13 States for ratification. Every working day, the courts of Maine are called upon to apply and enforce the guarantees contained in the Federal Bill of Rights -- freedom of speech and religion, and protection against unreasonable searches and seizures, for example. Without courts to enforce those guarantees and similar provisions of our Maine Constitution, those noble declarations would remain only aspirational and hortatory.

The significance for state courts of the Judiciary Act of 1789 and its federal progeny lies in what those federal statutes do not authorize the federal courts to do. The big reservoir of judicial power -- as well as responsibility -- remains with the states and the state courts. Over 95 percent of all litigation takes place in the state courts. Federal courts are specialized courts of limited jurisdiction. In general, they can entertain civil cases only if they arise under federal law or involve citizens of different states and they undertake criminal prosecution only for specific federal crimes. The bicentennial of the federal court system teaches us anew one clear lesson: However much federal law intrudes more and more into American life, our state courts still carry most of the burden for resolving disputes between citizens and between citizens and their governments, even to the extent of applying and enforcing much of the federal civil law. State courts have as their standard fodder civil cases running the whole gamut of contract, property and tort disputes, workers' compensation appeals, land use and other economic regulation, divorce and other family and inheritance matters, and so on, as well as criminal prosecutions ranging from murder to burglary to consumer fraud.

Thus, the quality of justice in this country depends overwhelmingly on the quality of the state courts. You in the Maine Legislature and we who work in the Maine courts are constantly faced with the joint challenge of maintaining and enhancing the quality of those courts. We have together

accomplished much in recent years in steadily working at the improvement of the administration of justice. On behalf of all of us in the Third Branch, I renew our pledge to continue to work closely with you in discharging our joint responsibilities for the courts of Maine.

Thank you very much for your time and attention. (Applause)

The Chief Justice and Associate Justices of the Supreme Judicial Court withdrew amid the applause of the Convention, the audience rising.

The purpose for which the Convention was assembled having been accomplished, the Chairman declared the same dissolved and the Senate retired to its chambers, amid applause, the members rising.

In the House

The House was called to order by the Speaker.

(Off Record Remarks)

The Chair laid before the House the following item: Bill "An Act Dealing with Coastal Search and Rescue" (H.P. 35) (L.D. 35) which was tabled earlier in the day and later today assigned pending reference.

On motion of Representative Gwadosky of Fairfield, tabled Unassigned pending reference.

The Chair laid before the House the following item: Resolve, Authorizing the Director of Parks and Recreation to Convey by Deed the Interest of the State in Certain Parcels of Real Property (S.P. 78) (L.D. 68) which was tabled earlier in the day and later today assigned pending reference in concurrence.

Subsequently, was referred to the Committee on Energy and Natural Resources in non-concurrence and sent up for concurrence.

By unanimous consent, all matters having been acted upon requiring Senate concurrence were ordered sent forthwith.

(Off Record Remarks)

On motion of Representative Joseph of Waterville, Adjourned until Thursday, February 9, 1989, at four o'clock in the afternoon.
