

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
47th Legislative Day
Thursday, April 20, 1989**

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

Prayer by Father John Shorty, St. Mary's Catholic Church, Augusta.

The Journal of Wednesday, April 19, 1989, was read and approved.

PAPERS FROM THE SENATE

Bill "An Act to Sustain and Enhance Children's Mental Health Services" (S.P. 455) (L.D. 1240)

Bill "An Act to Provide Additional Funding for the Overboard Discharge Assistance Program and the Overboard Discharge Replacement Program" (EMERGENCY) (S.P. 464) (L.D. 1249)

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.

Bill "An Act Relating to Licensing of State Social Workers" (S.P. 465) (L.D. 1250)

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

Was referred to the Committee on Business Legislation in concurrence.

Bill "An Act Relating to School Construction" (S.P. 459) (L.D. 1244)

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

Was referred to the Committee on Education in concurrence.

Resolve, to Study the Development of a System of Ecological Reserves in the State (S.P. 456) (L.D. 1241)

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 Establish the Medicaid Advisory Committee on Mental Health" (S.P. 467) (L.D. 1252)

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

Was referred to the Committee on Human Resources in concurrence.

Bill "An Act to Amend the Maine Human Rights Act with Regard to Housing Discrimination against Families with Children" (EMERGENCY) (S.P. 457) (L.D. 1242)

Bill "An Act to Encourage the Continuation of Obstetrical Services in the Medicaid Program" (S.P. 463) (L.D. 1248)

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

Were referred to the Committee on Judiciary in concurrence.

Bill "An Act Regarding Appeals Under the Workers' Compensation Law to Prevent Substantial Injustice to Injured Workers" (S.P. 466) (L.D. 1251)

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

Was referred to the Committee on Labor in concurrence.

Bill "An Act to Expand the Maine Job Training Partnership Program" (S.P. 462) (L.D. 1247)

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

(The Committee on Reference of Bills had suggested reference to the Committee on Appropriations and Financial Affairs.)

Was referred to the Committee on Labor in concurrence.

Bill "An Act to Amend the Law Governing the State Capitol Commission" (EMERGENCY) (S.P. 461) (L.D. 1246)

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

Was referred to the Committee on State and Local Government in concurrence.

Bill "An Act to Amend Commercial Driver License Laws" (S.P. 460) (L.D. 1245)

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

Was referred to the Committee on Transportation in concurrence.

COMMUNICATIONS

The following Communication: (S.P. 454)
April 18, 1989

Senator Barry J. Hobbins
Representative Patrick E. Paradis
Chairpersons
Joint Standing Committee on Judiciary
114th Legislature
Augusta, Maine 04333
Dear Chairs:

Please be advised that Governor John R. McKernan, Jr. has nominated Ronald D. Russell of Bangor for reappointment as Judge-at-Large for the Maine District Court.

Pursuant to Title 4, M.R.S.A. Section 157, this nomination will require review by the Joint Standing Committee on Judiciary and confirmation by the Senate.

Sincerely,
S/Charles P. Pray
President of the Senate
S/John L. Martin
Speaker of the House

Came from the Senate, read and referred to the Committee on Judiciary.

Was read and referred to the Committee on Judiciary in concurrence.

**PETITIONS, BILLS AND RESOLVES
REQUIRING REFERENCE**

The following Bills and Resolution 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:

Appropriations and Financial Affairs

Bill "An Act to Provide Medicaid-reimbursable Mental Health Services to Families with Infants and

Toddlers" (H.P. 900) (L.D. 1257) (Presented by Representative ANTHONY of South Portland) (Cosponsored by Representative MELENDY of Rockland, Representative POULIOT of Lewiston and Representative McGOWAN of Canaan)
 Ordered Printed.
 Sent up for Concurrence.

Banking and Insurance

Bill "An Act to Amend the Standard Fire Insurance Policy" (H.P. 901) (L.D. 1258) (Presented by Representative CONLEY of Portland) (Cosponsored by Senator HOBBS of York, Representative MARSANO of Belfast and Senator COLLINS of Aroostook)
 Ordered Printed.
 Sent up for Concurrence.

Business Legislation

Bill "An Act to Allow Retail Stores to Remain Open on Sundays" (H.P. 897) (L.D. 1254) (Presented by Representative ROTONDI of Athens) (Cosponsored by Representative HOGGLUND of Portland)
 Bill "An Act Relating to the Disclosure of Information Concerning Used Motor Vehicles at the Time of Sale or Transfer" (H.P. 903) (L.D. 1260) (Presented by Representative STEVENS of Sabattus)
 Ordered Printed.
 Sent up for Concurrence.

Energy and Natural Resources

Bill "An Act Providing for Changes in the Reports Required from Forest Landowners" (H.P. 906) (L.D. 1263) (Presented by Representative LORD of Waterboro) (Cosponsored by Representative HOGGLUND of Portland)
 Ordered Printed.
 Sent up for Concurrence.

Human Resources

Bill "An Act to Revise the Medical Examiner Act" (H.P. 905) (L.D. 1262) (Presented by Representative CLARK of Brunswick) (Cosponsored by Representative NADEAU of Saco and Senator BALDACCI of Penobscot)
 Ordered Printed.
 Sent up for Concurrence.

Judiciary

Bill "An Act to Prevent, Punish and Remedy Violations of Constitutional Rights" (H.P. 896) (L.D. 1253) (Presented by Representative HOGGLUND of Portland) (Cosponsored by Representative DORE of Auburn)
 Ordered Printed.
 Sent up for Concurrence.

State and Local Government

Bill "An Act Authorizing Changes to the Budget Process in York County" (H.P. 904) (L.D. 1261) (Presented by Representative SHELTRA of Biddeford)
 Bill "An Act to Standardize the Compensation and Appointment Practices for Senior State Managers" (H.P. 907) (L.D. 1264) (Presented by Speaker MARTIN of Eagle Lake) (Cosponsored by Representative WEBSTER of Cape Elizabeth) (Submitted by the Department of Administration pursuant to Joint Rule 24.)
 , Proposing an Amendment to the Constitution of Maine to Increase the Availability of Legislative Participation (H.P. 902) (L.D. 1259) (Presented by Representative HANLEY of Paris)

(Cosponsored by Senator WEBSTER of Franklin, Representative HEPBURN of Skowhegan and Representative GARLAND of Bangor)
 Ordered Printed.
 Sent up for Concurrence.

Taxation

Bill "An Act to Provide Property Tax Relief" (H.P. 909) (L.D. 1272) (Presented by Representative ROLDE of York) (Cosponsored by Senator ESTES of York)
 Ordered Printed.
 Sent up for Concurrence.

Transportation

Bill "An Act to Create a Full-time Motor Vehicle Office in the Town of Sanford" (H.P. 898) (L.D. 1255) (Presented by Representative HALE of Sanford) (Cosponsored by Representative RIDLEY of Shapleigh, Representative PAUL of Sanford and Senator DUTREMBLE of York)
 Bill "An Act to Provide a Notification Mechanism for the Expiration of Motor Vehicle Registration" (H.P. 899) (L.D. 1256) (Presented by Representative MANNING of Portland) (Cosponsored by Senator RANDALL of Washington)
 Ordered Printed.
 Sent up for Concurrence.

(At Ease)

The House was called to order by the Speaker.

Reported Pursuant to Private and Special Law

Representative PRIEST for 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 Provide Assistance to Owners of Manufactured Housing" (H.P. 908) (L.D. 1271) be referred to the Joint Standing Committee on Legal Affairs for Public Hearing and printed pursuant to Joint Rule 18.
 Report was read and accepted and the Bill referred to the Committee on Legal Affairs, ordered printed and sent up for concurrence.

ORDERS

On motion of Speaker MARTIN of Eagle Lake, the following Joint Resolution: (H.P. 910) (Cosponsors: Representative McKEEN of Windham) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 35)

JOINT RESOLUTION MEMORIALIZING THE CONGRESS OF THE UNITED STATES TO CONDUCT HEARINGS CONCERNING INTERSTATE COMMERCE COMMISSION OVERSIGHT OF MAINE RAILROADS

WE, the members of the One Hundred and Fourteenth Legislature of the State of Maine now assembled in the First Regular Session most respectfully present and petition the members of the Congress of the United States, as follows:

WHEREAS, transportation problems created in the State of Maine by Guilford Industries' railroad operations have left our biggest and best industries without adequate rail services; and WHEREAS, the economic development of the State of Maine has suffered immensely without a safe, dependable and competitive rail system since Guilford Industries reduced rail operations throughout the

State of Maine, including the Bangor Yard, in Bangor, Maine and the Rigby Yard in South Portland, Maine; and WHEREAS, employment on Guilford Industries' railroads has been reduced to a level insufficient to provide necessary services and employment to industries served by those railroad operations; and

WHEREAS, railroad seniority had provided qualified and experienced personnel to operate Guilford Industries' rail service in the past; however, during the past year Guilford Industries has substituted these employees with newly hired, inexperienced, junior and unqualified personnel; and

WHEREAS, this substitution is a threat to the safety of personnel, property and cargo; and

WHEREAS, the Legislature of the State has long been concerned with the problems caused by Guilford Industries' railroad operations in Maine and has found it necessary to enact certain legislation to protect the vital interests of its constituents; and

WHEREAS, a certain Interstate Commerce Commission decision of January 10, 1989, denied employees of Guilford Industries the benefit of the work rules issued by Richard Kasher after full, fair and fact-finding arbitration; and

WHEREAS, the Interstate Commerce Commission imposed a post-arbitration seniority arrangement which was not subject to any discussion or fact-finding arbitration and which denied employees due process; and

WHEREAS, the Chair of the Interstate Commerce Commission conducted all of the activities of the commission, resulting in the deprivation of a full and fair fact-finding arbitration for employees of Guilford Industries; now, therefore, be it

RESOLVED: That We, Your Memorialists, respectfully recommend and urge the Congress of the United States to:

1. Establish and conduct hearings in the Senate of the United States on the decision-making process used by the Interstate Commerce Commission in its oversight of Guilford Industries;

2. Establish and conduct hearings in the House of Representatives of the United States on the decision-making process used by the Interstate Commerce Commission in its oversight of Guilford Industries;

3. Decline to confirm any reappointment of the Chair of the Interstate Commerce Commission in light of the recent actions and decisions of the commission; and

4. Enact legislation requiring that the so-called Kasher Implementing Arrangement decided on June 12, 1988, govern Guilford Industries, its rail subsidiaries and their employees and labor organizations until amended, changed or abrogated under the provisions of the United States Railway Labor Act; and be it further

RESOLVED: That a duly authenticated copy of this Joint Resolution be immediately submitted to the Honorable George H. W. Bush, President of the United States, the President of the Senate and the Speaker of the House of Representatives of the Congress of the United States and to each member of the Maine Congressional Delegation.

Was read and adopted and sent up for concurrence.

REPORTS OF COMMITTEES

Unanimous Ought Not to Pass

Representative JACQUES from the Committee on Fisheries and Wildlife on Bill "An Act to Provide Free Hunting and Fishing Licenses to Persons 65 Years of Age or Older" (H.P. 689) (L.D. 941) reporting "Ought Not to Pass"

Representative MACOMBER from the Committee on Transportation on Bill "An Act to Provide Motor Vehicle Registration Consistency" (H.P. 615) (L.D. 838) reporting "Ought Not to Pass"

Representative JACQUES from the Committee on Energy and Natural Resources on Bill "An Act to Expand the Area Around Rivers Protected by the Site Location of Development Law" (H.P. 430) (L.D. 595) reporting "Ought Not to Pass"

Representative JACQUES from the Committee on Energy and Natural Resources on Bill "An Act to Allow Cleanup of Beach Frontage on Artificially Created Great Ponds" (H.P. 598) (L.D. 822) reporting "Ought Not to Pass"

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

Unanimous Leave to Withdraw

Representative WHITCOMB from the Committee on Agriculture on Bill "An Act to Simplify Pesticide Inventory Requirements" (EMERGENCY) (H.P. 593) (L.D. 811) reporting "Leave to Withdraw"

Representative CROWLEY from the Committee on Education on Bill "An Act Concerning Voting Procedures for School District Budgets" (H.P. 532) (L.D. 717) reporting "Leave to Withdraw"

Representative CROWLEY from the Committee on Education on Bill "An Act to Amend the Budget Procedures of Community School Districts" (H.P. 612) (L.D. 835) reporting "Leave to Withdraw"

Representative JACQUES from the Committee on Energy and Natural Resources on Bill "An Act to Exempt Certain Lands Classified as Wetlands under Local Ordinances" (H.P. 780) (L.D. 1092) reporting "Leave to Withdraw"

Representative MACOMBER from the Committee on Transportation on Resolve, to Study the Feasibility of an Interstate 95 Interchange to Access the Town of Sanford (H.P. 547) (L.D. 744) reporting "Leave to Withdraw"

Representative MANNING from the Committee on Human Resources on Resolve, to Establish the Commission to Study the Feasibility of Developing Mature Care Systems in Maine (H.P. 511) (L.D. 691) reporting "Leave to Withdraw"

Representative MANNING from the Committee on Human Resources on Bill "An Act to Allow Recovery of Costs Incurred in Cooperating with Length-of-stay Reviews, Utilization Reviews and Related Activities by Managed Care Organizations, 3rd Party Payors and Governmental Entities" (H.P. 643) (L.D. 877) reporting "Leave to Withdraw"

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

Refer to the Committee on Education

Representative CARTER from the Committee on Appropriations and Financial Affairs on Bill "An Act to Assist Local Educational Authorities in Replacing Unsafe School Buses" (H.P. 346) (L.D. 465) reporting that it be referred to the Committee on Education.

Report was read and accepted and the bill referred to the Committee on Education and sent up for concurrence.

Ought to Pass as Amended

Representative CARTER from the Committee on Appropriations and Financial Affairs on 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) reporting "Ought to Pass" as amended by Committee Amendment "A" (H-89)

Report was read and accepted, the Bill read once. Committee Amendment "A" was read by the Clerk and adopted and the Bill assigned for second reading later in today's session.

CONSENT CALENDAR

First Day

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

(H.P. 417) (L.D. 582) Bill "An Act to Amend the Law Regarding Shoplifters" Committee on Judiciary reporting "Ought to Pass" as amended by Committee Amendment "A" (H-87)

(H.P. 440) (L.D. 605) Bill "An Act Relating to the Division of Southern York of the 10th Maine District Court" Committee on Judiciary reporting "Ought to Pass" as amended by Committee Amendment "A" (H-88)

(H.P. 490) (L.D. 670) Bill "An Act to Amend the Lobbyist Reporting Law" Committee on Legal Affairs reporting "Ought to Pass"

(H.P. 512) (L.D. 692) Bill "An Act to Regulate Medical Wastes" Committee on Energy and Natural Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (H-90)

(H.P. 89) (L.D. 124) Bill "An Act to Establish an Exemption from the Seaweed Permit for Certain Noncommercial Harvesting" Committee on Marine Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (H-91)

There being no objections, the above items were ordered to appear on the Consent Calendar of Monday, April 24, 1989, under the listing of Second Day.

CONSENT CALENDAR

Second Day

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

(H.P. 135) (L.D. 179) Bill "An Act Concerning the Regulation of General Use Pesticides" (C. "A" H-77)

(H.P. 200) (L.D. 280) Bill "An Act to Allow Ruffling of Livestock by Charitable Organizations for Charitable Purposes" (C. "A" H-78)

(H.P. 501) (L.D. 681) Bill "An Act to Clarify the Motor Vehicle Law Concerning the Operation of Motorcycles" (C. "A" H-80)

(H.P. 429) (L.D. 594) Bill "An Act Concerning Antique Automobiles and Horseless Carriages" (C. "A" H-81)

(H.P. 642) (L.D. 876) Bill "An Act to Allow the Department of Human Services to Share Information with Support Teams for Foster Parents"

(H.P. 537) (L.D. 734) Bill "An Act to Amend the Northern Maine General Hospital Charter to Operate Programs for Disadvantaged Individuals" (C. "A" H-83)

(H.P. 494) (L.D. 674) Bill "An Act to Provide Consumers Notice of Restaurant Foods Containing Monosodium Glutamate" (C. "A" H-82)

(H.P. 568) (L.D. 772) Bill "An Act to Provide a Penalty on Delinquent Public Utilities" (C. "A" H-85)

No objections having been noted at the end of the Second Legislative Day, the House Papers were Passed to be Engrossed or Passed to be Engrossed as Amended and sent up for concurrence.

PASSED TO BE ENGROSSED

Bill "An Act to Prohibit and Provide a Penalty for Trespass by Animals" (H.P. 153) (L.D. 205) (C. "A" H-79)

Was reported by the Committee on Bills in the Second Reading and read a second time.

On motion of Representative Hussey of Milo, the House reconsidered its action whereby Committee Amendment "A" was adopted.

The same Representative offered House Amendment "A" (H-92) to Committee Amendment "A" (H-79) and moved its adoption.

House Amendment "A" (H-92) to Committee Amendment "A" (H-79) was read by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Milo, Representative Hussey.

Representative HUSSEY: Mr. Speaker, Ladies and Gentlemen of the House: All this amendment does is put an Emergency clause on this piece of legislation.

Subsequently, House Amendment "A" to Committee Amendment "A" was adopted.

Committee Amendment "A" as amended by House Amendment "A" thereto was adopted.

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

SECOND READER

Tabled and Assigned

Bill "An Act to Clarify Maintenance of Private Roads and Ways by Municipalities" (H.P. 271) (L.D. 383) (C. "A" H-84)

Was reported by the Committee on Bills in the Second Reading and read a second time.

The SPEAKER: The Chair recognizes the Representative from Corinth, Representative Strout.

Representative STROUT: Mr. Speaker, Ladies and Gentlemen of the House: I would like to pose a question through the Chair.

This little bill moving along at a fairly rapid pace, I am wondering, before we take a vote on this, that maybe somebody from the committee (in simple language) could explain to us what this bill does?

The SPEAKER: The Representative from Corinth, Representative Strout, has posed a question through the Chair to anyone who may respond if they so desire.

The Chair recognizes the Representative from Waterville, Representative Joseph.

Representative JOSEPH: Mr. Speaker, Men and Women of the House: L.D. 383, An Act to Clarify the Maintenance of Private Roads and Ways by Municipalities is a bill that was developed out of two pieces of legislation to allow municipalities and towns to plow private ways. It was an issue before the town of Standish, it is an issue throughout this state, and this was a compromise measure to give it as general language as could be.

There will be constitutional questions about this piece of legislation and we do hope to hold this bill for a solemn occasion when it moves for enactment.

The SPEAKER: The Chair recognizes the Representative from Corinth, Representative Strout.

Representative STROUT: Mr. Speaker, Ladies and Gentlemen of the House: I hear the remarks from the good lady from Waterville, Representative Joseph. I think it goes further than just saying that we are going to plow private roads.

One of the questions that I have specifically is -- in the amendment that replaces the bill, when it defines a privately-owned road and it goes on to say, "as a primary means of access and egress to two or

more private year-round residences and over which the public has no legal right or travel" -- that is what they define as a privately-owned road and I accept that. Then it goes on to Section 4 and it says, "a municipality may repair, maintain, sand, salt, or remove snow from a privately-owned road under this section only if" and then it goes to one section under A where it says, "beyond residence only or similar phrases which have the effect of discouraging public traffic." In one part of the amendment, you are saying that a private road which the public has no right to travel and then you go on to say that you are discouraging public travel.

The other question I have is that, on a private road, what is going to be the definition of the length of that private road? Are we talking private driveways? I understand what the good lady is saying about moving this to a solemn occasion and maybe that is the way to go but I just wonder -- before we pass this if we know really what we are attempting to do?

The SPEAKER: The Chair recognizes the Representative from Shapleigh, Representative Ridley.

Representative RIDLEY: Mr. Speaker, Ladies and Gentlemen of the House: This has been a long issue for many years in the small towns relative to these private roads or so-called camp roads or pond roads. I am certainly supportive of some sort of a bill that we could pass that would allow the towns to at least plow and sand these roads in the winter months if they could do it legally but the big question has always been the Constitution of the State of Maine very clearly states that the towns will not spend taxpayers money on private property. These camp roads are (there is no question about it) private property. I don't think there is any question in the Constitution of the State of Maine as to what it is referring to. The good lady did mention that there was some questions of legality as far as the Constitution was concerned and I don't think there is any question at all that we would be violating the Constitution of the State of Maine. I am wondering just how they propose to get around this obstacle?

The SPEAKER: The Chair recognizes the Representative from Lisbon, Representative Jalbert.

Representative JALBERT: Mr. Speaker, I would like to pose a question through the Chair.

What effect would this have on a new subdivision that is being proposed and constructed?

The SPEAKER: The Representative from Lisbon, Representative Jalbert, has posed a question through the Chair to anyone who may respond if they so desire.

The Chair recognizes the Representative from Gorham, Representative Larrivee.

Representative LARRIVEE: Mr. Speaker, Men and Women of the House: Having worked on this bill in committee and having some understanding of private roads, I specifically added an amendment to the bill which would require, before a community would be allowed to enter into an agreement to plow any private roads, that (1) the roads must currently be existing and (2) that they have in force new road standards for any new roads after the date that the bill becomes effective.

The definition of a private way, indeed, does say over which the public has no right of access. However, we felt that it was very important that if a community could be allowed to plow those roads because they had been doing it for a number of years, that the public not be barred from crossing those roads. That is why that additional amendment was offered and added to the bill.

I would be glad to discuss any other parts of it that you might have questions on.

The SPEAKER: The Chair recognizes the Representative from Island Falls, Representative Smith.

Representative SMITH: Mr. Speaker, Ladies and Gentlemen of the House: I think as Representative Strout has stated, this bill has been around before and is pretty difficult to address.

I believe if the towns have private roads and they want to maintain and plow them, they should take them over. The reason they don't take them over is because they say they do not meet the specs. Well waiver the specs in this case, take them over, your problems would be solved but I think you are getting into trouble when you start plowing private driveways.

The SPEAKER: The Chair recognizes the Representative from Berwick, Representative Murphy.

Representative MURPHY: Mr. Speaker, Ladies and Gentlemen of the House: Having had a heavy debate on this at our town meeting this year and having done a little research on it through MMA and the Attorney General's Office, I found out that one way this can be done and done legally is by a deeded easement. The people on these roads, if they give the town a deeded easement, the town can plow these roads legally. The reason that we had such a debate was the selectmen found out if they did plow the roads and ... we'll say a child was run over or any damage done, that the selectmen themselves were liable, not just the town but they themselves and they could be sued individually. That was a problem.

I would like to see an amendment on this that says "deeded easement" and I think that would clarify the law.

The SPEAKER: The Chair recognizes the Representative from Rumford, Representative Erwin.

Representative ERWIN: Mr. Speaker, I would like to request that the Clerk please read the Committee Report.

The SPEAKER: The Chair would advise members of the House that it is a unanimous Committee Report from the Committee on State and Local Government.

The Chair recognizes the Representative from Shapleigh, Representative Ridley.

Representative RIDLEY: Mr. Speaker, Ladies and Gentlemen of the House: As I stated before, this has been a problem for many, many years in these small towns. I personally have been involved having been a selectman for a number of years in my town and I think this bill is going to open up a can of worms that you are going to be sorry for later on.

Representative Murphy touched on it a little bit and I think that was a good approach which we have done in my particular area and that is to have these roads brought up to 32 foot right-of-ways in order to support year-round traffic. Then they would be eligible to be voted on for a town way and that solves all your problems. But, if you go in and start plowing these private roads and the town equipment is in there and someone gets hurt and they are on private property, you shouldn't be in there in the first place, you are spending the tax dollars on private property and this is strictly prohibited as far as the Constitution. Evidently, nobody really wants to address this problem of constitutionality. I am wondering if we are not going to be worse off than we are right now if this bill goes through.

The SPEAKER: The Chair recognizes the Representative from Fryeburg, Representative Hastings.

Representative HASTINGS: Mr. Speaker, Ladies and Gentlemen of the House: This bill has been one which has been closely followed by towns in my district and I will tell you why. For many years, towns in my district have been plowing several so-called camp roads as Representative Ridley mentioned. These

roads do not meet town specifications which generally require 66 feet. They probably are between 40 and 50 feet in width. They are otherwise well maintained graveled roads. The town wants to maintain them, has been doing so for many years and yet, MMA suddenly has told them that they have no right to do this even though in the past, their basis for doing it has been that it met the requirements to give fire protection to their town on a year-round basis.

This bill simply allows the towns to do what they have in the past if they choose by their own vote to do it. It is a home rule issue, in my opinion. It is not something that any town has to adopt, it clearly is done to remedy a problem which has existed and continues in these towns. It does not create other problems unless the town wishes to enter into that problem because of its own political needs. Therefore, I think the bill has been carefully crafted, especially with the amendments put on to protect the public and to protect the town as well as to give the town and its voters the option.

I would recommend that we do go ahead and pass this bill.

The SPEAKER: The Chair recognizes the Representative from Belfast, Representative Marsano.

Representative MARSANO: Mr. Speaker, Members of the House: I want to disagree with Representative Hastings, I consider this bill to have a number of safety problems in it that should be carefully addressed by this House. The bill in its present form requires that there be no signs posted on it probably during the winter time when the roads are going to be sanded or salted or whatever. The question then becomes, if there is a poor job done by whatever municipal facility seeks to do that, what happens to the individual, no longer apprised of the fact that it is a private road and goes down there and finds that the town has done the job badly and is injured? The bill creates an exculpatory situation. It is a cross purpose with the law and it seems to me as though the House ought to carefully consider all the aspects of this bill.

I agree with those who have suggested that the Constitutional problems in the final analysis will probably prove overriding but there are several public safety concepts that ought to be thought out as well.

On motion of Representative Gwadosky of Fairfield, tabled pending passage to be engrossed and specially assigned for Monday, April 24, 1989.

**FINALLY PASSED
Emergency Measure**

Resolve, to Study the Structure and Operations of the Legislature (H.P. 770) (L.D. 1081)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 126 voted in favor of the same and none against and accordingly the Resolve was finally passed, signed by the Speaker and sent to the Senate.

PASSED TO BE ENACTED

An Act to Clarify Certain Provisions in the Maine State Retirement System Laws (S.P. 270) (L.D. 698) (H. "A" H-63)

An Act to Amend the Occupational License Disqualification Law (S.P. 233) (L.D. 563) (C. "A" S-38)

Were 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.

The following item was taken up out of order by unanimous consent:

SPECIAL SENTIMENT CALENDAR

In accordance with House Rule 56 and Joint Rule 34, the following items:

Recognizing:

Ramona Brown, of Belfast, who outlasted 15 other county winners to become Maine's 1989 Spelling Champion; (SLS 157)

Was read.

The SPEAKER: The Chair recognizes the Representative from Belfast, Representative Marsano.

Representative MARSANO: Mr. Speaker, Ladies and Gentlemen of the House: It is a great pleasure for me to have here in the House today the quietly assertive and very confident student from the 8th grade at the Crosby Junior High School in Belfast who is this year's state champion.

Romana Brown is a high honors student who is known for being extremely quiet in class. I say quietly assertive because, on the day of the championship competition at Bates College, a word was offered to her to spell and, at the conclusion of that spelling, she was told that she had made a mistake. Very gently, she suggested to the officials that they had made a mistake and, in an instant TV replay, proved that this 8th grade girl was, in fact, right. So, they gave her an opportunity to spell again and, in the end, she won.

She is truly a remarkable person. She and her mother will go to the national championships in Washington in late June and early July. It will be the first time that either of them have been outside of the State of Maine.

Ramona Brown is a truly wonderful product of the educational system that the State of Maine provides for its citizens. She is looking forward to taking advantage of every opportunity and she is happy to be with us here in the House this morning.

The SPEAKER: On behalf of everyone, we certainly welcome her here to Augusta and wish her the best in Washington and congratulate her for her state victory. Subsequently was passed in concurrence.

ORDERS OF THE DAY

TABLED AND TODAY ASSIGNED

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

HOUSE REPORT - Refer to the Committee on Judiciary - Committee on Energy and Natural Resources on Bill "An Act Regarding Damage from Industrial Fallout" (H.P. 673) (L.D. 922)

TABLED - April 19, 1989 by Representative GWADOSKY of Fairfield.

PENDING - Acceptance of Committee Report.

Subsequently, the Committee Report was accepted and the Bill referred to the Committee on Judiciary and sent up for concurrence.

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

HOUSE DIVIDED REPORT - Majority (10) "Ought to Pass" as amended by Committee Amendment "A" (H-65) - Minority (3) - "Ought Not to Pass" - Committee on Fisheries and Wildlife on Bill "An Act to Increase the Number of Moose Permits Issued to Residents" (H.P. 197) (L.D. 277)

TABLED - April 19, 1989 by Representative GWADOSKY of Fairfield.

PENDING - Acceptance of Either Report.

Representative Jacques of Waterville moved that the House accept the Majority "Ought to Pass" Report.

The SPEAKER: The Chair recognizes the Representative from South Portland, Representative Macomber.

Representative MACOMBER: Mr. Speaker, I request a roll call.

The SPEAKER: The Chair recognizes the Representative from Southwest Harbor, Representative Carroll.

Representative CARROLL: Men and Women of the House: I urge you to vote against the Majority Report to increase the number of moose to 1500. I have reason to believe that people feel very strongly about this. This is not a political issue, I worked very closely with the Chairman, Representative Jacques. It is the way I feel. They want to increase the kill another 500 -- a thousand is enough. I worked for the State for 23-odd years, I have worked very closely with the biologists, we need biologists but on something like this, I don't like the way they count moose by aerial view. They look down on the State of Maine and say we have so many moose -- I can't go along with this.

We have sold our state, we have given our state away and other people are taking over the state. We had a deer problem awhile ago, we had to bring the doe permit back. Our bear are going to have problems if we don't do something about the bear. The Department is working on that and we are working on that. We are working closely with the Department.

This is my own view. I just believe we have done enough. We have done enough to kill and slaughter the moose and all our animals in the State of Maine.

I urge you to vote against this. A thousand is enough to shoot. That does not include what the poachers take every year. I realize some are killed by vehicles. We have only so many moose left and if we don't start taking care of them now, I think we will regret it down the road.

The SPEAKER: The Chair recognizes the Representative from West Gardiner, Representative Marsh.

Representative MARSH: Mr. Speaker, Ladies and Gentlemen of the House: I am not sure how long my voice is going to last so I condensed my notes. Yesterday I got up to speak and I lost my voice and had to have Representative Jacques take over for me. I hope that doesn't happen this morning.

Fifty percent is a significant number when you are dealing with wildlife management and I feel should only be considered when a proposal can be substantiated by irrefutable data. It is my understanding from what happened in committee and my talking with the Department last week that this data is not available. The current moose season in Maine is the envy of anyone in wildlife management. Anyone can participate and apply. Rich people participate, poor people participate, young and old people participate. This season has a 95 percent success. We are harvesting good top quality animals. After the season is over, there are plenty of animals that are left for other people to enjoy, such as photographers or whatever.

The current season is a product of a lot of hard work by a number of people and I think we should take into account that this season came about as a result of a referendum vote. Unless there is new evidence that I don't know about that substantiates the fact that we should be increasing this number by 50

percent, I strongly think that you should stay with the number that it is today.

The SPEAKER: The Chair recognizes the Representative from Athens, Representative Rotondi.

Representative ROTONDI: Men and Women of the House: I hope that you will vote to accept the Majority "Ought to Pass" Report. One of the reasons for supporting this legislation is the growing concern by my constituents about the particularly high number of accidents involving moose and motor vehicles along Route 201 between Bingham and the Canadian border.

Maine's moose population is growing rapidly especially in rural and heavy forested areas such as my district. I have talked with biologists from Fisheries and Wildlife and they estimate that Wildlife Management Unit #3, which is a large part of my district, (it takes in a large part of it) there are approximately 4,600 moose.

According to a report that was issued in 1988 (it was done by a wildlife biologist at the Department) on moose and motor vehicle accidents along Route 201 in Somerset County, there were 85 accidents documented between January, 1986 and December, 1987. Last year, I know that there were three deaths on that highway between moose and cars. You can see this is not a bill to extend the moose hunt to benefit sportsmen, it is a bill that is necessary to help prevent some of the accidents incurred on the stretch of road in my district.

The SPEAKER: The Chair recognizes the Representative from Waterville, Representative Jacques.

Representative JACQUES: Mr. Speaker, Men and Women of the House: It seems that the debate on the moose hunting season has come down to the credibility and the facts established by the biologists of the State of Maine. It took me 11 years to come to the point where I believe them half of the time and maybe after today, you will convince me I should have gone back to my original concept 11 years ago and not believe them any of the time.

I just called the Department and we are talking about 11 million acres that are in the moose hunting zone now. With 500 additional permits, I figured it out quickly and I may be wrong, that would be one moose for every 2,000 acres in the moose hunting zone. Not a real big number when you look at the whole aspect.

The only thing I would like to point out is that, in the State of Maine, we instituted a doe permit system where your constituents and my constituents have to apply for a doe permit based on the facts and figures and recommendations of the biologists. Not a very popular system but it is there.

We have instituted one and two fish limits on lakes such as Moosehead Lake and Chesuncook Lake. We have made major changes in Sebago Lake based on the recommendations, facts and figures of the biologists of this state. It comes to the point where, if you don't believe them, please let me know, we can save about \$4 million in the Fisheries and Wildlife budget. We won't have anymore crises in the funding of that budget because we will lay the whole bunch of them off and then emotions and peoples feelings will let all the experts that you and I all represent (and I love every one of them) manage the Fisheries and Wildlife for this state. It would help solve my problem, I wouldn't have to deal with the license fee increase every two years and you wouldn't have to deal with the license fee increase every two years.

I guess this has kind of come down to a mini-referendum on the credibility of the biologists of this state and I have a lot of respect for

Representative Carroll and Representative Marsh -- they both have long experience and background in natural resources of the State of Maine. I understand their concerns and their reservations but I think the time has come where you are either going to listen to them or not and that applies to your experts in Agriculture, Mental Health, Education as well as Fisheries and Wildlife. That is what it boils down to. I have participated in every moose hunt and I get a kick out of everybody telling me how easy they are and there isn't much work to it -- I have never been lucky enough to get picked yet but, when you have a camp in northern Maine, you have a lot of friends when moose hunting season comes around and they try to rely on your expertise and what you have seen. So, I have been involved in the hunt's and it took a lot of convincing to convince me to increase it by 500.

The original Department request was to give the Commissioner the authority to establish the ceiling on his own, completely and one hundred percent, at the recommendation of the biologists. Fortunately, the entire committee didn't agree with that concept. The recommendation was to put the ceiling at 300 and again, the committee (I think the entire committee) felt that if you are going to set a ceiling, you should do it conservatively and the majority went with 1500.

I guess you will just have to decide for yourself today -- are we going to give them any credibility or are we not? Should you decide not to, it will make my job of funding the Department a little easier come next month.

The SPEAKER: The Chair recognizes the Representative from Standish, Representative Greenlaw.

Representative GREENLAW: Mr. Speaker, Ladies and Gentlemen of the House: I agree with the Committee Chair, Representative Jacques but my remarks would be that, if we are going to hire Department heads whether it is Fisheries and Wildlife or some other departments, why don't we just, as Representative Jacques said, relieve them of their duties, we will move to Augusta full-time and run everything from AMHI to Fisheries and Wildlife. I doubt that we would do much better than they are doing.

This is a very emotional thing, shooting moose. Commissioner Vail has assured me that he would not go to the limit of what we have given him in this legislation.

The SPEAKER: The Chair recognizes the Representative from Bangor, Representative Duffy.

Representative DUFFY: Mr. Speaker, Ladies and Gentlemen of the House: This bill has been before us in several other forms and I have always voted in favor of additional moose to be shot in northern Maine.

I quite honestly believe the biologists when they say that the herd is more abundant. I also believe that we probably should have increased the moose hunt back when we increased the area that we hunt the moose in. We increased the area for the moose hunt by almost 20 percent a few years ago but we didn't increase the amount of moose. It has always been a social issue. Even Bud Leavitt -- I think it was in December -- said in one of his articles that there was enough evidence now that he probably could support an increased moose hunt because of what the biologists say the number of moose has accumulated up there.

Again, it is a question of biologists or what is good for the herd and it is not necessarily bad to increase hunts for the survival of that herd. In fact, it could be very, very good. I just want you to know that, if you go along with the

recommendations of the biologists, that is one thing but, if it is a social issue, you will have to vote whatever you believe on that.

The SPEAKER: The Chair recognizes the Representative from Woodland, Representative Anderson.

Representative ANDERSON: Men and Women of the House: Just to let you know where I am coming from, I have spent considerable amount of time in the woods and forests in northern Maine, especially from Millinocket north. I spent 13 winters in Allagash, between the Allagash and St. John Rivers loading pulpwood for the Great Northern Paper Company. I spent a couple of winters in Portage and two more in the BlackStone Siding area. I have seen many wild animals, some are quite rare like a mountain lion in the wild, Canadian lynx, black cat fisher, pine martin -- these are quite rare animals.

I am definitely not in favor of increasing the moose kill. A couple of weeks ago, when I was traveling from Aroostook to Augusta, south from Houlton on 95, as you round the bend, Mt. Katahdin shows up in front of you and the first thing I think of is the caribou and how they are faring and how much money and time was spent to put them there. I just hope that we don't wind up in the same solution and situation with the moose.

In our committee, all this session we have been working with a bill pertaining to land exemptions. We have many environmental people talking to us about the importance of wetlands and aquatic life and the aesthetic values of them. I think if we are going to talk about aesthetic values (or a sight for sore eyes as my mother used to call it) I think we should talk about the moose.

If you have ever rounded a turn on a woods road on a frosty November morning and seen a full-grown moose going down the road ahead of you about 25 or 30 miles an hour with a big set of horns and his tassels swinging from side to side -- if you want to talk about aesthetics, I think that is quite a lot of aesthetics for Maine.

I am sure you will hear and have heard already that people testified that the moose is dangerous to motorists -- if that being the case, we should increase the kill until there are no more moose left but I don't think that is necessary. From my experience, if you slow down instead of trying to predict in which direction the animals are going to go, you generally come out a winner. You know, if your neighbor's dog bites a person, you don't kill all the dogs on the street.

Ladies and gentlemen, I hope that the increase will never materialize.

The SPEAKER: The Chair recognizes the Representative from South Portland, Representative Macomber.

Representative MACOMBER: Mr. Speaker, Ladies and Gentlemen of the House: It may seem strange for somebody who comes from the city of South Portland to be speaking on a moose bill that really doesn't have much effect on my particular district but I would like to preface my remarks by saying that for 30 years I have spent at least a month every year on Moosehead Lake. I saw a lot of moose, I did a lot of fishing and I enjoyed it very much.

For those of you here when we passed the original moose bill, I am sure you recall I was very much against it. I was a friend of Toni Martin's and I certainly believed everything she had to say at that time. I think the argument that was brought forth then and I think you are seeing it here today is that the original moose bill was merely a foot in the door. Once you got the foot in the door, somewhere along the line depending on testimony of biologists,

we are going to say, we have too many moose here, we are going to do them a favor by killing part of them and the rest of them will have more range and more feed. I don't know whether the moose really appreciate that attitude or not. I sometimes wonder if you appreciate being killed to relieve the overfeeding situation.

The point I am trying to make is that we never seem to have had all these great problems with the moose until we passed the moose bill -- with car accidents, all this and all that. It amazes me that the moose managed to get along for a thousand years without all our help and they seemed to have survived quite well. But, now that we are making this great effort to preserve them and save them, we feel that we have to kill a certain number of them. I guess I relate, as I said to the original foot in the door approach -- it is not only on moose bills, we have a bill coming up here before the session is over on Sunday sales. I think those of us who were here at that time recall the Sunday sales and I was one of the people who testified in favor of the bill that gave the Sunday's between Thanksgiving and Christmas. At that time, we pledged that we would not come back and ask for more but I think as the people change, that doesn't always hold true. I talked to Representative Hepburn when he had the original bill and I did ask him if these 500 moose he was talking about were the 500 that we missed in the last hunt. I would just like to have you think about it. Is it pretty to have a live moose to look at or one of the dead ones?

The SPEAKER: The Chair recognizes the Representative from Princeton, Representative Moholland.

Representative MOHOLLAND: Mr. Speaker, Ladies and Gentlemen of the House: I would hope that you would go along with Mr. Jacques today on the "Ought to Pass." As far as moose are concerned, nobody has met anymore moose than I have. Down our way, we have a lot of clear cut land, the moose are increasing -- one of my trucks came down through Route 6 to Topsfield last fall and got hit by two moose at the same time so that tells me that the moose are expanding in Washington County. We had an occasion three or four years ago where we had a horse in a small stable and one of the moose came right in and cleaned up the grain so I think the moose are rapidly growing and I do hope that you will go along with Mr. Jacques.

The SPEAKER: The Chair recognizes the Representative from Rumford, Representative Erwin.

Representative ERWIN: Mr. Speaker, I would like to pose a question through the Chair to the Chairman of the Committee. Is there any record or statistics in regard to the number of moose killed by automobiles?

The SPEAKER: The Representative from Rumford, Representative Erwin, has posed a question through the Chair to the Chairman of the Committee who may respond if he so desires.

The Chair recognizes the Representative from Waterville, Representative Jacques.

Representative JACQUES: Mr. Speaker, Men and Women of the House: Yes, according to the records, there were more moose killed in highway accidents and on railroad crossings than there were by moose hunters last season.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The Chair recognizes the Representative from Waterville, Representative Jacques.

Representative JACQUES: Mr. Speaker, Men and Women of the House: I always appreciate the kind remarks of the Representative from South Portland and I will vouch that going to Rockwood, Maine and staying at Maynard's camp for 35 years does qualify him to state his opinions on fish and wildlife matters. As a matter of fact, that's probably more training than a lot of us have. I have only been around 35 years.

To get back to the facts behind this whole thing -- no one ever promised that a thousand would be set in cement. Obviously, the management plan is reevaluated and rewritten on a five year basis. It used to be a 10 year plan, then it went to five year management plans and now, on some species, such as the pine martin and the fisher that Representative Anderson talked about, they are talking about looking at 2 and 3 year management plans. A lot of it has to do with the other factors involved, cutting operations, forestry harvesting operations, which has been the factor that has contributed to the moose population increase. After the moose hunt last year and I am not an expert but after the last day of the moose hunt, I left my camp (I had been up there doing some work) and saw seventeen moose on the Golden Road and the road between Kakadjo and Caribou Corner on a Saturday evening after the five or six day hunt of that moose season. Obviously, all the moose in the area weren't wiped out, they were still right there.

We like to base things on fact and data, not emotions. If we start managing fish and wildlife on emotions, we are going to be in big trouble, I can assure you of that. But as I said before, you will help solve my problem, we will get rid of the biologists because we don't need them anymore.

The SPEAKER: The Chair recognizes the Representative from South Portland, Representative Macomber.

Representative MACOMBER: Mr. Speaker, Ladies and Gentlemen of the House: Just to respond to the good Representative from Waterville, I am sure in his 35 years, he has learned more than I did in my 35. But, when he says we want to rely on facts and data, that is fine, I will go along with that. But the fact that the moose count is taken by a plane flying over a particular area, we will say one acre, they count the number of moose in that one acre and then they multiply by the number of acres. I don't consider that very accurate.

The SPEAKER: The pending question before the House is the motion of the Representative from Waterville, Representative Jacques, that the House accept the Majority "Ought to Pass" Report.

The SPEAKER: The Chair recognizes the Representative from Lewiston, Representative Handy.

Representative HANDY: Pursuant to House Rule 7, I request leave of the House to pair my with the Representative from Gray, Representative Carroll. If he were present and voting, he would be voting yea; I would be voting nay.

The SPEAKER: The Chair recognizes the Representative from East Millinocket, Representative Michaud.

Representative MICHAUD: I request permission to pair my vote with the Representative from Millinocket, Representative Clark. If he were

present and voting, he would be voting yea; I would be voting nay.

The SPEAKER: The pending question before the House is the motion of the Representative from Waterville, Representative Jacques, that the House accept the Majority "Ought to Pass" Report. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 7

YEA - Aliberti, Allen, Bailey, Bell, Boutilier, Carter, Cashman, Clark, M.; Coles, Cote, Crowley, Daggett, Dipietro, Donald, Duffy, Dutremble, L.; Erwin, P.; Graham, Greenlaw, Gurney, Gwadosky, Hale, Heeschen, Hepburn, Hickey, Jackson, Jacques, Jalbert, Joseph, Ketover, Larrivee, Lawrence, Luther, Manning, Marston, Martin, H.; Mayo, McGowan, McHenry, McKeen, McSweeney, Melendy, Mills, Moholland, Nadeau, G. G.; Nadeau, G. R.; Paradis, P.; Paul, Pederson, Pineau, Plourde, Pouliot, Priest, Rand, Reed, Richard, Ridley, Rolde, Rotondi, Seavey, Sheltra, Smith, Swazey, Telow, Tracy, Walker, Wentworth, Whitcomb, The Speaker.

NAY - Adams, Aikman, Anderson, Anthony, Ault, Begley, Brewer, Burke, Butland, Cahill, T.; Carroll, J.; Cathcart, Chonko, Conley, Constantine, Curran, Dellert, Dexter, Dore, Farnsworth, Farnum, Farren, Foster, Garland, Gould, R. A.; Hastings, Hichborn, Higgins, Holt, Hussey, Hutchins, Lebowitz, Libby, Look, Lord, Macomber, Mahany, Marsano, Marsh, McCormick, McPherson, Merrill, Mitchell, Murphy, Norton, Nutting, O'Dea, O'Gara, Oliver, Paradis, E.; Paradis, J.; Parent, Pendleton, Pines, Richards, Rydell, Sherburne, Simpson, Skoglund, Small, Stevens, A.; Stevenson, Strout, B.; Strout, D.; Tammaro, Townsend, Tupper, Webster, M..

ABSENT - Foss, Hanley, Hoglund, Kilkelly, LaPointe, Lisnik, MacBride, Ruhlin, Stevens, P.; Tardy.

PAIRED - Carroll, D.; Clark, H.; Handy, Michaud. Yes, 69; No, 68; Absent, 10; Paired, 4; Excused, 0.

69 having voted in the affirmative and 68 in the negative with 10 absent and 4 paired, the Majority "Ought to Pass" Report was accepted, the Bill read once.

Committee Amendment "A" (H-65) was read by the Clerk and adopted and the Bill assigned for second reading Monday, April 24, 1989.

(Off Record Remarks)

(At Ease)

The House was called to order by the Speaker.

The following item appearing on Supplement No. 6 was taken up out of order by unanimous consent:

PAPER FROM THE SENATE
Ought to Pass as Amended

Report of the Committee on Energy and Natural Resources reporting "Ought to Pass" as Amended by Committee Amendment "A" (S-49) on Bill "An Act to Establish Criteria for Adopting a Moratorium in Maine's Unorganized Territories" (EMERGENCY) (S.P. 232) (L.D. 562).

Came from the Senate, with the report read and accepted and the Bill Passed to be Engrossed as amended by Committee Amendment "A" (S-49).

Report was read and accepted, the Bill read once. Committee Amendment "A" read by the Clerk and adopted.

Under suspension of the rules, the Bill was read a second time and passed to be engrossed as amended in concurrence.

By unanimous consent, ordered sent forthwith to Engrossing.

The following item appearing on Supplement No. 4 was taken up out of order by unanimous consent:

PASSED TO BE ENGROSSED

WITHOUT REFERENCE TO COMMITTEE

Bill "An Act to Improve Ventilation at the Augusta Mental Health Institute" (EMERGENCY) (H.P. 911) (L.D. 1273) (Presented by Representative HIGGINS of Scarborough) (Cosponsored by Representative CARTER of Winslow, Senator PERKINS of Hancock and Senator PEARSON of Penobscot)

Under suspension of the rules, without reference to 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.

The following item appearing on Supplement No. 2 was taken up out of order by unanimous consent:

PAPER FROM THE SENATE

The following Joint Order: (S.P. 474)

ORDERED, the House concurring, that when the House and Senate adjourn, they do so until Monday, April 24, 1989, at 9 o'clock in the morning.

Came from the Senate, read and passed.

Was read and passed in concurrence.

The following item appearing on Supplement No. 3 was taken up out of order by unanimous consent:

PASSED TO BE ENGROSSED

As Amended

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) (C. "A" H-89)

Was reported by the Committee on Bills in the Second Reading, read the second time, Passed to be Engrossed as Amended, and sent up for concurrence.

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

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

HOUSE DIVIDED REPORT - Majority (9) "Ought Not to Pass" - Minority (3) - "Ought to Pass" - Committee on State and Local Government on RESOLUTION, Proposing an Amendment to the Constitution of Maine Requiring Successful Gubernatorial Candidates to Receive More than 50 Percent of the Votes Duly Cast (H.P. 233) (L.D. 317)

TABLED - April 19, 1989 by Representative GWADOSKY of Fairfield.

PENDING - Acceptance of Either Report.

On motion of Representative Gwadosky of Fairfield, retabled pending acceptance of either report and later today assigned.

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

An Act Relating to the Dig-safe Law (Emergency) (H.P. 432) (L.D. 597) (C. "A" H-37)

TABLED - April 19, 1989 by Representative GWADOSKY of Fairfield.

PENDING - Passage to be Enacted.

On motion of Representative Moholland of Princeton, under suspension of the rules, the House reconsidered its action whereby L.D. 597 was passed to be engrossed.

The same Representative offered House Amendment "A" (H-94) and moved its adoption.

House Amendment "A" (H-94) was read by the Clerk and adopted.

Subsequently, the Bill was passed to be engrossed as amended by Committee Amendment "A" and House Amendment "A" and sent up for concurrence.

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

Bill "An Act to Further Define the Responsibilities of the Maine Milk Commission to Ensure a Supply of Milk to the Consumers of Maine" (H.P. 452) (L.D. 617)

TABLED - April 19, 1989 by Representative GWADOSKY of Fairfield.

PENDING - Motion of Representative TARDY of Palmyra to indefinitely postpone House Amendment "A" (H-66) to Committee Amendment "A" (H-59).

The SPEAKER: The Chair recognizes the Representative from Athens, Representative Rotondi.

Representative ROTONDI: Mr. Speaker, Ladies and Gentlemen of the House: I urge you not to indefinitely postpone House Amendment "A" (H-66). I am sure most of you remember the debate on this amendment last Thursday evening. I hope that everyone here understands how serious this problem really is. This is not an amendment for just Mom and Pop stores. This is an amendment that will ensure that milk distributors make regular deliveries of milk in all parts of the state, to retail outlets, schools, hospitals, nursing homes and restaurants which are on the delivery route and request a regular delivery. It does not mean that the distributor has to go out of his way to deliver the milk.

While lobbying this bill, I have heard a lot of comments made about the dairy processing plants and what they want. I believe we aren't here to represent the dairy processing plants, I believe we are here to represent people and people in need. There really is no other way to ensure milk deliveries to these rural parts of Maine that are miles and miles from large stores such as Shop and Save, Shaws, or the A & P. I am sure many of you who represent rural districts know that there are very few services there.

Milk is not a luxury ladies and gentlemen, it is a necessity.

The SPEAKER: The Chair recognizes the Representative from Leeds, Representative Nutting.

Representative NUTTING: Mr. Speaker, Ladies and Gentlemen of the House: I rise today to ask you to support the motion of Representative Tardy of Palmyra to indefinitely postpone House Amendment "A".

I want to basically go over what myself and the unanimous feeling on the Agriculture Committee was when we had this amendment (before you today) presented to us as a bill a couple of weeks ago when we unanimously decided the way to go would be to draft a committee amendment that is before you now, H-59.

Yes, there is a dairy in Maine that has bought out over 25 other dairies in the last 20 years. This particular real bad situation in Representative Rotondi's district happened when one dairy bought out another and decided that it didn't want to continue

all the routes of the dairy that it purchased. So, with a one day notice, they dropped that whole route. It really put them in a very bad spot. That same dairy dropped Pat, here on the first floor, a little while ago, gave her a half a day's notice. That same dairy also has dropped many small stores in Portland with almost no notice.

Part of the feeling the committee went through is this is a very similar situation to what this and other dairies tried to do with farmers all over Maine several years ago -- to drop farmers with no notice or with very little notice. Of course we produce and the dairies distribute a very perishable product, so back along in the past those farmers came to the Milk Commission and said well, we want it written in the Milk Commission Law that the Milk Commission must pick up our milk if we want them to. Of course the dairies didn't like that and the end result of that conflict years ago was that the rule was written that before a dairy can drop a farmer, it must give that farmer 30 days notice so the farmer has time to find another market for his milk. That system has worked very well for years, 30 days is ample time.

So, what we did in committee, in the unanimous fashion, was we extended this 30 day notice for stores also so that, if a dairy is going to drop a certain store from its route or a whole route if it doesn't want to continue delivering it, he has got to give them 30 days notice so that they have plenty of time to call other milk suppliers who are very anxious to deliver milk. I know two other dairies in Maine that have a policy, if they are called by stores to deliver milk, they have a policy not to turn down anybody.

So, in effect, when I discussed what we had done in committee (with Pat down on the first floor) I said, we are proposing to have it so that if you are going to get dropped you are going to have 30 days notice. Her words to me were, "That would be fine." That would give her plenty of time to secure another supply of milk.

This morning in talking to people from the Department of Agriculture and from the people from the Attorney General's Office, they both have problems with the original bill and this amendment as whether or not it is constitutional to demand that Business A do business with everybody who wants to do business with it. It is for these reasons that I have just described that in unanimous fashion the committee felt that we have addressed a very serious problem by our Committee Amendment "A" (H-59). I urge you to vote in support of the Representative from Palmyra's motion to indefinitely postpone this amendment.

The SPEAKER: The Chair recognizes the Representative from Island Falls, Representative Smith.

Representative SMITH: Mr. Speaker, Ladies and Gentlemen of the House: I listened to Representative Nutting's remarks -- I don't believe we are saying they have to go out and pick up all new business. I think they should be obligated to pick up the ones they already had.

Big is not always better. A 30 day notice is nice but the need for milk after 30 days is still there and I believe we can do better. When a large company buys up a small company that has served an area well, that large company should not be allowed to pull out without providing service to that area. Their business was once needed and I think it should be continued.

I have small towns in my district, the largest is approximately 1,300. Nearly every small town has at least one store and possibly more. My town of less

that 1,000 has four small stores, three of which are open late in the evening and also open on Sunday. Last week I mentioned how I thought it would be if one large dairy served the area. Less days served and the small stores would need larger coolers.

I served on the Agriculture Committee a few years ago and one year I recall the large dairy wanting to force out the smaller ones and I felt this was going to happen. The meeting was held in Presque Isle about 60 miles north of Island Falls. To get to Presque Isle, I went through eleven small towns and there was not a street light until I got to Presque Isle. This is rural Maine, rural America, nearly every town had one or more small stores. The stores were well-served by the small dairy, also the large one. Now if the large dairy forced the smaller one out, what do you think would happen to the service? I would ask each one here today, have you ever needed the service that the small stores offer? Maybe a loaf of bread, quart of milk, or last minute plans for a picnic, hot dogs, chips, pop or whatever? Today the small stores need us. Who else can they turn to? Let us help the small stores today, let's help them continue serving those people in the rural area. Ten or twenty miles is a long way to go for a quart of milk. I would hope you would vote against the pending motion.

The SPEAKER: The Chair recognizes the Representative from Berwick, Representative Murphy.

Representative MURPHY: Mr. Speaker, Ladies and Gentlemen of the House: You may think it is odd that I am speaking on this amendment because where I live I don't have to go far to get milk. Therefore, my children had all the milk they wanted to drink. I believe that every child in the State of Maine has that same right. I believe that milk is very important, especially for babies and small children. In fact, scientific research has proven now and they came out and said that milk is very important in the development of the brain, not powdered milk, not 2 percent milk, not skim milk — whole milk, the fat in it is very important to the health of a child. I think when a parent has to go 30, 40 miles, round-trip it would be 60 or 80 miles to buy milk for their children I don't think that is right. I think that we have created a monopoly in this state and I think it is bad.

I hope that you would defeat the motion on the floor and support the amendment.

The SPEAKER: The Chair recognizes the Representative from Sanford, Representative Hale.

Representative HALE: Mr. Speaker, Ladies and Gentlemen of the House: I would like to pose a question through the Chair.

I would like to know if there is a choice of other dairies in that area? The good Representative from Leeds spoke about a choice of other dairies, two other dairies. I am wondering if that choice is available to the Representative from Athens?

The SPEAKER: Representative Hale of Sanford has posed a question through the Chair to anyone who may respond if they so desire.

The Chair recognizes the Representative from Waldo, Representative Whitcomb.

Representative WHITCOMB: Mr. Speaker, Men and Women of the House: I don't rise in response to the question because I don't entirely understand the question and I am not familiar with the circumstances in Athens.

I think the question before the House, as I understand the motion now, is again acceptance of the Committee Report. I think as the Representative from Leeds discussed, the committee did debate and discuss many of the circumstances surrounding this piece of

legislation. Frankly, a committee that represents farm interest very frequently is obviously disposed to seeing that the product is available to people in as many places and at as much convenience as possible. If there is a committee in this legislature that seeks to favor an interest group, it is the Agriculture Committee who seeks to favor the farmers. But, the circumstances around the amendment which is very similar to the original bill proposed to us is a very dangerous precedent. We are in fact suggesting that this state is forcing businesses to do business with other businesses without a great deal of explanation or without a situation that resembles a public utilities or complete monopoly. If we are going to force to make one business deal with another, we need to look at it in a different light than we can now with our present regulatory system dealing with milk.

The situation that brought this issue before the committee from the Representative from Athens was a temporary situation. The situation has been alleviated. Right now I think you would be pressed to find a region of the State of Maine that does not have milk available to its people. I think trying to use a legislative remedy for a temporary situation has a potential for creating a very dangerous precedent. We are going to face, perhaps in other corners of the state, a few other small processors going out of business — I would argue with you that passing this legislation will hasten their demise particularly in Aroostook County where there are two small processors left facing very difficult financial circumstances partially because of the regulatory system that we have in place now. Forcing them to make deliveries in the far corners of that remote area would be one of the quickest ways I could think of of hastening their demise.

I urge you again to support the unanimous report of the committee, a committee that spent a great deal of time working on this issue, looking at it from many angles and feels that its report is the most reasonable solution to the difficulty presented to us.

The SPEAKER: The Chair recognizes the Representative from Island Falls, Representative Smith.

Representative SMITH: Mr. Speaker, Ladies and Gentlemen of the House: Again, I don't believe we are forcing the large dairies to serve any new customers. What we want them to serve is the customers that they had or was served by the small dairy that they bought out or forced out. I don't believe for a minute that this large dairy cannot make a buck — and that is what this is all about, that they can't make a buck by serving these small stores, that any small dairy is going in and picking up. They are taking off the cream and leaving the rest for someone else and that is wrong.

The SPEAKER: The Chair will order a vote. The pending question before the House is the motion of Representative Tardy of Palmyra that House Amendment "A" (H-66) to Committee Amendment "A" (H-59) be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

Representative Aliberti of Lewiston requested a roll call vote.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having

expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is the motion of Representative Tardy of Palmyra that House Amendment "A" H-66 to Committee Amendment "A" (H-59) be indefinitely postponed.

The SPEAKER: The Chair recognizes the Representative from Houlton, Representative Graham.

Representative GRAHAM: Mr. Speaker, pursuant to House Rule 7, I request permission to pair my vote with the Representative from Gray, Representative Carroll. If he were present and voting, he would be voting nay; I would be voting yea.

The SPEAKER: The Chair recognizes the Representative from Milo, Representative Hussey.

Representative HUSSEY: Mr. Speaker, pursuant to House Rule 7, I request permission to pair my vote with the Representative from Millinocket, Representative Clark. If he were present and voting, he would be voting nay; I would be voting yea.

The SPEAKER: The pending question before the House is the motion of Representative Tardy of Palmyra that House Amendment "A" H-66 to Committee Amendment "A" (H-59) be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 8

YEA - Aikman, Aliberti, Ault, Bailey, Begley, Butland, Curran, Dellert, Dexter, Dipietro, Donald, Farnum, Farren, Foster, Garland, Greenlaw, Hanley, Hastings, Hepburn, Higgins, Holt, Hutchins, Jackson, Jalbert, Lebowitz, Libby, Macomber, Mahany, Manning, Marsh, McCormick, McKeen, McPherson, Merrill, Norton, Nutting, Paradis, E.; Parent, Paul, Pederson, Pendleton, Pines, Reed, Richards, Sheltra, Small, Stevens, A.; Stevenson, Strout, B.; Telow, Townsend, Tupper, Webster, M.; Wentworth, Whitcomb.

NAY - Adams, Allen, Anthony, Bell, Boutilier, Brewer, Burke, Cahill, T.; Carroll, J.; Carter, Cashman, Cathcart, Chonko, Clark, M.; Coles, Conley, Constantine, Cote, Crowley, Daggett, Dore, Duffy, Dutremble, L.; Erwin, P.; Farnsworth, Gould, R. A.; Gurney, Gwadosky, Hale, Handy, Heeschen, Hichborn, Hickey, Jacques, Joseph, Ketover, Larrivee, Lawrence, Look, Luther, Marston, Martin, H.; Mayo, McGowan, McHenry, McSweeney, Melendy, Michaud, Mills, Mitchell, Moholland, Murphy, Nadeau, G. R.; Oliver, Paradis, J.; Paradis, P.; Pineau, Plourde, Priest, Rand, Richard, Ridley, Rolde, Rotondi, Ruhlin, Rydell, Seavey, Simpson, Skoglund, Smith, Stevens, P.; Strout, D.; Swazey, Tammaro, Tracy, Walker.

ABSENT - Anderson, Foss, Hoglund, Kilkelly, LaPointe, Lisnik, Lord, MacBride, Marsano, Nadeau, G. G.; O'Dea, O'Gara, Pouliot, Sherburne, Tardy, The Speaker.

PAIRED - Carroll, D.; Clark, H.; Graham, Hussey.

Yes, 55; No, 76; Absent, 16; Paired, 4; Excused, 0.

55 having voted in the affirmative and 76 in the negative with 16 being absent and four paired, the motion to indefinitely postpone did not prevail.

Subsequently, House Amendment "A" was adopted.

Committee Amendment "A" as amended by House Amendment "A" thereto was adopted.

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

The following item appearing on Supplement No. 4 was taken up out of order by unanimous consent:

PASSED TO BE ENACTED
Emergency Measure

An Act to Establish Criteria for Adopting a Moratorium in the Jurisdiction of the Maine Land Use Regulation Commission (S.P. 232) (L.D. 562) (C. "A" S-49)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 126 voted in favor of the same and 1 against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

The following items appearing on Supplement No. 1 were taken up out of order by unanimous consent:

PASSED TO BE ENACTED
Emergency Measure

An Act to Make Additional Allocations to the Department of Inland Fisheries and Wildlife for the Fiscal Year Ending June 30, 1989 (H.P. 91) (L.D. 126) (C. "A" H-46)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 127 voted in favor of the same and none against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

PASSED TO BE ENACTED
Emergency Measure

An Act to Change the Dates for Burial Eligibility at the Maine Veterans' Memorial Cemetery (H.P. 420) (L.D. 585) (C. "A" H-48)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 125 voted in favor of the same and none against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

PASSED TO BE ENACTED
Emergency Measure

An Act Relating to Highway Construction and Maintenance Signs and Advertising Signs (H.P. 454) (L.D. 619) (C. "A" H-47)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 122 voted in favor of the same and none against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

PASSED TO BE ENACTED

An Act to Change the Name of the Maine Committee on Problems of the Mentally Retarded and to Update the Definition of Mental Retardation (S.P. 195) (L.D. 443) (C. "A" S-33)

An Act Appropriating Funds to the Department of Educational and Cultural Services for Early Childhood Education (H.P. 23) (L.D. 18) (C. "A" H-43)

Were 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.

PASSED TO BE ENACTED

An Act to Return Certain Positions within the Department of Environmental Protection to Classified

Service under the Civil Service Law (H.P. 177) (L.D. 242)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed.

Representative Gwadosky of Fairfield requested a roll call vote on enactment.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is passage to be enacted. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 9

YEA - Adams, Aliberti, Allen, Anthony, Ault, Bell, Boutilier, Brewer, Burke, Butland, Cahill, T.; Carter, Cashman, Cathcart, Chonko, Clark, M.; Coles, Conley, Constantine, Cote, Crowley, Curran, Daggett, Dellert, Dipietro, Donald, Dore, Duffy, Dutremble, L.; Erwin, P.; Farnsworth, Farren, Foster, Gould, R. A.; Graham, Greenlaw, Gurney, Gwadosky, Hale, Handy, Hastings, Heesch, Hichborn, Hickey, Higgins, Holt, Hussey, Hutchins, Jacques, Jalbert, Joseph, Ketover, Larrivee, Lawrence, Libby, Look, Luther, Macomber, Mahany, Manning, Marsh, Marston, Martin, H.; Mayo, McGowan, McHenry, McKeen, McSweeney, Melendy, Merrill, Michaud, Mills, Mitchell, Moholland, Murphy, Nadeau, G. R.; Norton, Nutting, O'Dea, Oliver, Paradis, E.; Paradis, J.; Paradis, P.; Paul, Pederson, Pendleton, Pineau, Plourde, Priest, Rand, Richard, Rolde, Rotondi, Ruhlin, Rydell, Seavey, Sheltra, Simpson, Skoglund, Smith, Stevens, A.; Stevens, P.; Strout, B.; Strout, D.; Swazey, Tammaro, Telow, Townsend, Tracy, Tupper, Walker, The Speaker.

NAY - Aikman, Bailey, Begley, Carroll, J.; Dexter, Farnum, Garland, Hanley, Hepburn, Jackson, Lebowitz, Marsano, McCormick, McPherson, Parent, Pines, Reed, Richards, Small, Stevenson, Webster, M.; Wentworth, Whitcomb.

ABSENT - Anderson, Carroll, D.; Clark, H.; Foss, Hoglund, Kilkelly, LaPointe, Lisnik, Lord, MacBride, Nadeau, G. G.; O'Gara, Pouliot, Ridley, Sherburne, Tardy.

Yes, 112; No, 23; Absent, 16; Paired, 0; Excused, 0.

112 having voted in the affirmative and 23 in the negative with 16 being absent, the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

PASSED TO BE ENACTED

An Act to Include the Casco Bay Island Transit District under the Risk Management Division (H.P. 286) (L.D. 398) (C. "A" H-50)

An Act to Regulate Maternal Serum Alpha-fetoprotein Screening Programs (H.P. 301) (L.D. 413)

Were 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.

The following item appearing on Supplement No. 5 was taken up out of order by unanimous consent:

PASSED TO BE ENACTED

Emergency Measure

An Act to Improve Ventilation at the Augusta Mental Health Institute (H.P. 911) (L.D. 1273)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 123 voted in favor of the same and 2 against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

The Chair laid before the House the following matter: HOUSE DIVIDED REPORT - Majority (9) "Ought Not to Pass" - Minority (3) - "Ought to Pass" - Committee on State and Local Government on RESOLUTION, Proposing an Amendment to the Constitution of Maine Requiring Successful Gubernatorial Candidates to Receive More than 50 Percent of the Votes Duly Cast (H.P. 233) (L.D. 317) which was tabled earlier in the day and later today assigned pending acceptance of either report.

The SPEAKER: The Chair recognizes the Representative from Waterville, Representative Joseph. Representative JOSEPH: Mr. Speaker, I move that the House accept the Minority "Ought to Pass" Report.

I ask your support on the Minority "Ought to Pass" Report of L.D. 317. It is a Resolution Proposing an Amendment to the Constitution of Maine Requiring Successful Gubernatorial Candidates to receive more than 50 Percent of the Votes Duly Cast. This piece of legislation was offered for your serious consideration by the sponsor of this bill. It was not offered frivolously and should not be construed in any way to be a partisan issue.

I have great respect for the sponsor of this bill, the Honorable Representative from Easton, Representative Mahany. She represents Fort Fairfield, Mars Hill and Easton. She has presented this in all seriousness for your deliberation and for meaningful discussion. I don't want to embarrass the good Representative for she is very qualified to discuss this issue. Representative Mahany is an educator with a Masters in History and Government. She has pursued areas of study in the United States and in Europe and is presently doing advanced degree work in the political process in government. I tell you this so that you do realize that this bill is not partisan and that we hope you will take it seriously.

This bill is not scheduled to take effect until 1994. There were concerns by other committee members who voted "Ought Not to Pass" and those were the technicalities of the mechanism in which this bill would be implemented. If this bill continues on its way, an amendment will be offered by Representative Mahany to create a commission to deal with those mechanisms and to implement this bill so their concerns will be addressed.

All of us here are interested in good government. This is a good government bill. The State and Local Government Committee heard yesterday other bills that were described as good government bills. It is their responsibility as a legislator because we are interested in good government, because we wish to preserve the concept of the United States Constitution and the Constitution of the State of Maine that guarantees that the legislative and executive branch are co-equal bodies of government. It is important for you to recognize as well that, up until 1880, a majority is required for a governor to be elected in the State of Maine. At that time, governor's were elected every year. From that time forth, it was changed and governor's were then elected every two years and in 1957, governor's were then elected for a four year term.

To assure you that this bill is not partisan, in the past few years since 1974, three different

governor's did not receive a majority of the votes. Those were James E. Longley in 1974, 39.2 percent of those who voted; in 1978, Joseph E. Brennan received 47.6 percent of the vote and in 1986, John McKernan received 39.8 percent of the vote. It is important that we preserve what we describe as co-equal branches of government. It is important that we review this issue and look at where we are going and where we have been and where we want to be in the future. We have to look at the duties presently held by the Governor and we have to look at the responsibilities of the legislature. Then we have to balance that out.

There are many good reasons why you should be supporting the "Ought to Pass" Report. I ask you for your consideration.

The SPEAKER: The Chair recognizes the Representative from Easton, Representative Mahany.

Representative MAHANY: Mr. Speaker, Ladies and Gentlemen of the House: Thank you Representative Joseph for your kind words. It almost makes me afraid to speak.

As Representative Joseph has pointed out, since 1974 we have had three gubernatorial elections in which the governor was elected by a minority of votes cast. This puts Maine, incidentally, outside of the mainstream of the United States as only Alaska is in a similar situation, a situation in which back-to-back governor's have been elected by a minority mandate when the seat is open, that is to say when an incumbent isn't running.

As one might expect, these minority mandates for the governor corresponds with an increase in the number of candidates running for this office. This establishes a new trend in our gubernatorial elections. This is a rather recent new trend but nevertheless a new trend and that contracts very strongly with the period of time from 1882 to 1974, a period in time in which we had only one governor elected with a minority mandate or a minority of the votes cast. Only twice did we have more than two candidates running for the governor's office, in 1914 and 1952. So this really is a new trend. I think it is a trend that does not do service to nor bode well for the balance that is supposed to prevail between the branches of government.

I think it is especially serious when I take a look at the veto power of the governor. We have had, in my judgment, too often on the part of governor's a minority mandate. We have had an independent, a democrat and a republican. Too often we have a single individual with a minority mandate exercising a veto of a legislation of a branch of government, namely the legislature, which has consistently maintained a majority mandate from the people. This is especially unbalanced as the legislature must then muster a two-thirds override vote to maintain its will even though it has a majority mandate.

As I have said, all the governors that have been elected by the minority mandate have vetoed bills coming from the legislature. They all have been within their rights in doing so. One cannot fault them for exercising their prerogatives, they have to do their thing, that is what they are in office for. I do not blame them. Nevertheless, I have to recognize that the balance between the branches when this happens is out of kilter. The governors are not at fault -- what is at fault is the principle of plurality, which allows a governor to be elected with a minority of the votes cast. When I consider the fact that, in the most recent gubernatorial election, we had four rather strong candidates, it is not difficult to envision a time in the not to distant future, when we might have four rather equally strong

candidates and, with the governor having 26 percent of the vote or 28 or 30 maybe, even 31 percent of the vote. In my judgment, to permit such a possibility is not good policy and that is why I decided to sponsor this bill.

Accompanying this trend and paralleling it, we have also seen a marked increase in the governor's power over the past 20 years or so. First of all, in 1957 the governor got a four year term for the first time in our history. Previous to that year, our terms were coterminous, that is to say, we were elected at the same time as the governor and we served for the same period of time. Then in the 1970's, there was a rather massive reorganization of the executive branch which resulted in the abolition of the executive council, which council had been elected by the legislature -- a restructuring of the executive branch, which resulted in more centralization and giving the governor a more direct line of power through the departments down to many of the agencies. He also received in that context enhanced appointive power and that is considerable. Even though the Senate has the right to confirm the nominees of the governor, the fact is that the governor's nominees are almost always confirmed. Once in awhile they are not, but there has to be a very good reason for it or at least a perceived good reason for it.

In addition, there is the impact of TV, which has increased in recent years and has touched us all. All of us know that a chief executive as head of state, as it were, whether at state level or the federal level, gets a lot of extra attention from TV. This is not surprising in the context of state government because the executive process is ongoing. The governor is always in residence, as it were. He is always accessible whereas the legislature is intermittent and its leaders are not always here either.

I am not against the reforms in the executive branch to which I referred and which enhanced the governor's power. It makes it possible for him to govern the executive branch more directly and more efficiently. However, these reforms plus the impact of TV and the fact that the executive process is ongoing has so enhanced and increased his power that it becomes, now more than ever, important that the governor be elected by a majority mandate, by a majority of the votes cast.

Lastly, I would like to call your attention to my interpretation of a piece of our history. Those who had the greatest impact on the forming of our government and on the drawing up of the Constitution, whose roots go back in many respects to Massachusetts and knew political struggles firsthand, or else they knew people firsthand who knew it firsthand, were very conscious of the vulnerabilities of government. Last of all, they were conscious of how easy it was to manipulate the legislative process, to obstruct it, even sometimes harass it. Consequently, they put some very real safeguards in our system to guarantee against any abuse of our government. One of those safeguards, in my judgment, was the majority mandate. Those people who came from political struggle, who knew it firsthand, intended for our government to function in the context of a majority mandate. They intended that everything that happened in the relationship between the legislative and executive branches should take place in the context of the majority mandate.

I think it is time that we reconsider the action of 1880 when the majority mandate was done away with and ask ourselves if maybe our older ancestors weren't more right after all. It seems to me that

the balance of our government, the balance of the branches in our government, can only function properly if all the prerogatives that are exercised are exercised in the context of a majority mandate. Right now, it is the executive branch, the head of the executive branch the governor, who is not receiving that majority vote as a matter of course. That is why I chose to address the executive branch at this time. I see no problem with the legislative branch, there is no question that we have mustered a majority mandate consistently.

I repeat that I think under the circumstances, and with an eye to the future, that we ought to reflect on what is happening, we ought to ask the people to reflect on it, to send this issue out to them to enter into debate and discussion and await a decision from the people as to what they think. Government in our system, where balance is supposed to prevail, makes sense in the context of a majority mandate. I think that is really the only way that it makes sense in terms of democracy and in terms of representation.

The SPEAKER: The Chair recognizes the Representative from Lewiston, Representative Boutilier.

Representative BOUTILIER: Mr. Speaker, Men and Women of the House: I would like to pose a question through the Chair.

To members of the committee or to the prime sponsor -- have they discussed with other states that have this constitutional amendment and if there was any data presented as to whether it increased voter participation in those states? Also, have there been any states recently, say within the last five or ten years, which have repealed the provision in their law that dealt with this proposal?

The SPEAKER: Representative Boutilier of Lewiston has posed a question through the Chair to any member who may respond if they so desire.

The Chair recognizes the Representative from Easton, Representative Mahany.

Representative MAHANY: Mr. Speaker, Ladies and Gentlemen of the House: With respect to states that have repealed, I am not informed. I know that in some years past, some of the New England states have repealed it. The State of Vermont still has a majority mandate in place and when a governor is not elected by a majority mandate, then the Joint Assembly of the legislature with each person having one vote decides who shall be governor.

I understand from the people I have contacted there that, as a general rule, they do go with the person who got the majority of the votes but if it is a very close vote, they might not and that has also happened as I understand it.

The State of Georgia, to my knowledge, is the only other state that has a run off election even in the General Election. Now, they also have run off elections in the primary election. As a matter of fact, it has never come to pass that they have had to hold a run off election after the General Election.

As to the voter turn out, I have talked with Professor Charles Bullock, Professor of Political Science at the University of Georgia, and he has promised to send me some very accurate information which unfortunately has not yet arrived. He did have the results, concrete results you might say, of one survey, a survey of city government really and he found that, if it is a city-wide election, that the turn out is as good, sometimes better. If it is not a city-wide election, the turn out is somewhat less. His guess was on the basis of his long observation and research, he together with a Professor Johnson down there, have written many articles and done some

considerable research. On the run off primary elections in the south, it was his best judgment that statewide elections would also have an equally good turn out but that is not to say that it wouldn't on occasions be less. And that sometimes, in his judgment, it would be more and as a matter of fact he referred me -- leaving Georgia and going to New Hampshire for a moment -- he referred me to a run off election (I think it was between Wyman and Durkins in New Hampshire) around '74 I think it was. He pointed out that the turn out for the run off election or the second election, the race had been declared a dead heat and nobody had won but he said that the turn out for the second election was greater and that the interest of the people and the perceived importance of the particular election, he felt, was very important with respect to the turn out.

I guess what I am saying is I have no evidence to show that the turn out is much less and I have at this point no concrete evidence to show that it would be more or the equivalent, I only have the judgment of this political scientist, but I respect his judgment, I have talked with him several times and he is knowledgeable about the field.

The SPEAKER: The Chair recognizes the Representative from Wells, Representative Wentworth.

Representative WENTWORTH: Mr. Speaker and Members of the House: I ask you to vote against the Minority Report in order that we may accept the Majority Report. I am completing my 30th year in local and county government dealing the full-time with elections. Under our present election laws, there is no way to implement this bill.

The SPEAKER: The Chair recognizes the Representative from Lisbon, Representative Jalbert.

Representative JALBERT: Mr. Speaker, Ladies and Gentlemen of the House: As I read this bill, there is only one thing I could say, how much more punishment can we inflict on the electorate? They have to spend almost a year putting up for the primary, another six or seven months for the General Election. About that time, they are so fed up that you are lucky to get 50 percent of the turn out. If you have a run off, you are going to be lucky to get 40 percent of the people to show up, if that much. Now, if you have four candidates and I am supporting an independent candidate, I am not going to show up to vote for the last two because I don't want either one of them. I sent a questionnaire out and asked them what they thought about multiple choices and one answer came back and said, you should put a fifth one on there, "none of the above." You might be surprised someday to find "none of the above" elected governor. That is a problem we have. We have given enough to the people, we are not going to get the turn out any more, I think we should leave well enough alone.

The SPEAKER: The Chair recognizes the Representative from Easton, Representative Mahany.

Representative MAHANY: Mr. Speaker, Men and Women of the House: I would like to reiterate that, as was my intention from the beginning, this Resolution would not go into effect until 1994. That gives our bureaucrats, if you will, for their part five years to adapt. It may mean a little more work on the local level. Ladies and gentlemen, I do not believe that Maine people would turn out any less for the run off vote than they would for the first General Election.

I know the story of the logistics and how difficult it would be. I know that people do not like change that involves logistical adjustment. But ladies and gentlemen, if we are kept from making policy here by machines and schedules and

bureaucratic needs, then we are in tough shape. I have no doubt whatsoever that we can make the necessary adjustments to ensure that a governor is elected with a majority mandate.

The SPEAKER: The Chair recognizes the Representative from Westbrook, Representative Curran.

Representative CURRAN: Mr. Speaker, Men and Women of the House: I don't want to prolong this unnecessarily but I do want to go on the Record because I want people to know what my ideals are and what I hope yours are and what I hope my children's are. I don't believe for a moment that any person who purports to represent all of the people should be elected by any less than at least half of those people who are conscientious enough and well informed enough to get out and put him in office. The office of Governor in the State of Maine is an especially important and powerful office. It seems to me it would be a simple and elementary premise -- and forgive me for saying this for the people who disagree -- it has little basis for argument. I hope the people here will follow me when I follow my ideals and I vote for this.

Representative Joseph of Waterville requested a roll call vote.

The SPEAKER: The Chair recognizes the Representative from Gorham, Representative Larrivee.

Representative LARRIVEE: Mr. Speaker, Members of the House: I would ask you not to vote for the Minority Report but to support the Majority Report. I was on the Majority Report from the State and Local Government Committee and there are two basic reasons that have not as yet been brought forward. First of all, I do not believe that the problems with getting this vote done are technicalities. There is only so much time between November and the time the legislature goes into session in January. I believe that no matter how quickly the pieces of equipment can be made to work that we are in a very tight time frame and this position was supported by the town clerks and associations who have people who are going to have to do this. By the number of reporting days, we just simply do not have enough time. One of the serious flaws, I believe, is that this is going to disenfranchise the absentee voters because of the length of reporting time and the amount of time it takes to get an absentee vote out. The absentee's would not be able to vote in this run off election. I think that is a serious concern.

The speaker: The Chair recognizes the Representative from Bath, Representative Holt.

Representative HOLT: Mr. Speaker, Ladies and Gentlemen of the House: I have simply one thing to say. If I have learned anything since coming to this honorable body, it is that good government and democracy does not come easily.

Representative Mahany of Easton was granted permission to address the House a third time.

Representative MAHANY: Mr. Speaker, Ladies and Gentlemen of the House: I have spent many years abroad and I always voted absentee. I know how important it is and I don't believe for a minute that we cannot find a way to get an absentee ballot to everybody, including the people who are in Europe and Asia etcetera.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is the motion of Representative Joseph of Waterville that the House accept the Minority "Ought to Pass" Report.

The Chair recognizes the Representative from Brunswick, Representative Clark.

Representative CLARK: Mr. Speaker, under House Rule 7, I request permission to pair my vote with Representative Carroll of Gray. If he were here and voting, he would be voting nay; I would be voting yea.

The SPEAKER: The Chair recognizes the Representative from Thomaston, Representative Mayo.

Representative MAYO: Mr. Speaker, pursuant to House Rule 7, I request permission to pair my vote with Representative Clark of Millinocket. If he were present and voting, he would be voting nay; I would be voting yea.

The SPEAKER: The pending question before the House is the motion of Representative Joseph of Waterville that the House accept the Minority "Ought to Pass" Report. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 10

YE - Adams, Allen, Anthony, Boutilier, Burke, Cahill, T.; Carter, Cathcart, Conley, Cote, Curran, Dore, Duffy, Erwin, P.; Gwadosky, Handy, Heeschen, Hepburn, Hichborn, Hickey, Holt, Jacques, Joseph, Ketover, Luther, Mahany, Martin, H.; McGowan, McHenry, McKeen, McSweeney, Melendy, Mitchell, Moholland, Nadeau, G. G.; Oliver, Paradis, J.; Paul, Pederson, Priest, Rand, Rolde, Rydell, Seavey, Stevens, P.; Swazey, Tracy, Walker.

NAY - Aikman, Aliberti, Anderson, Ault, Bailey, Begley, Bell, Brewer, Butland, Carroll, J.; Cashman, Chonko, Coles, Constantine, Crowley, Daggett, Dellert, Dexter, Dipietro, Donald, Dutremble, L.; Farnsworth, Farnum, Farren, Foster, Garland, Gould, R. A.; Graham, Greenlaw, Gurney, Hale, Hastings, Higgins, Hussey, Hutchins, Jackson, Jalbert, Larrivee, Lawrence, Lebowitz, Libby, Look, Manning, Marsano, Marsh, Marston, McCormick, McPherson, Merrill, Michaud, Murphy, Nadeau, G. R.; Norton, Nutting, O'Dea, Paradis, E.; Parent, Pendleton, Pineau, Pines, Plourde, Reed, Richard, Richards, Rotondi, Sheltra, Simpson, Skoglund, Small, Smith, Stevens, A.; Stevenson, Strout, B.; Strout, D.; Tammaro, Telow, Townsend, Tupper, Webster, M.; Wentworth, Whitcomb.

ABSENT - Foss, Hanley, Hoglund, Kilkelly, LaPointe, Lisnik, Lord, MacBride, Macomber, Mills, O'Gara, Paradis, P.; Pouliot, Ridley, Ruhlin, Sherburne, Tardy, The Speaker.

PAIRED - Carroll, D.; Clark, H.; Clark, M.; Mayo. Yes, 48; No, 81; Absent, 18; Paired, 4; Excused, 0.

48 having voted in the affirmative and 81 in the negative with 18 being absent and 4 paired, the motion did not prevail.

Subsequently, the Majority "Ought Not to Pass" Report was accepted. Sent up for concurrence.

The following item was taken up out of order by unanimous consent:

SPECIAL SENTIMENT CALENDAR

In accordance with House Rule 56 and Joint Rule 34, the following item:

In Memory of:
the sailors aboard the USS Iowa, whose deaths in one of the worst peacetime naval disasters in recent years have shocked and saddened citizens throughout Maine; (HLS 379) by Representative ALLEN of Washington. (Cosponsors: Representative GOULD of

Greenville, Representative PARADIS of Old Town, Senator ERWIN of Oxford)

Was read.

The SPEAKER: The Chair recognizes the Representative from Washington, Representative Allen.

Representative ALLEN: Mr. Speaker, Men and Women of the House: Yesterday I received a rather frantic call from my twelve year old daughter who was at a friends house watching television and the programming had been interrupted with a very quick news flash saying that a ship had blown up in the Caribbean area and some sailors had been killed. She called me frantically because our son had left on Monday for maneuvers in the Caribbean and he is a naval sailor. We, fortunately, as one family in Maine, were able to breathe a sigh of relief when we found out that the ship in question was the USS Iowa and not the USS Tripp. But, for 47 families around this country, they were unable to breathe that sigh of relief and so my awareness and my sense of their loss was heightened by that personal experience. I am sure that it was one that we have all experienced in our lives in one way or another. So it is with deep sincerity that on behalf of the legislature I present this memorium today.

The SPEAKER: The Chair recognizes the Representative from Old Town, Representative Paradis.

Representative PARADIS: Mr. Speaker, Members of the House: The news at this time on the Iowa is not complete so that we know the full extent of the tragedy. However, we do have some partial information. To those of us who are from Maine, being a coastal state and a coastal people, we can appreciate the perils of service on the sea. When we couple this fact of service on the sea with high energy, high explosives, we are confronted within an especially high risk environment and situation for our young people. To those of us here who are faced with this, and we will continue to be faced with it, this position of readiness of which our nation must continue to be in, we can never forget our young people who serve and who fulfill this obligation in our behalf. This question is the most serious in peacetime as it is in war time for us but service is there and it is continuous.

Mr. Speaker, I join with the motion that is before us and when we adjourn, we observe a moment of silence in remembering these 47 young people who have died aboard the Iowa while on training exercises off Puerto Rico.

The SPEAKER: The Chair recognizes the Representative from Rumford, Representative Erwin.

Representative ERWIN: Mr. Speaker, Ladies and Gentlemen of the House: As a Navy veteran, I join with those who have presented this Resolution in sending condolences to those families.

Subsequently was passed and sent up for concurrence.

The SPEAKER: In the possibility of my absence on Monday, I will appoint Representative Michaud of East Millinocket to serve as Speaker pro tem for Monday, April 24, 1989.

At this point, the House observed a moment of silence in memory of the 47 sailors aboard the USS Iowa who lost their lives.

On motion of Representative Allen of Washington,

Adjourned until Monday, April 24, 1989 at nine o'clock in the morning, pursuant to Joint Order (S.P.474).