

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred And Fourteenth Legislature

OF THE

State Of Maine

VOLUME II

FIRST REGULAR SESSION

May 10, 1989 to June 14, 1989

WHEREAS, Maine has been a leader among the states in the development of creative solutions to the affordable housing crisis; and

WHEREAS, Maine once again has developed bold and innovative proposals designed to coordinate and target the resources and efforts of the public and private sectors to address the affordable housing crisis; and

WHEREAS, organizations involved in addressing the affordable housing crisis will be represented at the State House on Wednesday, June 7, 1989, to provide Legislators and the public with information on their efforts; and

WHEREAS, the Joint Standing Committee on Appropriations and Financial Affairs and the Joint Standing Committee on Housing and Economic Development will jointly hear bills on June 7, 1989, to finance the Affordable Housing Partnership Act of 1989, now, therefore, be it

ORDERED, the Senate concurring, that Wednesday, June 7, 1989, be declared "Affordable Housing Day," and all Legislators and the public are invited to attend and participate in the events and affairs of the day.

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

On motion by Senator BERUBE of Androscoggin, ADJOURNED until Thursday, June 8, 1989, at 8:30 in the morning.

ONE HUNDRED AND FOURTEENTH MAINE LEGISLATURE
FIRST REGULAR SESSION
79th Legislative Day
Thursday, June 8, 1989

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

Prayer by Father Raymond Melville, St. Mary's Catholic Church, Augusta.

The Journal of, Wednesday, June 7, 1989, was read and approved.

Quorum call was held.

PAPERS FROM THE SENATE

The following Communication:

Maine State Senate
Augusta, Maine 04333

June 7, 1989

The Honorable John L. Martin

Speaker of the House

114th Legislature

Augusta, Maine 04333

Dear Speaker Martin:

In accordance with Joint Rule 38, please be advised that the Senate today confirmed, upon the recommendation of the Joint Standing Committee on Education, the Governor's nomination of Robert L. Hinckley of Manset and Warren C. Cook of Freeman Township for appointments and Malcolm C. Cianchette of Hartland for reappointment to the Maine Maritime Academy Board of Trustees.

Robert L. Hinckley is replacing Irving Kagan.
Warren C. Cook is replacing King Cummings.

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

Was read and ordered placed on file.

The following Joint Resolution: (S.P. 636)
JOINT RESOLUTION COMMEMORATING THE 200th
ANNIVERSARY OF THE TOWN OF FRANKFORT

WHEREAS, one of the wellsprings of Maine's tradition is its history of seafaring and shipbuilding, whereby Maine sailors and Maine craftsmanship acquired worldwide reputations; and

WHEREAS, the Town of Frankfort, located along the banks of the North Branch of the Marsh River in Waldo County, and proud abutter of the majestic Penobscot River, is one of the sources of this tradition and skill, as a historic locus of Maine's shipbuilding; and

WHEREAS, this tree-shaded community was established in the mid-1700s by Joshua Treat, Jr. who persevered in maintaining the young community through British attacks in the Revolutionary War, and as the town thrived and prospered thereafter; and

WHEREAS, as the Town of Frankfort was incorporated shortly after the Revolutionary War by the General Court of the Commonwealth of Massachusetts on June 25, 1789, and was the 70th town incorporated in the territory which would become the State of Maine; and

WHEREAS, beginning in 1794 and continuing through the late 1800's many proud ocean-going schooners, barks, and ships of war were crafted in Frankfort and this tradition of fine shipbuilding continues to the present; and

WHEREAS, the town is also known for the fine granite quarried from the top of Mt. Waldo between 1836 and 1965; and

WHEREAS, this granite was used to construct such noble edifices as this State House, Fort Knox, the

old Bangor Post Office and the Augusta Federal Building; now, therefore, be it

RESOLVED: That We, the Members of the One Hundred and Fourteenth Legislature, now assembled in the First Regular Session, take this occasion to recognize the Bicentennial Anniversary of the Town of Frankfort, and to commend the inhabitants and officials of this town for the success which they have achieved for 2 centuries, and to extend our sincere hopes and best wishes for continued achievement over the next 200 years; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the citizens and officials of this proud community in honor of the occasion.

Came from the Senate, read and adopted.

Was read and adopted in concurrence.

Bill "An Act to Amend the Banking Code" (S.P. 635) (L.D. 1726)

Came from the Senate under suspension of the rules and without reference to a Committee, the Bill read twice and passed to be engrossed.

(The Committee on Reference of Bills had suggested reference to the Committee on Banking and Insurance.)

Under suspension of the rules and without reference to a Committee, the Bill was read once and assigned for second reading Friday, June 9, 1989.

COMMUNICATIONS

The following Communication: (S.P. 634)

114TH MAINE LEGISLATURE

June 5, 1989

Senator Zachary E. Matthews

Representative Charles R. Priest

Chairpersons

Joint Standing Committee on Legal Affairs

114th Legislature

Augusta, Maine 04333

Dear Chairs:

Please be advised that Governor John R. McKernan, Jr. has nominated Michael V. Rizzolo of Lewiston for appointment to the Maine State Lottery Commission.

Pursuant to Title 8, M.R.S.A. Section 352, this nomination will require review by the Joint Standing Committee on Legal Affairs 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 Legal Affairs.

Was Read and Referred to the Committee on Legal Affairs in concurrence.

The following Communication: (S.P. 637)

114TH MAINE LEGISLATURE

June 6, 1989

Senator Stephen M. Bost

Representative Herbert E. Clark

Chairpersons

Joint Standing Committee on Utilities

114th Legislature

Augusta, Maine 04333

Dear Chairs:

Please be advised that Governor John R. McKernan, Jr. has withdrawn his nomination of William Lund of

Falmouth for appointment as a Commissioner for the Public Utilities Commission.

Pursuant to Title 35-A, M.R.S.A. Section 105 (1988), this nomination is currently pending before the Joint Standing Committee on Utilities.

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 Utilities.

Was Read and Referred to the Committee on Utilities in concurrence.

PETITIONS, BILLS AND RESOLVES REQUIRING REFERENCE

The following Bill and Resolve 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:

Human Resources

Bill "An Act to Promote Greater Access to Health Screening" (H.P. 1238) (L.D. 1729) (Presented by Representative STEVENS of Bangor) (Cosponsored by Representative PEDERSON of Bangor and Representative CATHCART of Orono) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.)

Ordered Printed.

Sent up for Concurrence.

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

Legal Affairs

Resolve, Authorizing the Secretary of State to Release Certain Ballots to the Municipal Officers of the Town of Jay (H.P. 1237) (L.D. 1728) (Presented by Representative PINEAU of Jay) (Cosponsored by Speaker MARTIN of Eagle Lake, Senator ERWIN of Oxford and Representative MILLS of Bethel)

(Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.)

Ordered Printed.

Sent up for Concurrence.

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

REPORTS OF COMMITTEES

Unanimous Ought Not to Pass

Representative HOGLUND from the Committee on Energy and Natural Resources on Bill "An Act to Promote Recycling and Improved Solid Waste Management" (H.P. 103) (L.D. 139) reporting "Ought Not to Pass"

Representative HOGLUND from the Committee on Energy and Natural Resources on Bill "An Act to Create the Maine Solid Waste Authority" (H.P. 1115) (L.D. 1548) 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 GRAHAM from the Committee on Business Legislation on Bill "An Act to Promote Responsible Utilization of Ground Water" (H.P. 1011) (L.D. 1409) reporting "Leave to Withdraw"

Representative CARTER from the Committee on Appropriations and Financial Affairs on Bill "An Act

to Authorize a General Fund Bond Issue in the Amount of \$10,000,000 to Provide Funds for the Municipal Capital Investment Fund" (H.P. 1166) (L.D. 1620) reporting "Leave to Withdraw"

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

Divided Report

Majority Report of the Committee on Education reporting "Ought Not to Pass" on Bill "An Act to Establish the School Finance Act of 1989" (H.P. 1220) (L.D. 1692)

Signed:
Senators: ESTES of York
BOST of Penobscot
GILL of Cumberland
Representatives: O'GARA of Westbrook
HANDY of Lewiston
PARADIS of Frenchville
SMALL of Bath
OLIVER of Portland
NORTON of Winthrop
O'DEA of Orono
AULT of Wayne
CROWLEY of Stockton Springs

Minority Report of the same Committee reporting "Ought to Pass" on same Bill.

Signed:
Representative: KILKELLY of Wiscasset
Reports were read.

Representative Crowley of Stockton Springs moved that the House accept the Majority "Ought Not to Pass" Report.

The SPEAKER: The Chair recognizes the Representative from Boothbay Harbor, Representative Brewer.

Representative BREWER: Mr. Speaker, Men and Women of the House: I would just like to speak briefly on this bill. I feel grateful that I have the opportunity to speak to you on L.D. 1692. This bill is, "An Act to Repeal the School Finance Act of 1985." Under current law, the state's contribution to local educational costs is based on an allocation formula in which property valuation is a major factor. As a result, communities which have higher property valuation receive less funding for education. This bill repeals the School Finance Act of 1985 and enacts a new school funding formula that allocates on an equal per pupil basis. Operation of the new formula, which would be effective fiscal year 1990-91 will permit communities with high property values to reduce property taxes.

I received a letter from the Office of Fiscal and Program Review and they state that this bill proposes a different method of distributing the state's subsidies for schools which could result in either an increase in cost or a decrease in cost, depending on the level of funding desired by the legislature.

This method will also simplify school subsidy calculations resulting in some savings to the Division of Management Information within the Department of Education and Cultural Services. The amount of savings cannot be determined at this time, it could either be infinitesimal or substantial. Hopefully, it would be substantial.

Because of the late filing of this bill, the architects, Hinds and Hopkins of Boothbay, have informed me that they are very happy that it has gotten this far and I might add that L.D. 1692 has not been around too long and many people have contacted me relative to this bill.

Last Monday, I received a call from Mary Adams — most of you know Mary Adams who is famed for the property tax repeal and she lives in Garland. She realizes that through this subsidy she might have a little shortfall but she thinks the concept and the fairness of this bill is tremendous and she embraces it.

I am realistic that this bill is not going too far but I am sure that for many legislators here today, their towns and communities would benefit greatly from this bill.

So, Mr. Speaker, I ask that we have 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 Chair recognizes the Representative from York, Representative Rolde.

Representative ROLDE: Mr. Speaker, Ladies and Gentlemen of the House: The fact that I am a cosponsor of the bill before you today is a measure of the desperation of the high valuation communities such as the one that I live in. People in my community are extremely angry over what has happened to their property taxes as a result in large part to the school funding law. What makes them very angry is that they see money raised in their community through income tax, through sales tax, going into the state and being redistributed and they are not receiving what they consider a fair share of it. I think the basis of the problem is that the State of Maine uses valuation as a measure of wealth. There are many people who decry that particular use. None of these problems are really addressed in the property tax relief package that has come out of the Taxation Committee. That package will give a small amount of relief in some of the high valuation communities. But now, we even have the Governor saying he doesn't think he can afford even that small amount. This is obviously a rather revolutionary attempt to deal with the problem but I do want to point out that people are in a state of revolution in some of these towns right now.

The SPEAKER: The Chair recognizes the Representative from Wiscasset, Representative Kilkelly.

Representative KILKELLY: Mr. Speaker, Men and Women of the House: This L.D. 1692, I believe, is important because coastal communities are being squeezed. Coastal communities are being squeezed because they are on beautiful land, beautiful land that is very valuable. But, if you are earning \$15,000 a year and supporting your family and you live in a coastal community, you are paying a far higher percentage of your income on your education program than if you earn \$15,000 a year and live in a part of the state where a high percentage of the education funding is coming from the state.

Our coastal communities are losing their culture. Fishing families are being forced away from the ocean which is where they make their living. They are economically homeless. They are being forced away from their ability to earn a living. Elderly folks are being forced out of their homes. My concern in living in a coastal area is that at some point in time we may see a sign that says, the coast is closed until Memorial Day because the only folks that are living there are going to be seasonal

people who can afford the property values and the property rates that are there.

This bill is a way to provide some equity, equity not necessarily to the community but to the people that are living there, the people that are not earning great deals of money, the people that are the working people that have been the backbone of this state since its inception.

I would urge your support of this legislation.

The SPEAKER: The Chair recognizes the Representative from Stockton Springs, Representative Crowley.

Representative CROWLEY: Mr. Speaker, Ladies and Gentlemen of the House: I respect and commend Representative Brewer and his cosponsors for their effort to protect the property taxpayers and I am sure that the property taxpayers in Boothbay Harbor and others are really being hit hard but I don't feel that this is the vehicle and the way which we should go to solve this problem. I know the Committee on Taxation, Appropriations and many other committees are struggling with this property tax relief and just to take the school funding formula at this late date in the session and change it would be a monumental task.

Boothbay Harbor, according to their superintendent who spoke eloquently at our hearing, mentioned the fact that Boothbay Harbor offers French 4, Latin 4, physics, chemistry, they do an excellent job at Boothbay Harbor on their schools and they are not afraid to spend their money. I commend them also for that. But, I think this bill, this change at this late date, is too much and too late. I hope you will vote with my motion of "Ought Not to Pass."

The SPEAKER: The Chair recognizes the Representative from Frenchville, Representative Paradis.

Representative PARADIS: Mr. Speaker, Men and Women of the House: Being from communities that benefit from the school funding act, I urge you to vote "Ought Not to Pass" on this bill. My communities have a mill rate that sometimes doubles. We are paying everything we possibly can. This equity allows us to provide a basic, bare bones education to our northern Aroostook children.

I attended a graduation in St. Agatha last night and I was very pleased to hear that 71 percent of them were going on to higher education. That means that they will be leaving northern Aroostook County and they will be coming down here to work later on. We grow them healthy, strong, good work ethics and the State of Maine is going to get back in spades what they are putting into these children. So, I urge you not to pass this bill.

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

Representative MURPHY: Mr. Speaker, Ladies and Gentlemen of the House: This is not only a coastal bill, my district is not on the coast, it is 13-14 miles inland. Last year, because of the high valuation of our town, our school budget went up and our taxes went up 25 percent, 18 of that was school budget. This year our school budget went up 13 and a half percent but, because of the valuation going up, the school budget will go up 30 percent. We are losing money every year. Also, this year we have an increase in our property tax because of a town meeting, the town needed some things and we had to vote that in too.

Each year, those of us who live in southern Maine are really being hurt. Our taxes are jumping \$200 and \$300 and \$400 and we are not big earners down there either. I urge you to support this bill because it would be fair and equitable. We are

having a revaluation this year and I am sure that when that is all done, next year our state valuation will jump again. We cannot continue to afford this. This is putting it on the backs of our elderly too.

The SPEAKER: The Chair recognizes the Representative from Winthrop, Representative Norton.

Representative NORTON: Mr. Speaker, Ladies and Gentlemen of the House: There is a problem in many of our communities, especially two counties, there is no question about that, but the solution does not rest in this bill. The matter of equity would not even be addressed. In fact, it would be the reverse principle of equity. Putting equal dollars behind students sounds good only on the surface. Putting equal dollars behind students of unequal abilities to pay is not an answer, it will only create more inequity throughout the state.

I believe we have to address and can address the existing question better in a study. I know you get tired of the word study but I believe there is a problem, I think it needs to be addressed, I think there has to be other ways of doing it or you will hurt 5/6ths of Maine. It is just about in relation to the report, I am not being personal about it but that is the way it looks to me after having studied the education formula for about 30 years.

The SPEAKER: The Chair recognizes the Representative from Kittery, Representative Lawrence.

Representative LAWRENCE: Mr. Speaker, Men and Women of the House: I agree with the Representative from Frenchville, Representative Paradis, in that the school funding formula is important. Virtually everyone in Maine believes that the wealthier towns should be helping the poorer towns pay for education so we equalize education. But, there is something fundamentally wrong with the school funding formula as it stands.

I come from a working class town, a town of welders, ship fitters, pipe fitters, we have seen our school funding coming from the state drop year after year. Cape Elizabeth, the wealthiest town in this state, receives 32 percent of its education funded by the state. Kittery, a working class town, receives 22 percent. Something is fundamentally wrong with the school funding formula. I urge you to vote for this bill.

The SPEAKER: A roll call has been ordered. The pending question before the House is the motion of Representative Crowley of Stockton Springs that the House accept the Majority "Ought Not to Pass" Report. Those in favor of that motion will vote yes; those opposed will vote no.

ROLL CALL NO. 58

YEA - Aikman, Aliberti, Allen, Anderson, Ault, Bailey, Begley, Bell, Butland, Cashman, Cathcart, Chonko, Clark, H.; Clark, M.; Conley, Cote, Crowley, Curran, Daggett, Dellert, Donald, Duffy, Erwin, P.; Farnsworth, Farren, Garland, Gould, R. A.; Graham, Greenlaw, Handy, Hastings, Heeschen, Hepburn, Hichborn, Hickey, Hussey, Hutchins, Jacques, Jalbert, Joseph, Larrivee, Lisnik, Look, Luther, MacBride, Mahany, Marsano, Martin, H.; Mayo, McGowan, McHenry, McSweeney, Moholland, Nadeau, G. G.; Nadeau, G. R.; Norton, Nutting, O'Gara, Paradis, E.; Paradis, P.; Parent, Paul, Pederson, Pineau, Pines, Pouliot, Priest, Reed, Richard, Richards, Ridley, Rydell, Simpson, Smith, Stevens, A.; Stevenson, Strout, D.; Swazey, Tardy, Telow, Townsend, Tracy, Walker, Webster, M.; Whitcomb.

NAY - Adams, Anthony, Brewer, Carroll, J.; Coles, Constantine, Dexter, Dipietro, Dutremble, L.; Farnum, Foss, Gurney, Gwadosky, Hale, Hoglund, Holt, Jackson, Ketover, Kilkelly, LaPointe, Lawrence, Lebowitz, Libby, Lord, Macomber, Manning, Marsh, McCormick,

McKeen, McPherson, Melendy, Merrill, Michaud, Mills, Mitchell, Murphy, Paradis, J.; Pendleton, Plourde, Rand, Rolde, Rotondi, Seavey, Sheltra, Sherburne, Skoglund, Stevens, P.; Tammaro, Wentworth.

ABSENT - Boutilier, Burke, Carroll, D.; Carter, Dore, Foster, Hanley, Higgins, Marston, O'Dea, Oliver, Ruhlín, Small, Strout, B.; Tupper, The Speaker.

Yes, 85; No, 49; Absent, 16; Vacant, 1; Paired, 0; Excused, 0.

85 having voted in the affirmative and 49 in the negative with 16 being absent and 1 vacant, the motion to accept the Majority "Ought Not to Pass" Report was accepted. Sent up for concurrence.

Divided Report

Majority Report of the Committee on Human Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (H-409) on Bill "An Act to Strengthen Maine's Restaurant Smoking Law" (H.P. 966) (L.D. 1344)

Signed:

Senators: GAUVREAU of Androscoggin
TITCOMB of Cumberland
RANDALL of Washington

Representatives: MANNING of Portland
ROLDE of York
BOUTILIER of Lewiston
CLARK of Brunswick
BURKE of Vassalboro
CATHCART of Orono
PEDERSON of Bangor
DELLERT of Gardiner
PENDLETON of Scarborough

Minority Report of the same Committee reporting "Ought Not to Pass" on same Bill.

Signed:

Representative: HEPBURN of Skowhegan

Reports were read.

On motion of Representative Manning of Portland, the House accepted the Majority "Ought to Pass" Report, the Bill read once.

Committee Amendment "A" (H-409) was read by the Clerk and adopted and the Bill assigned for second reading, Friday, June 9, 1989.

Divided Report

Majority Report of the Committee on Appropriations and Financial Affairs reporting "Ought to Pass" as amended by Committee Amendment "A" (H-410) on Bill "An Act to Enhance the Management of the Fish and Game Resources of the State of Maine" (H.P. 16) (L.D. 8)

Signed:

Senators: PERKINS of Hancock
PEARSON of Penobscot
BRANNIGAN of Cumberland

Representatives: LISNIK of Presque Isle
McGOWAN of Canaan
CHONKO of Topsham
RIDLEY of Shapleigh
CARROLL of Gray
CARTER of Winslow
FOSS of Yarmouth
POULIOT of Lewiston
HIGGINS of Scarborough

Minority Report of the same Committee reporting "Ought Not to Pass" on same Bill.

Signed:

Representative: FOSTER of Ellsworth

Reports were read.

On motion of Representative Carter of Winslow, the House accepted the Majority "Ought to Pass" Report, the Bill read once.

Committee Amendment "A" (H-410) was read by the Clerk and adopted and the Bill assigned for second reading Friday, June 9, 1989.

Divided Report

Majority Report of the Committee on Appropriations and Financial Affairs reporting "Ought to Pass" as amended by Committee Amendment "A" (H-411) on Bill "An Act to Increase Funding of Legal Services for the Elderly" (H.P. 888) (L.D. 1232)

Signed:

Senators: PERKINS of Hancock
BRANNIGAN of Cumberland
Representatives: HIGGINS of Scarborough
McGOWAN of Canaan
FOSTER of Ellsworth
LISNIK of Presque Isle
POULIOT of Lewiston
CHONKO of Topsham
CARTER of Winslow
CARROLL of Gray
FOSS of Yarmouth

Minority Report of the same Committee reporting "Ought Not to Pass" on same Bill.

Signed:

Senator: PEARSON of Penobscot
Representative: RIDLEY of Shapleigh

Reports were read.

On motion of Representative Carter of Winslow, the House accepted the Majority "Ought to Pass" Report, the Bill read once.

Committee Amendment "A" (H-411) was read by the Clerk and adopted and the Bill assigned for second reading Friday, June 9, 1989.

Divided Report

Majority Report of the Committee on Labor reporting "Ought to Pass" as amended by Committee Amendment "A" (H-417) on Bill "An Act to Reduce the Potential for Violence During Labor Disputes" (H.P. 292) (L.D. 404)

Signed:

Senators: ESTY of Cumberland
MATTHEWS of Kennebec
Representatives: LUTHER of Mexico
McKEEN of Windham
McHENRY of Madawaska
TAMMARO of Baileyville
PINEAU of Jay
RUHLIN of Brewer
RAND of Portland

Minority Report of the same Committee reporting "Ought Not to Pass" on same Bill.

Signed:

Senator: WHITMORE of Androscoggin
Representatives: BUTLAND of Cumberland
REED of Falmouth
McCORMICK of Rockport

Reports were read.

The SPEAKER: The Chair recognizes the Representative from Madawaska, Representative McHenry. Representative McHENRY: Mr. Speaker, Ladies and Gentlemen of the House: I move acceptance of the Majority "Ought to Pass" Report.

This is another strikebreaker bill, it also has a referendum. The whole idea behind the strikebreaker bill is to prevent violence during a strike. What is happening is that we have professional strikebreakers that come into the State of Maine, we are wide open

to them. We have a "Welcome to Maine-Strikebreakers" sign right out in the State of Maine presently because, for the past few years, we have seen what has happened.

When you replace people who are on strike, when you replace them with professional strikebreakers, you have a large number of people who come in and it is a great potential for violence. The law enforcement officers of that municipality where the corporation is located do not have the proper enforcement to take care of violence, the potential violence that can be rough. It is costly to the State of Maine as well as to that municipality.

The whole idea behind this bill is to narrow it down and it is very, very narrow. It says that a professional strikebreaking corporation is one that has supplied three times (within the last five years) at least 100 or more employees to a firm that has had a strike or a lock-out.

Ladies and gentlemen, that is not very many corporations that would be included. We allow people who do regular maintenance to come in, it does not prohibit a company from hiring regular people. It does not prohibit people from providing the regular maintenance they used to provide. It just prohibits these professionals who come in and replace the regular working force. Most of the time, those people are not familiar with that plant and they can cause, as you have seen in Jay, spills, they can cause hazardous waste, they can cause maybe the death of several people in the town by accident because they are not familiar as to how and where the lines are. The chlorine spill that they had in Jay can tell you pretty much what could have happened had the wind been in the right direction. These are the things that we are trying to stop. If that mill had started gradually, had hired people gradually, they would have been familiar with the equipment, they would have known what they were doing but they chose to hire professionals. They had people who weren't qualified to do the job. That is plain and simple, they had people there who just were not qualified to do the job.

What we are focusing on really is the health and safety of our community. I assure you if I were a person living in Jay, I would have been scared for the life of my family and myself, day in and day out, because it is not a very nice place, it is not a very nice situation to be in, not knowing what is going to happen. This, my friends, has cost the State of Maine a lot of money. It has cost this legislature a lot of time, a lot of debate, a lot of work. Why should we be protecting people who are up there and don't seem to give a hoot about the health and welfare of the citizens of the State of Maine. They come into this state, they use and abuse our resources, not all of them, but quite a few of them.

I would hope that we would send this out to referendum and let the people decide but I would be more than willing to strip the referendum clause off if the people here in this House want to deal with this. We have tried and we have tried but we have always had the same answer from the second floor, hopefully this time it will be different.

The SPEAKER: The Chair recognizes the Representative from Falmouth, Representative Reed.

Representative REED: Mr. Speaker, Ladies and Gentlemen of the House: Much has been said in this chamber about this subject and I believe it will be neither prudent nor productive to speak at length to it so I will not do so.

However, I do wish to take just a moment to bring to your attention the concerns of the minority signers of this matter. We share the concerns of the

proponents to this bill for the safety of a community that may be burdened by a protracted labor dispute. We do, however, believe that this vehicle is not the appropriate way to address those.

Our first, and in fact our major concern, is that this bill may well be preempted by federal law. The National Labor Relations Act provides a struck employer with the legal right to hire replacement workers and the Commerce and Supremacy Clause of the United States Constitution enforces that right by prohibiting states from enacting laws that infringe upon it. In the event that the Law Court would not uphold this bill, we do believe that the safety of the strike burdened community could be bolstered by more stringent enforcement of existing laws. For example, the diligent enforcement of at least eight of the public order statutes of the Maine Criminal Code could deter picket line violence and strict enforcement of state and federal regulatory statutes could ward off in-plant accidents.

Our second concern is that the scope of this bill is overly broad. First, because the bill seeks to prevent potential violence, this bill would enable a court to enjoin an employer whose replacement hirings have not necessarily contributed to nor proximately caused the violence in the community. Yet, the United States Supreme Court has recognized that, as compelling as the interest in preventing potential violence is, injunctions should be issued only when there is an actual violence or an imminent threat to violence, not just the potential for violence.

Thirdly, the regulations in this bill exceed the needs posed by the targeted problem. The Statement of Fact indicates that the potential harm sought to be avoided arises from the sudden and mass hirings of untrained replacements. The bill, however, does not regulate the rate at which replacements may be hired, does not regulate the number nor their skill level. The bill simply regulates hiring on the quantity and nature of the replacements for employment.

In conclusion, the minority signers believe that there are other avenues that would achieve the goal of this bill which are much more likely to succeed and for that reason, I would urge you to defeat the pending motion.

Mr. Speaker, when the vote is taken, I respectfully request a roll call.

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 Millinocket, Representative Clark.

Representative CLARK: Mr. Speaker, Men and Women of the House: We talk about our bringing in replacement workers and whatever and we talk about violence -- what creates any more violence than bringing in replacement workers and then leave it up to the collective bargaining process. Back when I used to negotiate contracts, we left it up to the unions and management to work out a deal on collective bargaining. The last thing on our mind was bringing in replacement workers. That is the last thing we ought to think about today is bringing in replacement workers.

Most of our workers in these plants are very qualified people that do a good job, a good job. The last thing I want to see is opening up the door to bring in replacement workers. It takes away a little

bit of the effect of collective bargaining. When you go to the table, the thing you have on your mind is knowing that you are going to lose your job if you do elect to strike and knowing that out on the street there are replacement workers that are going to be taking your job. It takes away the bargaining process.

I hope today when you vote you will vote with the good Representative from Madawaska on this bill.

The SPEAKER: The Chair recognizes the Representative from Jay, Representative Pineau.

Representative PINEAU: Mr. Speaker, Ladies and Gentlemen of the House: The bill before you is an important one. Those of you who were here last time saw measures like it. Since January, all I have heard is, we don't want another Jay. Well, I beg to differ, Jay is a good community that was taken advantage of.

I am not going to talk about the multibillion dollar corporation strategy of taking Maine workers and throwing them in the street. I am not going to talk to you about the Maine workers who won't talk to their brothers or the fathers who won't talk to their sons because of a strategy.

What I am going to talk to you about is what we discussed in the Labor Committee on other issues. The people on the coast, the people up in the county, the people in southern Maine, the Mainer's who paid for International Paper's decision to throw Mainer's in the street. The administration's own Department of Labor has a figure of over \$423,000 which had to be put in for retraining the Maine workers of Jay and the surrounding towns, almost half a million dollars because of a company's decision to throw their workers away.

The Unemployment Fund which we heard all through this session in the Labor Committee, how small businesses are affected by any major decision on the trust fund, the Employment Security Commission, over \$3,300,000 was taken out of that fund to help feed the families of Jay, Livermore Falls, Farmington, Wilton, Athens, Wayne, Augusta, and the Lewiston/Auburn areas. That fund was depleted because of International Paper's decision and also because the State of Maine failed to send a message. An additional \$1,970,000 plus funds were paid in dislocated worker benefits.

Ladies and gentlemen, representatives of people from the coast, the county -- couldn't your people have used those funds better? Couldn't a decision have been made to protect those funds and use those funds in the training? It scares me what the state did over the last couple of years. The loggers, the fishermen, the small business owners all helped pay to replace these funds, funds that weren't intended for a dislocated work force because of the strategy of a multi-national corporation. These companies have the money, they have the funds to hire who they want at what cost they want. They have spent over a million dollars (the company did) in housing extra security and transporting them to the mill site.

You have been handed an advertisement in an April, 1989 issue of Pulp and Paper. It says, before you get a piece of his mind, I want you to look at the face of that gentleman, all he is is a regular Mainer. You can smirk, you can smile, but that is all he is. I don't think he is somebody to be feared.

Yes, I want the yeas and nays taken because I want the people of this House to think of the people that work for a living in this state. I want to send out a message to every giant employer that wants to use and abuse our people and that Maine cherishes its working sons and daughters and we want them to know where we stand on it.

The SPEAKER: A roll call has been ordered. The pending question before the House is the motion of Representative McHenry of Madawaska that the House accept the Majority "Ought to Pass" Report. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 59

YEA - Adams, Aliberti, Allen, Anthony, Bell, Carter, Cashman, Chonko, Clark, H.; Clark, M.; Coles, Conley, Constantine, Cote, Crowley, Daggett, Dipietro, Dore, Duffy, Dutremble, L.; Erwin, P.; Farnsworth, Gould, R. A.; Graham, Gurney, Gwadosky, Hale, Handy, Heesch, Hichborn, Hickey, Hoglund, Holt, Hussey, Jacques, Jalbert, Joseph, Ketover, Kilkelly, LaPointe, Larrivee, Lawrence, Lisnik, Luther, Macomber, Mahany, Manning, Marston, Martin, H.; Mayo, McGowan, McHenry, McKeen, McSweeney, Melendy, Michaud, Mills, Mitchell, Moholland, Nadeau, G. G.; Nadeau, G. R.; Nutting, O'Gara, Paradis, P.; Parent, Paul, Pendleton, Pineau, Plourde, Pouliot, Priest, Rand, Richard, Ridley, Rolde, Rotondi, Rydell, Sheltra, Simpson, Skoglund, Smith, Stevens, P.; Swazey, Tammaro, Tardy, Townsend, Tracy, Walker, The Speaker.

NAY - Aikman, Anderson, Ault, Bailey, Begley, Brewer, Butland, Carroll, J.; Curran, Dellert, Dexter, Donald, Farnum, Farren, Foss, Garland, Greenlaw, Hanley, Hastings, Hepburn, Hutchins, Lebowitz, Libby, Look, Lord, MacBride, Marsano, Marsh, McCormick, McPherson, Merrill, Murphy, Norton, Paradis, E.; Paradis, J.; Pines, Reed, Richards, Seavey, Sherburne, Stevens, A.; Stevenson, Strout, D.; Telow, Webster, M.; Wentworth.

ABSENT - Boutilier, Burke, Carroll, D.; Cathcart, Foster, Higgins, Jackson, O'Dea, Oliver, Pederson, Ruhlin, Small, Strout, B.; Tupper, Whitcomb.

Yes, 89; No, 46; Absent, 15; Vacant, 1; Paired, 0; Excused, 0.

89 having voted in the affirmative and 46 in the negative, with 15 being absent and 1 vacant, the Majority "Ought to Pass" Report was accepted, the Bill read once.

Committee Amendment "A" (H-417) was read by the Clerk and adopted and the Bill assigned for second reading Friday, June 9, 1989.

Divided Report

Majority Report of the Committee on Judiciary reporting "Ought to Pass" as amended by Committee Amendment "A" (H-429) on Bill "An Act to Allow Recovery for Wrongful Death of Unborn Children" (H.P. 408) (L.D. 551)

Signed:

Senators: HOBBS of York
GAUVREAU of Androscoggin
Representatives: ANTHONY of South Portland
PARADIS of Augusta
CONLEY of Portland
COTE of Auburn
RICHARDS of Hampden
MACBRIDE of Presque Isle

Minority Report of the same Committee reporting "Ought Not to Pass" on same Bill.

Signed:

Senator: HOLLOWAY of Lincoln
Representatives: FARNSWORTH of Hallowell
STEVENS of Bangor
HANLEY of Paris
HASTING of Fryeburg

Reports were read.

The SPEAKER: The Chair recognizes the Representative from Augusta, Representative Paradis
Representative PARADIS: Mr. Speaker, I move that the House accept the Majority "Ought to Pass" Report.

Mr. Speaker, Men and Women of the House: What we have before us in the Majority Report is Committee Amendment "A" (H-429). I would urge you to read it during the course of the discussion on this bill because it redoes what L.D. 551 had originally sought to do in a much more coherent and tighter fashion. It addresses specifically the issue of allowing civil recovery (we are not talking criminal now, we are talking civil) for the death of an unborn viable fetus. If you will look at the Committee Amendment, we even changed the title to read "An Act to Allow Recovery for Wrongful Death of an Unborn Viable Fetus." We have, if you will look at the majority signers, sought to take into consideration practically every point of view of the membership of the committee.

I respect the signers of the Minority "Ought Not to Pass" Report but I think those of us on the majority have taken consideration and care to address the issue specifically of what happens when a viable fetus dies and no recovery is allowed in the civil court system in the state. This bill is before us because of a decision of about a year and a half ago by the Law Court in the case of Hallie Milton vs. Cary Medical Center up in Caribou where the Milton's sought to recover for the death of an 8 month viable fetus and were not allowed under the Maine Probate Code to recover any damages. The Maine Probate Code allows up to \$50,000 in damages for the death of a person but it does not define what a person is. When Maine adopted the Probate Code in 1981, it did not lend definition nor did it have any discussions since it was a unanimous committee report.

What we have before us is a sort of a dichotomy — Justice Daniel Wathen of Augusta, speaking for the minority signers of the decision who dissented from the majority on the Law Court, gave a beautiful example to the people of Maine to the dichotomy to the problem that we have existing in the state. Quoting Justice Wathen, "Unless the court is prepared to buy a claim for prenatal injury, we are now left with result that prenatal injury is actionable while prenatal death is not. The absurdity of such a result is usually illustrated by the hypothetical of twins suffering simultaneous prenatal injuries with one dying moments before birth and the other dying moments after birth." Such an extreme case demonstrates the irrationality of the requirement of a live birth.

Since the Lord Campbell Act of 1846 in Great Britain, which brought about this whole area of law, you have the possibility of recovering damages if the fetus is born and takes only one breath. But since 1946 in the United States, we have allowed for recovery in many states, practically 36 of them, from the point of viability. As medical science goes on and gives us greater insight into the whole life process, the legal system is hurrying to catch up to this whole idea. Maine stands as the only New England state not to permit such civil action. This bill, this committee amendment, would bring Maine into the mainstream and would make us the 37th state to permit this type of action.

Let me briefly give you a couple of cases where we could have such action and I continue to make the distinction between a criminal because we are not talking manslaughter, we are talking civil action where the estate of that unborn child, the fetus, can bring action to recover for the parents. In Fairfield, Maine several months ago, we had a case where a young woman of 19 was returning from a baby shower with her fiance, the fetus was 8 months, she was hit by a driver who alleged had been driving under the influence of alcohol and the state now has

charges of OUI against this person. She was 8 months pregnant and four days after the accident, the baby was stillborn in a Waterville hospital.

About a year or so ago in Litchfield, a young woman was going to a birth class with her brother when they approached an intersection, the other driver did not stop at the stop sign, crashed into their vehicle, both baby and mother were killed as a result of the accident, the fetus was about 8 months of gestation at that time.

It is absurd if either of those unborn viable fetuses had taken but one breath, whether it be in the seat of the car, on the stretcher, in the ambulance or in the emergency room of the hospital, our laws would have permitted a recovery of damages through court civil action but because there was not one breath, the absurdity is, they are not allowed to recover any damages whatsoever. I think we can all sympathize that any woman who has carried a baby to term or practically to term knows what is living inside of her and anticipates the arrival of this child and for that reason, I think that when they want to carry this baby and someone interferes in this process in this negligent way, that we ought to have cause of action in this state.

I urge you to read the amendment especially the Statement of Fact which explains that this is not aimed at any woman who is seeking to have an abortion, it does not infringe on her right as defined in Roe vs. Wade. It does not mean that we are going to prosecute women who perhaps are abused through alcohol, smoking or drugs — it does not do any of those things, it speaks to clarify what other states have done (36 of them) and seeks to put Maine into the mainstream of the other New England states to permit this. Really, I think it seeks to address a wrong that we have left uncorrected for many, many years.

In the Maine Law Review of several years ago, Justice Wathen based his minority dissent (he told me) in the case in a wonderfully written article on Maine's Probate Code dealing with actions for wrongful death and damages. At the very end, Mr. Ward Graffam, the class of '67 Law School writes and I quote, "The best ends of justice cannot be served until the courts and the legislatures have fully recognized that an individual has a value simply for his status as a human being." I think that really beautifully illustrates that the human family is all encompassing and that we in the legislature today, in 1989, are seeking to add definition to the human family.

I urge that you please vote to accept the Majority "Ought to Pass" Report.

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

Representative STEVENS: Mr. Speaker, Men and Women of the House: I will thank the majority of the committee for all the work they did on this bill. They did meet many of the concerns that the minority signers had. If you were to look at the bill that is out, you can see about five or six concerns that were addressed. However, all of us sitting around at the end of the session struggled to anticipate all the problems that might arise with this bill. These are the ones that came to mind. What I fear are the ones not discovered but will come to light after the bill is passed.

Representative Paradis is right in that 36 states have some form of protection for the death of a viable fetus. However, what he failed to mention is that only two states, Tennessee and South Dakota, have done it through their statutes. According to the literature that's been circulated by the

proponents of this bill, the rest of the states have done it by court made law in their judicial system to meet the specific needs and the equity that is required in cases that come before the court. Maine would be only the third state to statutorily pass a wrongful death action.

There is recovery available right now under Maine law for the death of that fetus. Parents can sue for emotional distress, medical costs -- that is currently available under our Tort Law. What is different in this bill from that remedy is that they put it under the Probate Code. That means for us who are not lawyers is that what we are doing today is, we are creating an estate for every stillborn fetus potentially in the State of Maine. Think of the consequences of creating an estate for a stillborn fetus.

I would suffer a loss, all of us would suffer a loss if we had the grave misfortune of losing a viable fetus, any fetus. That is a very sad thing for a family. However, they do (right now) under Maine law have the right to recovery. If we create an estate for a stillborn fetus, try to anticipate the consequences in inheritance law and tax law that might arise as a result of our good intentions. If there were no available recovery, that would be something different, but there is under Maine law.

The terrible case that Representative Paradis spoke of where the accused OUI driver killed this 8 month old fetus is a terrible thing. This bill would not punish him in the way that is most appropriate for the state, it would not punish him by criminal sanctions. This bill does not touch criminal sanctions for that OUI driver who kills that 8 month old fetus. It is only in the Probate Code and that is what we have to remember, whether or not that is the appropriate place to try to create a right for this loss that a family will suffer. I know it is difficult for the body to look at the signers on this report and by looking at the signers try to get some idea how they should go on the vote. Everybody has good intentions, everybody wants a recovery for the death of this fetus, we just feel that the Probate Code is not the appropriate place to do it because it might create problems that we cannot anticipate.

Mr. Speaker, I move the indefinite postponement of this bill and all its accompanying papers.

The SPEAKER: The Chair recognizes the Representative from Hampden, Representative Richards.

Representative RICHARDS: Mr. Speaker, Men and Women of the House: There are 36 other states that have adopted some form of law either through their judge-made law or through statutes that deal with this problem. In looking through the cases and looking through the statute, it has not been an easy process. We see a period of time where Roe vs. Wade came down and courts were uncertain as to what to do to recognize life at what point or what a viable fetus meant, and, after a period of time with our technology and understanding that a viable fetus is an individual that can live independent of the mother outside the womb, then states became a little bit more comfortable with that.

The next problem they overcame was the fact that a lot of the statutes, the wrongful death statutes, dealt with person. Our present statute deals with person and that still is a problem because when you interject person and then include that to be the viable fetus, then you have problems of interpreting the Probate Code. Our court in this state, in 1988, struggled with that issue, with the issue of person. They did not consider the fact that the wrongful death statute had words of viable fetus, that is a major distinction.

I think the primary distinction between what is happening in our current law today and the 36 states and the states that have not adopted or are in the process of adopting it, is that we have in our majority opinion in this state, logic that is devoid of human experience. We have them straining through the Probate Code, we have them straining through the laws that already exist by use of the word person and coming to the conclusion that the procedural process would be difficult or create a burden on interpreting what type of damages there would be and whether this person would be able to recover, where an estate would be a problem, and all kinds of procedural nightmares.

In our presently existing law, if a child is born and lives one minute, the Probate Code will take care of it so we simply have made a change to say that, we are not talking about a person, we are talking about a viable fetus. Now what happens in an instance like that? First you need a cause of action. The cause of action is that there is an injury and a stillborn and as a result of that, you next have got to determine whether it is a viable fetus. That could either be a question of fact or a matter of law. If I could just briefly explain that -- if you have a question of law that goes to the judge and if that fetus was 7 weeks old and is stillborn, as a matter of law, our scientific technology does not recognize that fetus to be a viable fetus -- the question of law -- it is out, there are no damages. If that child reaches the age of between 20 and 28 weeks, we then have a question of fact, it is a matter of proof to determine whether that child is viable. Then you introduce evidence (and that is by scientific evidence) by calling in an expert to determine the age of the child and as to whether that child could live outside the womb. We have the technology to do that, the 36 other states are using that technology and using it successfully.

It appalls me to say that because there are difficulties in proof of this issue, that we should say there is no cause of action. The other way around is that first you determine there is a cause of action, the cause of action does not attach to the mother, there is no double recovery and if you accept the notion of the Representative from Bangor, that there is a double recovery, you would have to accept the fact that a viable fetus could not live outside the womb independently. That is not true. That cause of action of that child is not attached to the mother and she cannot recover for that cause of action. A cause of action attaches to that individual, that viable fetus.

I will say just briefly in closing because I don't know if I will be up again perhaps clarifying some other statements that might be made later on, but I think with the way we have drafted the amendment, I urge everyone to read it very carefully. We have put the human element back into it, the human element being that we have taken into consideration a situation where a cause of action should not be brought against the mother for a number of reasons. We have also made it clear that a doctor that does not know that a woman is pregnant and administers some kind of medical treatment and as a result of that, the child dies, then he should not be liable. It was something that he didn't know so he would be cautious to begin with.

Secondly, it indicates that any medical treatment that is consistent with informed consent and consistent with the rights of the mother would not hold the doctor liable for an abortion. We have also disclaimed the fact that manslaughter is not an instance here, this is not something that a medical

examiner would get into like an ordinary homicide. I would urge that you vote against the indefinite postponement and support the Majority Report.

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

Representative HASTINGS: Mr. Speaker, Ladies and Gentlemen of the House: When I learned this split Judiciary report was coming on the calendar today, I was very happy that the Speaker called us in at eight-thirty. Obviously, there were many questions in our committee and I rise to show you those which the minority, five of us, with a very huge philosophical difference came to the decision that this bill ought not to pass.

I would like to indulge you with Oliver Twist. Some of you remember the young lad ensnared by Fagan born of a very rich family, by father of an unwed mother and, at the very end, when they were going to find and prove that he was, indeed, entitled to an inheritance, they brought in Mr. and Mrs. Bumble. Mr. Bumble ran a parochial trust or parochial home, a home where four women would often stay, free of charge run by the church and as this woman had died, Mrs. Bumble had taken a couple of trinkets, a locket and a ring, and had sold them to a pawn broker and it was that connection that showed concretely that Oliver was, indeed, the son of this rich lady who had left half of her estate to Oliver. When the conclusion of the interrogation of Mrs. Bumble was finished, the lawyer Mr. Brownlow, was talking with Mr. Bumble and Mr. Bumble said, "You know the incident of my wife taking those things was unfortunate but, of course, I presume it will not take away my position of trust. I will still be able to continue as the officer of the parochial home." Keeping in mind the era in which this is written, it is said in the book by the lawyer, "That is no excuse, replied Mr. Brownlow, you were present on the occasion of the destruction of these trinkets and, indeed, are the more guilty of the two in the eye of the law for the law supposes that your wife acts under your direction." "If the law supposes that" said Mr. Bumble squeezing his hat emphatically in both hands, "The law is an ass, an idiot. If that is the eye of the law, the law is a bachelor and the worse I wish the law is, that his eye may be opened by experience."

The law has for centuries set limits on wrongful death. We have said that our children cannot drink until 21, not 20 years and 364 days, we said they could vote at eighteen, not seventeen and a half. We don't count children who are within the womb in our census, we allow children in gestation, children in our womb to inherit, provided they live, that they breathe. That has been law for centuries.

The common law evolved initially without allowing anybody to collect for the wrongful death of a person, that is, the person who died could not collect because that person was dead. There was no cause of action but in the Industrial Revolution in the mid-19th Century in England, they evolved the law of wrongful death and said, if somebody is killed through the negligence of another, you may have a cause of action in behalf of the estate of that person. The estate of that person has the cause of action and so it evolved into the 20th Century. As scientific knowledge developed and expanding life as some would claim it, courts started pecking away through creativity of the arguments of the lawyers so that it expanded wrongful death beyond living people, people who breathe, to those who did not. Approximately, to the best count of our library downstairs, 33 states by court decree, court interpretation, have said that, indeed, you have

wrongful death to an unborn child. A claim may be made by the estate of that child by the Personal Representative. Only two states have passed a law to the report of that library where the legislature made a conscious decision that said you had a right to claim wrongful death damages for the death of an unborn child.

Today, we are asked to change a decision made in February of 1988, not centuries ago, in February of 1988, just as Caroline Glassman ruled that under the laws of the State of Maine, there is no right to wrongful death claims of an unborn child. The legislature had not spoken and while the legislature may, it felt it inopportune for the court to expand this type of cause of action, which has been done in 33 other states, because it would breach the very fabric of our Probate Code, that which we had adopted in 1981.

If adopted, this law gives us a moving target like we see at the fair with the ducks going across and a BB gun sitting there to pound them out. What is a viable fetus? In Boston, Portland, Rockport, Fort Kent -- it is different in each one of those communities. It is a medical standard that changes depending on whether you are in the state and the medical and scientific expertise of that particular court in which you are acting -- let me give you a little synopsis of what really happens under our wrongful death action for a fetus. Because we can go even at an earlier age for a viable fetus perhaps in Portland, most probably in Portland, let's say that we have a young couple driving into Portland on a rainy day and the car goes off the highway and the young mother who was pregnant with child is injured as a result of the accident -- what happens? There has always been a right of cause of action by the mother against the driver of that vehicle, her husband. Obviously, we wouldn't want to take money from the husband and put it over in the pocket of the wife -- that doesn't really make much sense -- but it makes a lot of sense where we have insurance and so the wife gets a lawyer and sues the husband. If the fetus dies, if the fetus is stillborn at birth, the mother has a further cause of action for emotional distress and mental anguish. That cause of action has always existed and should she, under present law, lose that fetus, according to all treatises, there is an enhancement for the damages if, in fact, a factor causing that mental anguish and emotional distress is, in fact, the death of a stillborn child, the fetus carried by the mother.

However, what else happens now? First, because of a conflict, they would go and get themselves a lawyer for the estate of the fetus, that lawyer would probate the fetus's estate and because again of the nature of the case, that lawyer as Personal Representative now to the estate of the fetus will go and get a lawyer to bring a lawsuit against the father of that fetus. After a lawsuit, the Probate Attorney representing the estate, will pay off the attorney representing the cause of action, pay the bills of the estate, pay himself, and distribute the money, half to the mother and half to the father. The father caused the injury that resulted in the death through his negligence, so what happens? He gets half of the money. The mother has already recovered for her mental anguish and emotional distress and she would have gotten an enhancement of that according to the reports of ALR but now she would be recovering double.

Put that even in a more strained law school classical textbook type issue and say that the two people weren't even married but it was the girlfriend who was with child and the boyfriend caused the death

of both the mother and the fetus. Now we go through the same lawsuits that I told you about before and in addition, we now have a further lawsuit as to the paternity of the child so that this father who is negligent can show himself to be the father and claim as the father of the child, an inheritance under the Probate law. Interesting and there are further complications and hypotheticals that could go on and on just as Judge Wathen uses the example of the twins who are fetuses.

I will tell you that it has been a long time in coming to this state and I suggest that, in the past where we have adopted a physical rule by our Probate Court that says, one shall breathe to bring an action is one which we have over the centuries tried and found accommodating and comfortable to our style of life. We, as a legislature, and none of the other 33 of 35 legislatures in states which have passed or adopted a wrongful death action, have ever taken any action on this and yet today, we are asked to do it. What does this lead to? As Representative Paradis very quickly points out, this isn't criminal, but I will tell you that in six states where they have adopted, either by court decree or by legislative statute wrongful death to a fetus, they have adopted a crime of better side.

Number two statute will be coming along, the crime of feticide and you then would be saying that, indeed, it is not only a civil cause of action when hit by this drunken driver -- as Representative Paradis said, you will also be charged for a crime. The courts have never been willing to go that far. The courts at least know that it is only money that makes them move to expand their jurisdiction, not crime. They have never expanded the criminal laws to include the crime of feticide. They have left that to the legislature but they have never suggested that legislatures could not do that and six have.

I ask you why this law is amerce? I will give you a few possible further legal complications. One is, if we are going to have an estate for an unborn fetus, why not a will for an unborn fetus? Perhaps we will have to have a judicial bypass to accommodate one where they don't have one in advance.

Secondly, with the scientific growth and development of our health industry, are our test-tube babies going to have wrongful death?

Lastly, do we ever understand that a case itself uses an approach of common sense? It says the Probate Code would be violated by this law, by this change and therefore, the court does not adopt the change. It says by Justice Caroline Glassman, "In turn, we will use the common sense meaning of a child and that is birth." It is an absolute line that we can find, we need not shoot at a moving target as to what is liability, rather it is a definitive absolute answer that, when a child is born, it breathes, it can be touched, loved, nurtured and held. Then that child has a cause of action under wrongful death. Until that time, we do not have a cause of action. To pass this bill as proposed would simply expand an action into an area where the court has found the law does not apply in Maine.

I strongly urge you to adopt the motion which is to indefinitely postpone this bill and all its accompanying papers.

The SPEAKER: The Chair recognizes the Representative from Fairfield, Representative Gwadosky.

Representative GWADOSKY: Mr. Speaker, Ladies and Gentlemen of the House: Speaking as the Representative from Fairfield, I am always amazed at the capacity of members of this body who make the

most simple issue and the most simple solution very, very complex.

I am very familiar with the circumstances that Representative Hastings and Representative Paradis have mentioned about the unfortunate circumstances of the young lady who was nine months pregnant and lost her baby because she is employed by myself.

Occasionally, serving as a member of this legislature and in life, we are called upon to make a very difficult choice or a difficult decision. Sometimes we are called upon to make that decision with very little supporting background information. Usually in those circumstances, each of us looks within ourselves, reexamine our values, we go back to the basics, understand the difference between right and wrong in playing by the rules.

I am proud to say that I belong to a political party that has a long history of sticking up for people who only had the rules to go by, people like immigrants, minorities, women, and in that same history, I think it impels us all today to stand up and fight for families, for the future of families and, indeed, for the potential of life itself.

I commend the majority members of the Judiciary Committee, I think they have done an outstanding job with this piece of legislation and I think it deserves enactment.

The SPEAKER: The Chair will order a vote. The pending question before the House is the motion of the Representative from Bangor, Representative Stevens, that L.D. 551 and all its accompanying papers be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

Representative Stevens of Bangor requested a roll call.

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 Hallowell, Representative Farnsworth.

Representative FARNSWORTH: Mr. Speaker, Men and Women of the House: I rise just to explain on behalf of the minority of the Judiciary Committee that I don't believe there is any question but what the minority is a concern to the majority for the loss of families who undergo the death of an unborn child. I think the issue here has nothing to do with that law and our feelings about that law. The issue here has to do whether this bill and this mechanism is appropriate for dealing with it.

Every time we looked at this bill in committee, more concerns came up, more issues were raised, more amendments were added and since the committee has acted on it, additional concerns have been raised, additional concerns that could be added by amendments.

I also would suggest that to take the entire Probate Code and amend one paragraph of it to change such a radical concept in our law so quickly without addressing the potential questions of inheritance tax and other kinds of issues related to this is a change too fast for our law. The kind of concerns that we raised in committee that have been dealt with by amendment, I think, are only the tip of the iceberg. I think the minority concern is that this issue has not been properly studied and researched. I think that is why there are only two states that have

passed laws on this subject as opposed to all the other states where the judiciary interpreted their existing law to apply to this kind of situation. Our judiciary interpreted our existing law and said that there was no recovery under the Probate Code, under the wrongful death act. The fact is, the court made very clear that there are other funds of recovery for the parents in this kind of situation -- for negligence or intentional treatment that causes death, for emotional and mental distress for lack of consortium. We are not talking about leaving people with no run for recovery, we are talking about whether this is the appropriate mechanism and whether this bill, as amended, is fully and adequately researched and drafted. I would suggest if there is a concern where there needs to be more recovery available that this bill needs more work and it should be done over the next few years and brought back again.

I urge you to vote for indefinite postponement.

The SPEAKER: The Chair recognizes the Representative from Hampden, Representative Richards.

Representative RICHARDS: Mr. Speaker, Ladies and Gentlemen of the House: I hate to rise again because I think the Representative from Fairfield, Representative Gwadosky, has hit the nail on the head as to what we are doing here today. I do feel compelled to clarify some statements made by the Representative from Fryeburg, Representative Hastings, a good colleague and seatmate.

There are no other forms of recovery for a fetus that is born dead. Another person cannot recover for that cause of action, that is an absolute, and that has always been the law. It has not been said regarding the statutes that have been on the books in 36 other states the court found that, despite the common law, those statutes were sufficient. I might add that that was not a majority, the majority found that the statutes did cover it and then made judge-made law. The reason why they accommodated the concept was to deal with this dichotomy as a result of a breakdown in logic. Our Supreme Court decision was strained in going through our Probate Code in defining person -- it didn't fit. The logic, they would have you believe, is that because we have a procedural nightmare, there is no cause of action. There is a cause of action and if you have person, there is a procedural nightmare -- if you have viable fetus and put the safeguards in there, it is no longer a nightmare.

As far as the Probate Code and the estate and all the other problems that exist that were pointed out eloquently by Representative Hastings, just flip that over and say, what do we do if a child is born and lives one minute? There is no difference. To accommodate no difference, that is the reason we came up with the statute we did.

Reference was made to feticide and went on with an elaborate thing about how much then can develop to manslaughter, criminal sanctions and all the rest -- well, the bill that we designed took those into account. I might add the feticide statute is just a play on words. That was synonymous with a wrongful death statute. Feticide, homicide -- if you have a homicide, does it mean that somebody was murdered? Murder and homicide is different. Homicide is a result of a car accident and negligence so I would say in closing that the only difference is where we draw the line and that is to take the logic and put the human experience in with the logic and make sense of our law.

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

Representative ANTHONY: Mr. Speaker, Ladies and Gentlemen of the House: I guess I feel on behalf of the Judiciary Committee a kind of a sense of apology to the whole body that one of the first things you have to do on Thursday morning is deal with the intricacies and technicalities of the law of wrongful death.

What we have presented here in the simplest terms is a bill that would propose drawing a slightly different line than has been drawn in the past. People seem to have this fear that we shouldn't be drawing lines or that the line drawn by centuries is the only line that can be drawn. I should point out that the decision of the Supreme Court that we are asked to reverse was a 4 to 3 decision. This was not an easy case for them to decide either. We are asked all the time here to draw lines and I would suggest that what we have here is a situation where the line that has been drawn by the court needs to be moved ever so slightly to allow local death action for a viable fetus.

This bill has been worked carefully hard by the Judiciary Committee to address any number of problems and I submit to you that what we have here is a reasonable, carefully drawn, tightly controlled measure that would allow recovery by the estate of a fetus. People get all upset about the fact that there is an estate of a fetus, that is the way wrongful death actions happen and that is the only way that wrongful death actions happen. So is the way that it was used and we are asking you to move the line ever so slightly to allow in the case of the good Representative from Fairfield's employee or other women who lose a viable fetus in the last few months of pregnancy through the negligence of another, not of herself, that has been precluded as well by the way we have drawn this thing, but who lose an unborn viable fetus by the negligence of another, to allow a cause of action for that loss. It is a reasonable measure, it makes good sense, it is fair, it is just and it is giving recovery for those who suffer severe forms of loss. I ask you to defeat the motion to indefinitely postpone.

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

Representative STEVENS: Mr. Speaker, Men and Women of the House: I beg to speak after my good friend Representative Anthony. He says we are moving the line ever so slightly -- ladies and gentlemen of the House, we are moving the line all right, we are moving the line that says "before" in our state and our society. People had an estate after they drew a breath of life. This bill says you have an estate before you are born. I don't call that a slight move, I call that an enormous move and that is exactly what this bill seeks to do. We are creating an estate in the Probate Code for someone who never drew a breath of life.

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

Representative HASTINGS: Mr. Speaker, Ladies and Gentlemen of the House: Very briefly, I would rise to indicate that, while my brother Representative Richards is correct, that there is no cause of action for the fetus under the present law, there is in fact causes of action that do compensate those who are injured and who survive. Wrongful death simply was a statute enacted to give further meaning where there was not such causes of action in the past. But here, the mother herself, the person most harmed by such an accident, is, according to the treatise of the American Law Review, to the extent that the plaintiff, the mother, is deprived of the opportunity to recover whatever elements of damages might be

recoverable in the wrongful death action -- that mother is able to offset this to some extent by establishing how the loss of the child added to the pain and the suffering to the child's mother.

This action and this amendment creates a new cause of action that creates double recovery. To a lawyer, it is fine but I will tell you that you are changing your philosophical meaning of the law. We have had standards which have been well set, well established and the court adopted them in the State of Maine when it reviewed it.

At this time, I believe we should live with what the court has decided and not try to tinker with the Probate Court Code by changing the law in this one area for this one civil cause of action. It is an enormous change of philosophical impute to the entire Probate Court Code.

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

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

Medical professionals realize that accidents happen to fetuses even in uterus just before birth sometimes -- was that issue addressed in the committee? It seems to me that this is a very radical legal step to take and I would like that question answered, please.

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

The Chair recognizes the Representative from Hampden, Representative Richards.

Representative RICHARDS: Mr. Speaker, may I ask that Representative Holt repeat her question?

Representative HOLT: Mr. Speaker, I asked the question of whether the state of the fetus that may have died in the uterus had been considered by the committee before the majority voted "Ought to Pass" on this bill.

There are incidences in the medical literature, of course, in which fetuses die shortly before the time of birth.

The SPEAKER: The Chair recognizes the Representative from Hampden, Representative Richards.

Representative RICHARDS: Mr. Speaker, Men and Women of the House: We did consider that question. This statute deals with somebody's negligent act, their tort against another individual to be compensated. There's a number of other reasons as a result of accidents, things that cannot be helped where a fetus may die minutes before it is actually born. There is no recovery except for perhaps emotional distress in the event there is negligence in a situation like that.

The SPEAKER: The Chair recognizes the Representative from Buxton, Representative Donald.

Representative DONALD: Mr. Speaker, Ladies and Gentlemen of the House: I rise, I had not intended to, but I am concerned because of another area of impact that this will have. It is clear that there is going to be, if this passes, substantial litigation. This ultimately will result in increases in your liability insurance, I just bring this up, I know that this should not be a paramount concern but it should be a consideration because, to me, it is clear that this is going to substantially increase the amount of litigations.

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

Representative ANTHONY: Mr. Speaker, Ladies and Gentlemen of the House: We are talking about a very unusual situation, we are talking about a situation that arises two or three times a year at the most in

this state. I do not believe that passage of this bill would bring about any substantial increase in litigation, substantial increase in anything. We are talking about giving justice to those very few numbers of cases that do arise during the course of the year.

I urge you to vote against this motion.

The SPEAKER: The Chair recognizes the Representative from Hallowell, Representative Farnsworth.

Representative FARNSWORTH: Mr. Speaker, Ladies and Gentlemen of the House: In the Judiciary Committee's work sessions on this bill, the minority did not give the majority the dickens but we did have considerable discussion about the types of litigation that would arise if this bill were to pass. I would certainly agree with the comments that were made that there would be a lot of litigation. Just to review the list for you, we talked about the kind of litigation that would arise somewhere to the courts cases that have been referred to where there is an accident or something that would normally result from litigation and this would be an additional claim. We also talked about litigation that would arise just because of this bill and the way it is drafted such as, if the parents of the fetus are not married -- who is the father and what kinds of paternity actions might there need to be? We talked about the fact that since this creates an estate for the fetus and if there were an accident and both parents died, the recovery could actually go to any one of a number of people in the family, some of whom might not even know that the woman was pregnant.

The fact that there is recovery available and it would be through an estate like this, it seems to me that even though now we do not have numerous lawsuits when there is a stillbirth or death of a fetus, we are much more likely to have that. The kinds of cases that I think Representative Anthony was referring to are the cases that have resulted in litigation to date. Once the statute passes, there is the potential for recovery for lots more people than could recover right now so we certainly agree that that is the problem. I think in addition to that, we have not necessarily covered all the bases with respect to the medical community. Somebody mentioned to me this morning that, although we do have some provisions in the amendment for immunity for doctors treating a woman in some certain circumstances where they might not know or have any reason to know that the woman was pregnant, there is nothing in this bill that protects the doctor for immunity from lawsuit, if, for example, the woman has refused some form of treatment and later there is a stillbirth. I think this is just the beginning of looking at what might result from all of this.

The SPEAKER: The pending question before the House is the motion of the Representative from Bangor, Representative Stevens, that L.D. 551 and all its accompanying papers be indefinitely postponed.

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

Representative MAYO: Mr. Speaker, pursuant to House Rule 7, I wish to pair my vote with the Representative from Vassalboro, Representative Burke. If she were present and voting, she would be voting yea; I would be voting nay.

The SPEAKER: The pending question before the House is the motion of the Representative from Bangor, Representative Stevens, that L.D. 551 and all its accompanying papers be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 60

YEA - Adams, Aikman, Allen, Anderson, Ault, Begley, Brewer, Butland, Cathcart, Clark, M.; Coles, Constantine, Daggett, Dellert, Donald, Dore, Farnsworth, Farnum, Foss, Garland, Greenlaw, Gurney, Handy, Hanley, Hastings, Heeschen, Hichborn, Hoglund, Holt, Joseph, Ketover, Kilkelly, Larrivee, Lawrence, Lebowitz, Libby, Look, Lord, Marsano, Marsh, McGowan, McKeen, McPherson, Merrill, Mills, Mitchell, Murphy, Norton, Pederson, Pendleton, Pines, Priest, Reed, Rolde, Rydell, Sherburne, Simpson, Skoglund, Small, Stevens, P.; Stevenson, Swazey, Webster, M.; Wentworth, Whitcomb.

NAY - Aliberti, Anthony, Bailey, Bell, Boutilier, Carroll, J.; Carter, Cashman, Chonko, Clark, H.; Conley, Cote, Crowley, Curran, Dexter, Dipietro, Duffy, Dutremble, L.; Erwin, P.; Farren, Gould, R. A.; Graham, Gwadosky, Hale, Hepburn, Hickey, Hussey, Hutchins, Jackson, Jalbert, LaPointe, Lisnik, Luther, MacBride, Macomber, Mahany, Manning, Marston, Martin, H.; McCormick, McHenry, McSweeney, Melendy, Michaud, Moholland, Nadeau, G. G.; Nadeau, G. R.; Nutting, O'Dea, O'Gara, Paradis, E.; Paradis, J.; Paradis, P.; Parent, Paul, Pineau, Plourde, Pouliot, Rand, Richard, Richards, Ridley, Rotondi, Ruhlin, Seavey, Sheltra, Smith, Stevens, A.; Strout, D.; Tammaro, Tardy, Telow, Townsend, Tracy, Walker, The Speaker.

ABSENT - Carroll, D.; Foster, Higgins, Jacques, Oliver, Strout, B.; Tupper.

PAIRED - Burke, Mayo.

Yes, 65; No, 76; Absent, 7; Vacant, 1; Paired, 2; Excused, 0.

65 having voted in the affirmative and 76 in the negative with 7 being absent and 1 vacant, the motion did not prevail.

Subsequently, the Majority "Ought to Pass" Report was accepted, the Bill read once.

Committee Amendment "A" (H-429) was read by the Clerk and adopted and the Bill assigned for second reading Friday, June 9, 1989.

At this point, Representative Michaud of East Millinocket was appointed by the Speaker to act as Speaker pro tem.

The Chair was called to order by the Speaker pro tem.

Divided Report

Majority Report of the Committee on Appropriations and Financial Affairs reporting "Ought to Pass" as amended by Committee Amendment "A" (H-422) on Bill "An Act to Undedicate the Alcohol Premium Tax Fund" (H.P. 710) (L.D. 971)

Signed:

Representatives: CARTER of Winslow
POULIOT of Lewiston
HIGGINS of Scarborough
RIDLEY of Shapleigh
CHONKO of Topsham
LISNIK of Presque Isle
MCGOWAN of Canaan

Minority Report of the same Committee reporting "Ought Not to Pass" on same Bill.

Signed:

Senators: PERKINS of Hancock
PEARSON of Penobscot
BRANNIGAN of Cumberland
Representatives: FOSTER of Ellsworth
FOSS of Yarmouth
CARROLL of Gray

Reports were read.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Winslow, Representative Carter.

Representative CARTER: Mr. Speaker, I move that the House accept the Majority "Ought to Pass" Report.

Mr. Speaker, Members of the House: Many of you may recall that the Appropriations Committee heard virtually the same bill two years ago in the First Regular Session of the 113th Legislature. The reason that I supported that legislation then and the reason I am supporting this legislation today are virtually the same.

First of all, I am convinced that the State of Maine needs two funding sources for alcohol and substance abuse services. Currently, the alcohol premium contributes approximately \$5,500,000 each year to the state's alcohol substance abuse budget while the General Fund contributes approximately \$2,900,000. Additionally, federal funds in driver evaluation and education program or DEEP revenues also contribute approximately \$4,100,000 for a total of \$12,500,000.

There are administrative inefficiencies when the state enters into separate contracts with community provider agencies using alcohol premium dollars for one contract and General Fund dollars for another. Our alcohol substance abuse funding subcommittee learned from these services in the previous session that this practice causes record keeping and other administrative burdens that detract from the contract objectives.

Secondly, because the alcohol premium revenues have stabilized at approximately \$5,500,000 per year, we are seeing more alcohol premium dollars that were originally targeted for service now being redirected to pay for the various ongoing obligations of the state, including state employees reclassifications. In short, ladies and gentlemen, the programs that this system is supposed to provide to the public is being short shifted at the expense of management.

The Alcohol Premium Budget Allocation Bill that we will pass on this morning, in virtually every account, you will see reflection of a decrease in the "All Other" compared to the previous fiscal year so these dollars may go into "Personal Services" to fund state employee costs instead of going to fund the programs where they actually should go.

Thirdly, there is an inflexibility in the current funding mechanism for alcohol substance abuse services. There was little opportunity to redirect dollars to meet a higher need. Our subcommittee also learned that the contract agencies have little or no opportunity to provide input into the ADPC, which is the Alcohol and Drug Abuse Planning Committee's resource allocation process. As you are all aware, funding for additional substance abuse services is increasingly requested from the General Fund simply because alcohol premium dollars have become constant and committed. I am also equally sure that some House members like myself have received letters from the provider agencies who have become increasingly disenchanted with the current funding system.

Fourth, I have been concerned with the lack of planative analysis that would help us target the limited dollars. We found an evaluation system last session for the treatment component but have not yet seen any results. There is no system in place that provides an objective evaluation of the education component of our system.

In conclusion, I think we are all well aware of the need for alcohol substance abuse education and treatment services in this state. No one is saying that any of these vital services should be eliminated. This bill would provide alcohol and substance abuse services with greater financial

stability and will simplify the contracting process from these provider agencies and will allow the Appropriations Committee to have continued oversight of the funding issue and will eliminate one more dedicated funding anachronism.

I would hope that you would support the Majority "Ought to Pass" Report.

The SPEAKER PRO TEM: The Chair recognizes the Representative from York, Representative Rolde.

Representative ROLDE: Mr. Speaker, Ladies and Gentlemen of the House: I sincerely hope that you will vote against the gentleman from Winslow's motion and I would also ask for a roll call when the vote is taken, Mr. Speaker.

When the hearing was held on this bill, the only supporters of the bill itself, aside from the sponsors, were representatives of the liquor industry. What they said they didn't like and what they don't like about the alcohol premium dedication is that it somehow ties the problem of alcoholism to the sale of alcohol. That sort of messes up all their nice advertisements that show people having a wonderful time drinking. However, this is precisely what I like about the dedicated alcohol premium, that we do make this connection, that we say by allowing this industry to sell what really is a dangerous drug, that a very small part of the profit that they will get from that will go in part to deal with the problems caused by alcoholism. I would emphasize in part because the alcohol premium plan only pays a part of what we use to deal with the problem of alcoholism.

A number of years ago, the Special Select Committee on Alcoholism which we had then, hired Professor Dennis Meadows of Dartmouth, a world expert, to study what those problems cost the taxpayers of the State of Maine. The figure at that time was about \$700 million a year. We were the first state in the nation to enact this type of law. It was a very proud moment, I felt, for the State of Maine when we did and, until we did, we had very little money going in to deal with the problems of alcohol, particularly in the area of prevention, in the area of education in our schools. In fact, that is why I originally became interested in this problem because I was on the Education Committee and I saw how we had practically absolutely no money going in to dealing with education. Since then, this has been the major source of any money that has been increased for dealing with the problems of alcoholism. Since then, Maine has led the nation, we have one of the finest programs in the country particularly in the area of prevention and education. I realize and I have discussed this many times with members of the Appropriations Committee that there are some technical problems in dealing with this but I don't think that we should turn the clock back and I don't think we should turn our backs in dealing with the problem of alcoholism.

I ask you to oppose the motion.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Canaan, Representative McGowan.

Representative MCGOWAN: Mr. Speaker, Men and Women of the House: I think that Representative Rolde has made some good points and brought about some great history on the alcohol programs that this state has adopted that are, indeed, amongst the finest in the nation. But I will tell you as a five year member of the Appropriations Committee that we sit there and deal with all the revenues brought in through the General Fund and others throughout state government and I can tell you that a dedicated revenue is a dead end street. It may not be this year but I will predict that by 1990 there will be

the constituency that Representative Rolde and others have represented in this House, the providers of substance abuse treatment will be in this body and before our committee telling us they want to undedicate so they can continue funding important programs in this state. We have seen in our committee L.D. 8 a bill which undedicates the Fisheries and Wildlife Department because they have seen after many years of dedicated revenues that that is, indeed, a dead end street for financing and funding of the needed services of their department. I will tell you that you will see the same thing in the coming years from the alcohol premium.

In testimony before the Appropriations Committee, we saw many people that do provide alcohol treatment services for people in this state. I posed questions to some of them asking them if they were advocating prohibition and outright denial of any consumption of alcohol and many of them answered in the affirmative. Then I posed another question to them and said, "If everybody in the State of Maine stopped consuming alcohol, how much money would there be in the alcohol premium?" The answer was zero dollars. So you see we have an interesting situation here -- we have liquor revenues and sale of alcohol is declining in the State of Maine. They have been declining at a rate (for distilled spirits) of 14 percent annually over the past couple of years. You will see that those will continue to decline because the people of Maine are becoming more and more educated to the dangers and problems associated with heavy alcohol consumption. You will find that, if we continue down this road, then the alcohol premium dollars that we now have, will soon be zero or lower enough so that the services we are providing to our people that do, indeed, have alcohol problems will be gone. I will tell you that it won't be today and it may not be next month but I will predict to you that in the next couple of years, you will see the same constituency that are begging you to keep this a dedicated revenue in here to say, "Please undedicate us and give us adequate general funding."

I urge you to vote the Majority Report on this legislation.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Winthrop, Representative Norton.

Representative NORTON: Mr. Speaker, Ladies and Gentlemen of the House: I was present in the then Department of Education in 1969 when our budget was stripped of money enough to meet a payroll two weeks hence. It was then that I became a very staunch advocate.

Let me tell you where we got the money to continue with that next payroll after the end of the fiscal year of that time. We got it from the Highway Safety Committee and I believe what the Representative from Canaan is saying will come true and I believe it will become true because those programs that we are supporting today through dedicated revenues are working. I couldn't be happier. However, we have a long way to go before that takes place and I suggest we keep the programs in touch with the problem.

The SPEAKER PRO TEM: 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 PRO TEM: The pending question before the House is the motion of the Representative from

Winslow, Representative Carter, that the House accept the Majority "Ought to Pass" Report. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 61

YEA - Aliberti, Begley, Bell, Carter, Cashman, Chonko, Coles, Dipietro, Dore, Graham, Gurney, Hichborn, Joseph, Larrivee, Lisnik, Macomber, Manning, Marsh, Marston, McCormick, McGowan, Moholland, Nadeau, G. G.; Paradis, J.; Paradis, P.; Paul, Pineau, Plourde, Pouliot, Ridley, Rotondi, Rydell, Simpson, Tardy, Webster, M.

NAY - Adams, Aikman, Allen, Anderson, Anthony, Ault, Bailey, Boutilier, Brewer, Butland, Carroll, D.; Carroll, J.; Cathcart, Clark, H.; Clark, M.; Conley, Constantine, Cote, Crowley, Curran, Daggett, Dexter, Donald, Duffy, Dutremble, L.; Erwin, P.; Farnsworth, Farnum, Farren, Foss, Garland, Gould, R. A.; Greenlaw, Gwadosky, Hale, Handy, Hanley, Hastings, Heesch, Hepburn, Hickey, Hoglund, Holt, Hussey, Hutchins, Ketover, Kilkelly, Lawrence, Lebowitz, Libby, Look, Lord, Luther, MacBride, Mahany, Marsano, Martin, H.; Mayo, McHenry, McKeen, McPherson, McSweeney, Melendy, Merrill, Mills, Mitchell, Murphy, Nadeau, G. R.; Norton, Nutting, O'Dea, O'Gara, Paradis, E.; Parent, Pederson, Pendleton, Pines, Rand, Reed, Richard, Richards, Rolde, Ruhlman, Seavey, Sheltra, Sherburne, Skoglund, Small, Smith, Stevens, A.; Stevens, P.; Stevenson, Strout, D.; Swazey, Tammaro, Telow, Townsend, Tracy, Walker, Wentworth, Whitcomb, The Speaker.

ABSENT - Burke, Dellert, Foster, Higgins, Jackson, Jacques, Jalbert, LaPointe, Michaud, Oliver, Priest, Strout, B.; Tupper.

Yes, 35; No, 102; Absent, 13; Vacant, 1; Paired, 0; Excused, 0.

35 having voted in the affirmative and 102 in the negative with 13 being absent and 1 vacant, the motion did not prevail.

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

Divided Report

Majority Report of the Committee on Appropriations and Financial Affairs reporting "Ought to Pass" as amended by Committee Amendment "A" (H-423) on Bill "An Act to Establish a Commission on State Finance" (EMERGENCY) (H.P. 1113) (L.D. 1546)

Signed:

Senators: PEARSON of Penobscot
BRANNIGAN of Cumberland
McGOWAN of Canaan
Representatives: LISNIK of Presque Isle
POULIOT of Lewiston
RIDLEY of Shapleigh
CARROLL of Gray
CHONKO of Topsham
CARTER of Winslow

Minority Report of the same Committee reporting "Ought Not to Pass" on same Bill.

Signed:

Senator: PERKINS of Hancock
Representatives: FOSTER of Ellsworth
HIGGINS of Scarborough
FOSS of Yarmouth

Reports were read.

Representative Carter of Winslow moved that the House accept the Majority "Ought to Pass" Report.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Yarmouth, Representative Foss.

Representative FOSS: Mr. Speaker, Ladies and Gentlemen of the House: I would like to comment on my perception of L.D. 1546. Other alternatives were offered and now considered by the signers of the

Majority Report. For example, it was suggested at the public hearing that an outside, impartial group be organized to review revenue estimates. Other states do ask for technical, professional help from citizens who volunteer and offer their advice. However, this bill before you today creates a commission with subpoena powers, a group of legislators, the Chairs of Appropriations and the Chairs of Taxation, 4 members of the administration and the Director of the Office of Fiscal and Program Review. It is very difficult in my opinion to define that group as an impartial oversight function outside of the political arena.

L.D. 1546 is clearly a blurring of a separation of powers between the Executive and Legislative Branches. I might also mention on an amendment before you today has a price tag of over a third of a million dollars.

It is my opinion that this bill is a political statement designed to embarrass the administration. The illusion that it creates is that somehow this newly created commission, through its unusual wisdom, will miraculously make our revenue shortfall disappear and improve our current fiscal picture. The reality is that a slump in the sales tax revenues, a slump that has been ongoing for several months, has created the current budget crunch. I might add, at this point, that legislative leadership and members of the Appropriations, were advised of this potential problem several months ago. The economy of the entire northeast has slowed down except for Vermont. The housing market has slowed and auto sales are down. All the political rhetoric in the world will not make these facts go away. Very simply, our citizens have curbed their spending recently. It is time for us to follow that same course of direction.

State spending increased more than 90 percent between 1982 and 1988. Spending at the federal and local levels is being tightened. In fact, several million dollars in our state budget reflects the loss of federal dollars. The federal government is working toward reducing its deficit without raising taxes and, in many cases, we are paying the price for their frugality. Local governments as well are scrutinizing their spending levels and making cuts. It is time for the state to be more conservative in its spending. Belts have been tightened everywhere else, it is time for us to understand these same constrictions. Creating a legislative commission will not make this reality disappear.

I would like to pose a question through the Chair to a signer of the Majority Report.

Under this bill as presented to you today, I am wondering who has final authority for revenue estimates and what would happen if the commission were divided?

The SPEAKER PRO TEM: The Representative from Yarmouth, Representative Foss, has posed a question through the Chair to anyone who may respond if they so desire.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Winslow, Representative Carter.

Representative CARTER: Mr. Speaker, Men and Women of the House: The gentlelady from Yarmouth has posed a question that is quite clearly explained in the L.D. and it does not change existing statutes, it doesn't repeal anything but it tries to deal with a problem that I don't think I have to go into much detail to explain to you what is happening around us today.

She has alluded to the separation of powers, we are not affecting that but we could choose another route, we could choose to do what Congress is doing,

we could have a separate office to estimate revenues for the Legislative Branch, we could have a separate office like we do now to estimate revenues for the Executive Branch. I could picture what would happen -- nothing different than what happens in Washington, the Executive Branch would possibly be at a lower level than their estimates and the Legislative Branch might be at a higher level and then they would sit down and start haggling and end up some place in the middle. They could possibly end up in deficit funding like they are doing in Congress, deficit funding over their ears.

This commission is an attempt to provide a group that would be as impartial as possible. It is very difficult to do that because you could have, like we have had in the past, the other body being controlled by one party and the House being controlled by another and the second floor being controlled by one of those parties in either branch. The way we have it now is the legislature is controlled by one party, the second floor is controlled by another party and the party that controls the second floor appoints four of these members, the legislature on the other hand would appoint four members and that there would be representative of the Office of Fiscal and Program Review as another impartial member.

What this commission would do is it would attempt to forecast the revenues. It is not simply estimating revenues related to the income tax or the sales tax -- there are 257 different indicators that must be checked and rechecked before you can come up with adequate revenue estimates.

Right now, we are several weeks away from the end of the session, we don't know how much money we have in the till, we've got to go back to the drawing board on the Appropriations Committee, we have to review a budget of Part I that is composed of \$3.1 billion of General Fund money, we have to review the Part II and based on the best available knowledge or forecast that we have for us, is if you follow the governor's recommendation, there is going to be a balance of \$200,000 for all your L.D.'s. Now this is an honest attempt and I would like to remind this House that, whenever we try to correct a system that has gone wrong, it is not easy. The sponsors of this bill are not trying to interject politics into the system, we are trying to steer away and remain as impartial as possible. Believe me, it is not easy but the end result, what we want, is the forecast that presumably the Executive Branch will not disregard because they are represented and the Legislative Branch will not disregard because they are represented. In so doing, we can avoid some of the clashes and haggling that we see happening in Washington. We could also avoid ending up in the predicament we are in now, not having to go back and redo work that we have done over the past few months.

This is a sincere attempt to deal with the problem, and it is a big one, I don't have to remind you of that.

What the commission would do is purchase or create models with the funds that have been added by the amendment and the funding calls for a quarter of a million dollars the first year of the biennium and then the annual expenses would drop down to \$100,000, much less expensive in the long-run than what we are currently faced with today for those expenditures to get revenue estimates. We spent \$140,000 just on the income tax and we may end up having to spend an equal amount on the sales tax and still be back to square one when we come in next year. This is the sensible way of moving forward and I would urge this House to support the Majority Report.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Presque Isle, Representative Lisnik.

Representative LISNIK: Mr. Speaker, Men and Women of the House: This commission on state finance, I believe, is an excellent idea. I don't believe that it is put in place to embarrass the governor at all. I believe it is put in place to have a cooperative venture with the Executive Department, something that is already done in the Office of Fiscal and Financial Review. Currently, when our staff writes fiscal notes, it consults with the Executive Branch, it consults with the various departments, it consults with the Chief of Staff before putting on these fiscal notes. So, we already have a mechanism in place that is a cooperative venture.

Currently, we have absolutely no legislative input in the process, no legislative involvement in our revenue estimates. This would provide us with that involvement and in a bipartisan way. There are four members on the commission, the chairs of Appropriations, the chairs of Taxation, four members of the Executive Branch and the Director of Fiscal and Financial Review making up a nine member commission.

I think that had we had this mechanism in place this year, we probably would not be in the situation that we are in today because there would have been a forecast and we would have known in advance because this commission would report quarterly, we would have known in advance what kind of situation we were going to be in.

Just a few weeks ago, we reported out a Part I budget. In our committee, our staff told us that they thought in the General Purpose Aid Account for Education that there was at least \$10 million in excess there, a cushion if you will. We began to negotiate with our counterparts, the Republican members of the Appropriations, over that particular issue. We came right down to just a couple of hundred thousand dollars in difference. Because we were going to take that money out of the general purpose aid account, the Commissioner of Education started calling everybody who had capital projects on line telling them that those capital projects were not going to be funded because we were cutting too deep in General Purpose Aid. We started getting calls back here in Augusta saying, "Don't cut out our money. Don't cut this out because we are going to lose our project in Freeport, we are going to lose our project in Fort Fairfield." I think there were five or six. We actually had to put in the budget that these projects would go on line because we knew the money was there. We took our staff's advice. Finally, the administration did relent and concede that they could take that \$10 million cut.

Look in your Part II, there is another \$10 million that they just took out in General Purpose Aid when only a few weeks ago they were saying, if you take this \$200,000, we are going to fall apart. That is what a bipartisan commission will do, that is what legislative input will do, that is what a technical staff will do, it will get a handle on these projections, get a handle on what is in the budget, get a handle on what is surplus. It is an excellent idea and I hope you vote with the Majority Report.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Yarmouth, Representative Foss.

Representative FOSS: Mr. Speaker, Men and Women of the House: I would like to make one point before I paraphrase my question that I had framed earlier. I would like to point out that, contrary to what has

been suggested today, we were not taken by surprise by the sales tax revenues. In March, the governor's people advised the Appropriations Committee and legislative leadership that we may have a potential problem with a decline in the sales tax.

I would like to paraphrase my question -- is the budget process paralyzed if the nine member commission has a divided report?

I also, Mr. Speaker, respectfully request a roll call.

The SPEAKER PRO TEM: Representative Foss of Yarmouth has posed a question through the Chair to any member who may respond if they so desire.

The Chair recognizes the Representative from Winslow, Representative Carter.

Representative CARTER: Mr. Speaker, Ladies and Gentlemen of the House: To again try to clarify and answer the gentlelady's question, let me tell her that this is an advisory commission, it is not binding on the governor's office. The governor is still charged to adjust the revenue estimates, but hopefully, based on the construction of this commission, the fact that four of his department heads are on it, would assure us that the governor would hopefully abide by the revenue estimates forecasted by this impartial commission.

The gentlelady also tells us that the Appropriations Committee was made aware of a pending shortfall -- yes we were, two months ago. But when I got the total picture in one of the printouts given to us by the Executive Branch in one of the briefings that I attended, the revenues on the sales tax started declining last August. We were made aware of a possible problem two months ago. When all around us every other state is experiencing a financial problem, downturn in the economy, and I can't believe what makes us think that Maine is so much different than the rest of this nation, that we are not going to experience the same type of downturn in our economy if it is happening all across the country. It is inconceivable to me that we are that special. I know we are special in many other ways but not when it comes to economic growth of this type projected by the sales tax activities.

The revenues projected on this graph handed to us by the Executive Department show a decrease of an excess of 33 percent since last July. It doesn't take much of a fiscal expert to see that there is something wrong and something drastic happening across the state. Had we had a commission in place, you know nine or ten heads are much better than one in many cases, we would have been made aware of what is happening.

Again Mr. Speaker, I hope that the members of this House will support the Majority "Ought to Pass" Report.

The SPEAKER PRO TEM: 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 PRO TEM: A roll call has been ordered. The pending question before the House is the motion of Representative Carter of Winslow that the House accept the Majority "Ought to Pass" Report. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 62

YEA - Adams, Aliberti, Anthony, Bell, Boutilier, Carroll, D.; Carter, Cashman, Cathcart, Chonko,

Clark, H.; Clark, M.; Coles, Conley, Constantine, Cote, Crowley, Daggett, Dipietro, Dore, Duffy, Dutremble, L.; Erwin, P.; Farnsworth, Gould, R. A.; Graham, Gurney, Gwadosky, Hale, Handy, Heeschen, Hichborn, Hickey, Hoglund, Hussey, Jalbert, Joseph, Ketover, Kilkelly, LaPointe, Larrivee, Lawrence, Lisnik, Luther, Macomber, Mahany, Manning, Marston, Martin, H.; Mayo, McGowan, McHenry, McSweeney, Melendy, Michaud, Mills, Mitchell, Moholland, Nadeau, G. R.; Nutting, O'Dea, O'Gara, Paradis, J.; Paradis, P.; Paul, Pederson, Pineau, Plourde, Pouliot, Priest, Rand, Richard, Ridley, Rolde, Rotondi, Rydell, Sheltra, Simpson, Skoglund, Smith, Stevens, P.; Strout, D.; Swazey, Tammaro, Tardy, Telow, Townsend, Tracy, Walker, The Speaker.

NAY - Aikman, Allen, Anderson, Ault, Bailey, Begley, Brewer, Butland, Carroll, J.; Curran, Dellert, Dexter, Donald, Farnum, Farren, Foss, Garland, Greenlaw, Hanley, Hastings, Hepburn, Holt, Hutchins, Lebowitz, Libby, Look, Lord, MacBride, Marsano, Marsh, McCormick, McPherson, Merrill, Murphy, Norton, Paradis, E.; Parent, Pendleton, Pines, Reed, Richards, Seavey, Sherburne, Small, Stevens, A.; Stevenson, Webster, M.; Wentworth, Whitcomb.

ABSENT - Burke, Foster, Higgins, Jackson, Jacques, McKeen, Nadeau, G. G.; Oliver, Ruhlin, Strout, B.; Tupper.

Yes, 90; No, 49; Absent, 11; Vacant, 1; Paired, 0; Excused, 0.

90 having voted in the affirmative, 49 in the negative, with 11 being absent and 1 vacant, the motion to accept the Majority "Ought to Pass" Report was accepted, the Bill read once.

Committee Amendment "A" (H-423) was read by the Clerk and adopted and the Bill assigned for second reading Friday, June 9, 1989.

At this point, Speaker Martin resumed the Chair.

The House was called to order by the Speaker.

CONSENT CALENDAR

First Day

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

(H.P. 563) (L.D. 761) Bill "An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, Alcoholism Prevention, Education, Treatment and Research Funds, 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) Committee on Appropriations and Financial Affairs reporting "Ought to Pass" as amended by Committee Amendment "A" (H-413)

(H.P. 342) (L.D. 461) Bill "An Act to Provide Complimentary Marine Resources Licenses to Certain Persons 75 Years of Age or Older" Committee on Marine Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (H-414)

(H.P. 798) (L.D. 1110) Bill "An Act Criminalizing the Unlawful Possession of Class Z Drugs" Committee on Judiciary reporting "Ought to Pass" as amended by Committee Amendment "A" (H-415)

There being no objections, the above items were ordered to appear on the Consent Calendar of Friday, June 9, 1989, under the listing of Second Day.

(H.P. 443) (L.D. 608) Bill "An Act to Increase the Price Farmers Receive for Milk" Committee on Agriculture reporting "Ought to Pass" as amended by Committee Amendment "A" (H-416)

On motion of Representative Hussey of Milo, was removed from Consent Calendar, First Day.

Report was read and accepted, the Bill read once. Committee Amendment "A" (H-416) was read by the Clerk.

Representative Hussey of Milo offered House Amendment "A" (H-430) to Committee Amendment "A" (H-416) and moved its adoption.

House Amendment "A" to Committee Amendment "A" was read by the Clerk and adopted.

Committee Amendment "A" as amended by House Amendment "A" thereto was adopted and the Bill assigned for second reading Friday, June 9, 1989.

(H.P. 1068) (L.D. 1490) Bill "An Act to Amend the Real Estate Brokerage License Laws" (EMERGENCY) Committee on Business Legislation reporting "Ought to Pass" as amended by Committee Amendment "A" (H-421)

(H.P. 727) (L.D. 1004) Bill "An Act to Include Unorganized Territories as School Administrative Units" Committee on Education reporting "Ought to Pass" as amended by Committee Amendment "A" (H-424)

(H.P. 979) (L.D. 1357) Bill "An Act to Increase the Penalty for Illegal Netting of Atlantic Salmon" Committee on Marine Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (H-425)

(H.P. 1192) (L.D. 1659) Bill "An Act to Facilitate District Court Judicial Administration" Committee on Judiciary reporting "Ought to Pass" as amended by Committee Amendment "A" (H-426)

(H.P. 980) (L.D. 1358) Bill "An Act to Amend the Law Concerning Taxing of Costs in Civil Actions" Committee on Judiciary reporting "Ought to Pass" as amended by Committee Amendment "A" (H-427)

(H.P. 1158) (L.D. 1612) Bill "An Act to Protect the Identity of Juveniles Prior to Hearing or Bind Over to Superior Court" Committee on Judiciary reporting "Ought to Pass" as amended by Committee Amendment "A" (H-428)

There being no objections, the above items were ordered to appear on the Consent Calendar of Friday, June 9, 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. 1042) (L.D. 1453) Resolve, to Provide Respite Care Services for Families of the Mentally Ill (C. "A" H-395)

(H.P. 1007) (L.D. 1405) Bill "An Act to Amend the Laws Relating to Small Claims" (C. "A" H-396)

(H.P. 961) (L.D. 1339) Bill "An Act to Require Municipalities to Leave the Names of Women Who Marry on Voting Registration Records" (C. "A" H-397)

(H.P. 794) (L.D. 1106) Bill "An Act to Allow Municipal Clerks to Inspect Blank Ballots Prior to Election Day" (C. "A" H-398)

(H.P. 813) (L.D. 1125) Bill "An Act to Amend the Natural Resources Protection Act" (C. "A" H-399)

(H.P. 225) (L.D. 305) Bill "An Act Amending Various Licensure Laws of Boards and Commissions within the Department of Professional and Financial Regulation" (C. "A" H-404)

(H.P. 1055) (L.D. 1477) Resolve, Concerning Africanized Bees (C. "A" H-405)

(S.P. 398) (L.D. 1042) Bill "An Act to Clarify the Law Governing Prelitigation Screening Panels" (EMERGENCY)

(S.P. 169) (L.D. 326) Bill "An Act to Increase the State Share of Education Funding and to Increase the Minimum State Allocation" (C. "A" S-209)

(S.P. 461) (L.D. 1246) Bill "An Act to Amend the Law Governing the State Capitol Commission" (EMERGENCY) (C. "A" S-198)

(S.P. 520) (L.D. 1427) Bill "An Act to Combine and Coordinate Services to Maine's Elderly with Services to Other Adults in a Single Bureau of the Department of Human Services" (C. "A" S-203)

(S.P. 552) (L.D. 1555) Bill "An Act to Save Medicaid Funds by Expanding the Ability of the Department of Human Services to Recover Funds from Other Payors" (C. "A" S-204)

(S.P. 350) (L.D. 927) Bill "An Act to Establish a Comprehensive Service Delivery System for Persons with Head Injuries" (C. "A" S-211)

(S.P. 487) (L.D. 1329) Bill "An Act to Amend the Law Concerning the Collection of Fees for General Educational High School Equivalency Certificates" (EMERGENCY) (C. "A" S-210)

(H.P. 1122) (L.D. 1554) Bill "An Act to Revise the Communicable Disease Law" (C. "A" H-408)

(H.P. 1218) (L.D. 1690) Bill "An Act Relating to Periodic Justification of Programs of State Government under the Maine Sunset Laws" (EMERGENCY) (C. "A" H-412)

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

**PASSED TO BE ENGROSSED
As Amended**

Bill "An Act to Allow the Maine Potato Board and the Maine Blueberry Commission to Retain Interest on the Cash Balance of Tax Funds" (S.P. 326) (L.D. 863) (C. "A" S-202)

Bill "An Act to Establish Disability Retirement Benefits for Members of the Maine State Retirement System" (EMERGENCY) (H.P. 716) (L.D. 977) (C. "A" H-400)

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

**SECOND READER
Tabled and Assigned**

Bill "An Act to Simplify the Process by Which People with Disabilities Are Able to Acquire Information and Apply for Services" (H.P. 1032) (L.D. 1438) (C. "A" H-391)

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

On motion of Representative Gwadosky of Fairfield, tabled pending passage to be engrossed and specially assigned for Friday, June 9, 1989.

**PASSED TO BE ENGROSSED
As Amended**

Bill "An Act to Establish the Child Welfare Advisory Committee and to Redesignate the Bureau of Social Services as the Bureau of Child and Family Services" (H.P. 1024) (L.D. 1425) (C. "A" H-393)

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

Representative Tamaro of Baileyville offered House Amendment "A" (H-418) and moved its adoption.

House Amendment "A" (H-418) was read by the Clerk and adopted.

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

PASSED TO BE ENACTED
Emergency Measure

An Act to Make Allocations from the Maine Nuclear Emergency Planning Fund for the Fiscal Years Ending June 30, 1990, and June 30, 1991 (H.P. 365) (L.D. 496) (C. "A" H-126; S. "A" S-88 and S. "E" S-201)

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. 110 voted in favor of the same and 3 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 Clarify Use of Corporate-owned Life Insurance Policies (H.P. 411) (L.D. 554) (C. "A" H-356)

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. 113 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 Amend the Underground Oil and Hazardous Substance Storage Tank Installer Laws (H.P. 667) (L.D. 909) (C. "A" H-360)

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. 112 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 Make Allocations from the Transportation Safety Fund for the Fiscal Years Ending June 30, 1990, and June 30, 1991 (H.P. 700) (L.D. 952) (C. "A" H-354)

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. 119 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 Authorize County Commissioners to Provide Additional Facilities for Prisoners (H.P. 978) (L.D. 1356) (C. "A" H-373)

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

Representative Mayo of Thomaston 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. This being an emergency measure a two-thirds vote of the members elected to the House is necessary. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 63

YEA - Adams, Aikman, Aliberti, Allen, Anderson, Anthony, Ault, Bailey, Begley, Boutilier, Butland, Carroll, D.; Carroll, J.; Cashman, Cathcart, Clark, H.; Clark, M.; Coles, Conley, Constantine, Cote, Crowley, Curran, Daggett, Dellert, Dexter, Dipietro, Donald, Dore, Duffy, Erwin, P.; Farnsworth, Farren, Foss, Garland, Gould, R. A.; Greenlaw, Gwadosky, Handy, Hanley, Hastings, Heeschen, Hickey, Hoglund, Hutchins, Jacques, Joseph, Ketover, Kilkelly, LaPointe, Larrivee, Lawrence, Lebowitz, Libby, Look, Lord, Luther, MacBride, Macomber, Manning, Marsano, Martin, H.; Mayo, McCormick, McGowan, McPherson, McSweeney, Melendy, Merrill, Michaud, Mills, Mitchell, Norton, Nutting, O'Dea, O'Gara, Paradis, E.; Paradis, J.; Paradis, P.; Parent, Pederson, Pineau, Pines, Priest, Rand, Reed, Richard, Richards, Rolde, Rotondi, Ruhlin, Rydell, Seavey, Sheltra, Sherburne, Simpson, Skoglund, Small, Smith, Stevens, A.; Stevens, P.; Stevenson, Tamaro, Telow, Townsend, Tracy, Tupper, Webster, M.; Whitcomb.

NAY - Bell, Brewer, Carter, Chonko, Dutremble, L.; Farnum, Graham, Gurney, Hale, Hichborn, Holt, Hussey, Jalbert, Lisnik, Mahany, Marsh, Marston, McHenry, Moholland, Murphy, Nadeau, G. R.; Paul, Pendleton, Plourde, Pouliot, Strout, D.; Swazey, Tardy, Walker, Wentworth, The Speaker.

ABSENT - Burke, Foster, Hepburn, Higgins, Jackson, McKeen, Nadeau, G. G.; Oliver, Ridley, Strout, B..

Yes, 109; No, 31; Absent, 10; Vacant, 1; Paired, 0; Excused, 0.

109 having voted in the affirmative, 31 in the negative, with 10 being absent and 1 vacant, 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 Correct Errors and Inconsistencies Regarding Reporting Requirements in the General Assistance Laws (H.P. 997) (L.D. 1386) (C. "A" H-351)

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 to Continue Habilitation and Vocational Rehabilitation Services to Eligible Clients (H.P.

1082) (L.D. 1504) (C. "A" H-350)

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. 124 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 Allow the Creation of the Megunticook Watershed District (H.P. 1205) (L.D. 1675) (C. "A" H-348)

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. 121 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.

ENACTOR
Emergency Measure
Tabled and Assigned

An Act Concerning Public Water Supplies in the Mid-coast Area (H.P. 1202) (L.D. 1672) (C. "A" H-340)

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

On motion of Representative Clark of Millinocket, tabled pending passage to be enacted and specially assigned for Friday, June 9, 1989

ENACTOR
Emergency Measure
Tabled and Assigned

Resolve, to Establish a Blue Ribbon Task Force to Promote Equity of Opportunity for Women in the Public School System (S.P. 389) (L.D. 1034) (C. "A" S-175)

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

On motion of Representative Gwadosky of Fairfield, tabled pending passage to be enacted and specially assigned for Friday, June 9, 1989.

FINALLY PASSED
Emergency Measure

Resolve, to Protect and Preserve Certain Property in Saco Owned by the Finance Authority of Maine (H.P. 1210) (L.D. 1682)

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 1 against and accordingly the Resolve was finally passed, signed by the Speaker and sent to the Senate.

PASSED TO BE ENACTED

An Act to Amend the Time within which a Juvenile Detention Hearing Must Be Held (S.P. 421) (L.D. 1132)

An Act to Equalize State Retiree Health Benefits (S.P. 493) (L.D. 1367) (C. "A" S-186)

An Act Making Changes to the Composition of the Governor's Advisory Council on Alcoholism (S.P. 506) (L.D. 1394) (S. "A" S-200 to C. "A" S-180)

An Act Providing for a Report on the Availability of Insurance and Level of Competition within the Insurance Industry in Maine and a Report on Insurance

Rating Organizations in Maine (H.P. 37) (L.D. 37) (C. "A" H-359)

An Act Directing the Department of Educational and Cultural Services to Study Class Size and Related Issues (H.P. 39) (L.D. 39) (C. "A" H-358)

An Act to Modify the Statute of Limitations in Sexual Abuse of Minors Cases (H.P. 202) (L.D. 282) (C. "A" H-375)

An Act Pertaining to Breast Cancer Treatment (H.P. 219) (L.D. 299) (C. "A" H-341)

An Act to Allow a Student an Option in Biological Dissection (H.P. 253) (L.D. 365) (H. "A" H-383 to C. "A" H-334)

An Act to Require Notice of Termination of Policies Issued under an Assigned Risk Plan (H.P. 428) (L.D. 593) (C. "A" H-376)

An Act to Require the Commission on Manufactured Housing to Study Mediation of Disputes Between Mobile Home Park Operators and Tenants (H.P. 465) (L.D. 630) (C. "A" H-357)

An Act to Prohibit Motor Vehicle Insurers from Adjusting Personal Insurance Rates of Public Works Employees Involved in Collisions (H.P. 503) (L.D. 683) (C. "A" H-378)

An Act Concerning Withdrawal of Candidates (H.P. 559) (L.D. 757) (H. "A" H-282 to C. "A" H-234)

An Act to Strengthen and Improve Enforcement of Environmental Laws (H.P. 629) (L.D. 852) (C. "A" H-361)

An Act to Amend the Law Relating to Submerged Land (H.P. 668) (L.D. 910) (C. "A" H-379)

An Act to Restrict Smoking in Enclosed Shopping Malls (H.P. 751) (L.D. 1055) (S. "C" S-177 to C. "A" H-190)

An Act Relating to Motor Vehicle Insurance Surcharges Due to License Suspension (H.P. 765) (L.D. 1069) (C. "A" H-377)

An Act to Clarify the Definitions of Cocaine and Heroin (H.P. 795) (L.D. 1107) (C. "A" H-355)

An Act to Allow Municipalities To Be Reimbursed for Costs Incurred in Hazardous Waste Spills (H.P. 809) (L.D. 1121) (C. "A" H-371)

An Act to Require Administrators of Boarding Homes to Obtain Continuing Education (H.P. 914) (L.D. 1280) (C. "A" H-309)

An Act Amending the Oil and Solid Fuel Board Laws (H.P. 973) (L.D. 1351) (C. "A" H-370)

An Act to Make General Assistance More Available to Homeless People and Clarify the Definition of Need (H.P. 1061) (L.D. 1483) (C. "A" H-352)

An Act to Amend the Law Relating to Court Security (H.P. 1106) (L.D. 1539)

An Act to Amend the Antitrust Laws to Permit Suits by Indirect Purchasers (H.P. 1186) (L.D. 1653)

An Act to Increase the Punishment for Trafficking in and Possession of Cocaine (H.P. 924) (L.D. 1290) (C. "A" H-339)

An Act to Reduce the Quantities of Cocaine and Heroin Necessary to Allow a Presumption of Trafficking (S.P. 402) (L.D. 1046) (C. "A" S-183)

An Act to Increase the Penalty for Drug Crimes Committed while in Possession of a Firearm (H.P. 804) (L.D. 1116) (C. "A" H-324)

An Act to Strengthen the Laws Concerning Marijuana (H.P. 294) (L.D. 406) (C. "A" H-333)

An Act to Prohibit the Sale of Unlawful Drugs in or near Schools (H.P. 816) (L.D. 1144) (C. "A" H-342)

An Act to Implement Civil Penalties for Passing Worthless Instruments (S.P. 251) (L.D. 641) (C. "A" S-172)

An Act to Strengthen Criminal Drug Laws in the State by Allowing Forfeiture of Firearms and Other Dangerous Weapons (H.P. 826) (L.D. 1158) (C. "A" H-336)

An Act to Increase the Penalties for Repeat Violations of the Prostitution Laws (H.P. 757) (L.D. 1061) (C. "A" H-338)

An Act to Provide for the Forfeiture of Firearms Used to Commit Crimes (H.P. 820) (L.D. 1148) (C. "A" H-337)

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.

FINALLY PASSED

Resolve, to Create the Advisory Committee to Update the Maine Aviation Systems Plan (H.P. 750) (L.D. 1054) (C. "A" H-354)

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

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

PAPER FROM THE SENATE

Bill "An Act Concerning the Workers' Compensation Laws" (S.P. 638) (L.D. 1730)

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

Was referred to the Committee on Labor in concurrence.

**ORDERS OF THE DAY
UNFINISHED BUSINESS**

The following matters, in the consideration of which the House was engaged at the time of adjournment yesterday, have preference in the Orders of the Day and continue with such preference until disposed of as provided by Rule 24.

The Chair laid before the House the first item of Unfinished Business:

Bill "An Act Regarding the Exclusion of Family Members under a Motor Vehicle Liability Insurance Policy" (S.P. 267) (L.D. 695)

- In Senate, Passed to be Engrossed as amended by Committee Amendment "A" (S-206)

TABLED - June 7, 1989 (Till Later Today) by Representative ALLEN of Washington.

PENDING - Motion of Representative MARSANO of Belfast to indefinitely postpone Committee Amendment "A" (S-206)

The SPEAKER: The Chair recognizes the Representative from Brunswick, Representative Rydell.

Representative RYDELL: Mr. Speaker, Men and Women of the House: I would like to take a few moments to explain this bill to you. This Committee Amendment represents the unanimous report of the Banking and Insurance Committee on what is really a very important bill. The bill deals with our auto insurance policies. Currently there is a trend to exclude family members living in the household of the insured person from protection under the policy liability portion. In that type of policy, the spouse or child living with the policy holder, who is injured in an accident in which the policy holder is negligent, has only recovery under the medical portion of the policy and not under the liability portion. That may not be sufficient recovery.

The original bill would have allowed insurance companies to exclude only the claims of spouses for noneconomic damages but it would have allowed recovery for children or for the economic damages of spouses. On its face, that seemed reasonable to the committee and there was a good deal of sympathy for the needs of family victims and for this bill.

However, as we studied the bill and its possible ramifications actuarially on insurance rates and in particular on the circumstances of Maine's Domestic Mutual Insurance Company, which has a sizable share of the auto insurance market in our state, we recognize that this is a complicated process. We had several work sessions and there were meetings with interested parties that were held on this bill. Finding a solution which will bring fairness to all injured parties while maintaining Maine's favorable status with respect to auto insurance rates requires further work on the part of the insurance companies. Therefore, the committee recommended a two-tier process in dealing with this problem.

First, we recommend passage of this bill in its amended form. This will require that on the cover sheet or securely affixed to the front of the policy is a disclosure which clearly states whether or not the policy excludes coverage for liability for injuries sustained by the insured family members. This will replace the current requirements for an endorsement which is usually attached somewhere at the back of the policy, not easily found by the insured.

The committee feels policy holders should be aware of whether or not their policy contains the family exclusion but that is only step one. We also feel that to merely tell us what coverage we do have or do not have is not enough.

Step two is changing the system so that there will be equitable recovery for injured family members. The committee has requested that the insurance companies and agents work together this summer and report back to the Banking and Insurance Committee by October 1 on their proposed resolution and all parties have agreed to do that.

If the resolution proposed is satisfactory to the committee, a determination will be made whether implementation can be accomplished by rules or whether it requires legislation. If it requires legislation, that will be submitted. If no satisfactory solution is proposed by the industry, then the committee members will submit legislation. However, representatives of the agents and the domestic companies have indicated to the committee a willingness to work out an equitable proposal, recognizing that the current situation unfairly penalizes some injured family members.

I would ask this body to allow the process to work by supporting the Committee Amendment and not the motion to indefinitely postpone it.

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

Representative MARSANO: Mr. Speaker, Men and Women of the House: I appreciate the opportunity to have spoken ever so briefly yesterday with regard to this matter. I am glad that the Representative from Brunswick has taken time to explain to the House that some of you probably have insurance policies which do not protect your children in the event that you negligently injure them while operating your motor vehicle. I consider the family exclusion to be something that needs to be addressed by the legislature at the earliest opportunity. I am, however, persuaded that the course which the Representative from Brunswick has outlined is at this juncture the most satisfactory of courses available to this legislature and though I would like to see us move with even greater dispatch, I would now like to withdraw my motion to indefinitely postpone.

Subsequently, Committee Amendment "A" was adopted and the Bill assigned for second reading Friday, June 9, 1989.

The Chair laid before the House the second item of Unfinished Business:

An Act to Permit Law Enforcement Officers to Solicit Funds for a Law Enforcement Officers' Memorial (EMERGENCY) (S.P. 154) (L.D. 274) (C. "A" S-161)

TABLED - June 7, 1989 (Till Later Today) by Representative GWADOSKY of Fairfield.

PENDING - Passage to be Enacted.

On motion of Representative Mayo of Thomaston, retabled pending passage to be enacted and later today assigned.

TABLED AND TODAY ASSIGNED

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

SENATE DIVIDED REPORT - Majority (8) "Ought Not to Pass" - Minority (5) "Ought to Pass" as amended by Committee Amendment "A" (S-212) - Committee on Transportation on Bill "An Act to Mandate the Use of Seat Belts" (S.P. 491) (L.D. 1333)

- In Senate, Minority "Ought to Pass" as amended Report read and accepted and Bill passed to be engrossed as amended by Committee Amendment "A" (S-212)

TABLED - June 7, 1989 by Representative MOHOLLAND of Princeton.

PENDING - Motion of same Representative to accept the Majority "Ought Not to Pass" Report.

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

Representative MACOMBER: Mr. Speaker, Ladies and Gentlemen of the House: I rise today to ask you to oppose the motion which is before you, the "Ought Not to Pass" so we would accept the Minority "Ought to Pass" on seat belts.

I think before we go any further, in view of what some of you might have seen on Channel 6 last night and heard on (I believe) WGAN, the information that they used for a survey -- the question that they asked was, "Should seat belts be mandated for all people?" On the other channel, their statement was, "be applied to 17 year olds?" All we are talking about here today is the amendment. The amendment is the bill. The amendment speaks only to children 13, 14 and 15 years old, nobody else.

Just to give you a little bit of history in the nine years that I have been here, in about 1981 or 1982, we approved the safety seat for children, from the time they were born until they were four years old. A few years later, we raised that and said children four years old to 12 years old had to be in safety belts. What we are proposing now is to raise it by three years. In other words, it will be for children from the day they are born until they are 16 years old and driving cars and things like that and then they will have been in the habit of being in seat belts.

I think if you go from the time you are born until you are 16 years old wearing a safety belt or seat belt, whichever you prefer, I think then it is going to be imprinted on these children that this is the way life is. I don't think there is going to be a lot of discussion about mandating seat belts and things like this.

I have a granddaughter who is five years old and she automatically buckles up. In fact, she reminds me that I don't have my seat belt on too.

You are going to hear, I would assume, a few horror stories about friends or relatives of people who were not buckled up but if they had been buckled

up they would have been killed because of the nature of the accident. I am sure these isolated incidents do happen, I don't dispute that at all. But, I think the majority of the people, the majority of the reports that you have read, the majority of the reports that you have seen, all say that safety belts in the vast majority of the instances that we are talking about, safety belts are the way to go.

I think probably the biggest thing that you may hear is the question of mandates, that you are mandating things, that you shouldn't mandate people to do certain things. I guess when it comes to mandating, all I can say on that particular question is that is the reason you were elected and that is the reason you were sent here -- to create laws. Every time you press a button, you mandate something or other in one fashion or another.

We talked about mandating for children 13, 14, and 15 -- I think you can think of many, many instances where we do that right now, right here today. We say that children up to the age of 16 years old have to go to school so many days, children up to that age can't buy liquor, they can't purchase cigarettes. These are all mandates, but I think they are all mandates that we do with the best interests at heart of these children that we are talking about. I don't really think mandating is a question that should decide your vote here today.

I have been here nine years, I have always been involved on the seat belt bill. I think we have made great strides and I think by increasing the age from 12 to include 13, 14 and 15 year olds would be a step in the right direction. I would like to have you vote against the motion before you so we could accept the "Ought to Pass."

Mr. Speaker, when the vote is taken, I ask for the yeas and nays.

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 Bethel, Representative Mills.

Representative MILLS: Mr. Speaker, Ladies and Gentlemen of the House: I rise today also to join the Representative from South Portland and hope that you defeat the motion that is before you so we can go on to enact the Minority "Ought to Pass" Report.

I think it has already been mentioned that studies have shown the safety and preventing of injuries that are caused by having seat belts on. I don't think anybody would really deny that. There are some cases, I am sure, (as the Representative mentioned) where it may be different but the majority of studies proved that seat belts helped to prevent injuries and to save lives.

I think it is important for us to realize that we are trying to make the seat belt law more consistent with our current law as to who can operate a motor vehicle. We just recently changed that to 16 year olds. This bill would include safety belts for 16 year olds. I think it would make it more consistent with our motor vehicle laws.

I hope you will vote to defeat this motion so we can pass the "Ought to Pass" Report.

The SPEAKER: The Chair recognizes the Representative from Portland, Representative Manning.

Representative MANNING: Mr. Speaker, Ladies and Gentlemen of the House: The last two or three days,

the Committee on Human Resources has spent a lot of time dealing with the cost of health care. I know my colleagues in Banking and Insurance have done the same thing.

I know some people don't equate the seat belt bill with higher health care costs but, ladies and gentlemen, that is true. You can't argue with the statistics that we have seen over the years, that people wearing seat belts are going to cost us less (in hospitals) than people who don't wear seat belts.

I think every single one of us have gotten letters from either the Chamber of Commerce in your local community or your own employees or employers in your community who are concerned about the high rate in health care costs. I would hope that before you push the button today, you would think about that because on one hand, you can't ask the Banking and Insurance Committee and the Human Resources Committee to try to keep health care costs down and, on the other hand, let things like this go by the boards. Automobile accidents are some of the most costly times in hospitals. They cost the hospital and the person who is paying, whether it is the person himself or the insurance companies, some of the largest pay outs. If we really want to start to keep health care costs down, please remember that if you are against this bill, you ought to think about how you want to keep health care costs down.

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

Representative HALE: Mr. Speaker, Ladies and Gentlemen of the House: I urge you to vote for the motion on the floor. Over the past few years, we have insidiously increased the age limit. There are no statistics to prove that, whether you wear a seat belt or you do not wear a seat belt, saves lives. The statistics that were presented to our committee was a very selective group. When I say selective, I mean very selective. There are no statistics to show that insurance premiums on automobiles go down. They do not have statistics on how many lives are saved by not wearing seat belts. This is one further step to mandate a seat belt law. The people of Maine have spoken over and over that they will make the choice themselves. They are willing to go four to twelve.

They have told us that the years that we have had this law in place have trained the children. If they are trained and they truly believe it, they will buckle up. But there is nothing here that says they are going to buckle up. When you are a teenager, you know everything there is to know in the whole wide world and we never want to forget that. If they think they are safer without it, they are going to be without it. If they think they are safer with it, they will be with it. Remember one thing, when good old dad and good old mom is there, they buckle up, but when they are out of sight, they are going to do what they want to do.

I urge you again to support the motion on the floor.

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

Representative MOHOLLAND: Mr. Speaker, Ladies and Gentlemen of the House: Two years ago, we passed a law mandating seat belts for ages up and including 12 years old. Now the ink from the Governor's signature is just about dried out and here we are trying to change the law to age 15. This 13 to 15 age group has already gone through the steps, they have already been through the school, so why do we want to mandate these children (I shouldn't say children, they are half grown up) to be mandated to go another three years? For another three years, I

am sure they are still buckling up, nobody is telling them not to buckle up.

There is no question in my mind that they are going to pick this up every session until they have a mandatory seat belt for everybody in the State of Maine. If a few of your constituents are against mandatory seat belts for all, then you should support the Majority "Ought Not to Pass."

The SPEAKER: The Chair recognizes the Representative from Cape Elizabeth, Representative Webster.

Representative WEBSTER: Mr. Speaker, Ladies and Gentlemen of the House: I speak today as the Representative from Cape Elizabeth and a cosponsor of this legislation.

I am really very pleased to have an opportunity to agree with the first three speakers on this legislation to encourage the wider use of seat belts in Maine. Let one wonder whether this means I have departed from my allegiance to my conservative ideals, I will only say that I plan to vote no on the pending motion.

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

Representative STROUT: Mr. Speaker, Men and Women of the House: I did not intend to speak on this but when my leader got up, I must get up and tell you that sometimes she does make mistakes.

The reason that I reported this out "Ought Not to Pass" very simply is that I asked AAA and my main reason of not going from 12 to 15 was — today with those states that have mandatory seat belts, what's the percentage of use? What came back to me was, the percentage of use was 51 percent.

My other question was, what is the percentage of use on those states that don't have mandatory laws? As of the 1987 figures, it was 33 percent. I think that there is a movement in the State of Maine and across the country for those states that don't have mandatory seat belts for the youth and that is the biggest reason why I don't think we need this bill.

The younger children in my own family, I have two that are in the age group between the 4 and 12 range and they have continually used seat belts and I think you will see as they get older they are going to continue to use them. That is why I don't think we need the bill.

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

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

My question is, because I truly do not know, are air bags going to be mandated in automobiles in the near future and is that occurring presently?

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

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

Representative MACOMBER: Mr. Speaker, Ladies and Gentlemen of the House: I think the only way I can answer the question is that they are working on federal legislation in Washington at this very moment. That is one of the suggestions that has been made. The automobile companies, of course, are not in favor of it because of the additional costs it would put on the manufacture of a car. I think that is part of the same bill that they are talking about that will make the determination to how much mileage you have to get to a gallon. I think both of those bills are being worked on in Washington now.

The SPEAKER: The Chair recognizes the Representative from Bethel, Representative Mills. The Reagan Administration set into law a policy which

mandated the use of safety restraint in vehicles and it was to be implemented if the states did not go along with seat belt legislation. One of the reasons people mention for not voting for seat belt legislation is that they don't want that federal law to become a policy in law throughout the country. The way that law is written it says, not air bag, but "self-restraining" and that means either self-restraining seat belts or other devices other than air bags that can be used by manufacturers of vehicles. I think it is very important for people to realize that there is no federal mandate for air bags but there is a federal mandate on self-restraining instruments in vehicles and most of your corporations you will see, rather than going with air bags, they are going with the self-fastening seat belts, because they are a lot less expensive.

I want to make sure that people realize that if they pass the Minority version on this bill, it does nothing more to affect that federal policy towards getting air bags or self-restraining seat belts put in because we already have a law for 12 year olds and beyond. All this does is add on to that so if you are for safety in cars by voting for the Minority Report, you do nothing to affect that federal mandate at all. I think it is important for people who want safety in their cars not to think if they vote for seat belts they are going to be doing away with that federal policy.

I hope you will defeat the motion before you and pass the motion afterwards for the Minority Report.

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

Representative WENTWORTH: Mr. Speaker, Ladies and Gentlemen of the House: I am not in favor of mandating seat belts to everyone for the simple reason, about five years ago, my daughter was badly injured from not having one on. Two weeks ago, my son was not killed because he did not have one on but, on this amendment, your children who are 15 and 16 are the ones who are wearing them, they are being taught right now in driver ed to fasten their seat belts before they even turn a key on so I think it wouldn't hurt to keep that going.

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

Representative HALE: Mr. Speaker, Ladies and Gentlemen of the House: In answer to the good Representative from Waterville that asked about mandatory air bags, during the course of the hearing, I happened to speak with a regional representative from one of the car companies and at that particular time I was told that the air bag would be for the driver only if it ever passed, not for the passenger, the driver.

The SPEAKER: The Chair recognizes the Representative from Buxton, Representative Donald.

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

I would like to know what the present law is regarding school buses and how this legislation would affect that.

The SPEAKER: The Representative from Buxton, Representative Donald, has posed a question through the chair to anyone who may respond if they so desire.

The Chair recognizes the Representative from Princeton, Representative Moholland.

Representative MOHOLLAND: Mr. Speaker, Ladies and Gentlemen of the House: If you saw the paper a couple of weeks ago, the panel in Washington completely turned down seat belts in school buses. They said that most of the time it is when your children get on and off the bus that they get hurt. That is like anything else and that is why I tell you

today, if you want to see this, I will have it photographed for you people. I think we ought to go along with the "Ought Not to Pass" Report today and let it go the way it is.

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

Representative ALLEN: Mr. Speaker, Men and Women of the House: In response to Representative Donald's question, state law does not require that school buses be equipped with seat belts. However, if a school bus is equipped with seat belts, the students on that bus must be buckled up -- state law.

The SPEAKER: The pending question before the House is the motion of Representative Moholland of Princeton that the House accept the Majority "Ought Not to Pass" Report. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 64

YEA - Aikman, Anderson, Bailey, Begley, Bell, Carroll, J.; Carter, Cashman, Clark, H.; Crowley, Dellert, Dutremble, L.; Erwin, P.; Farren, Garland, Gould, R. A.; Graham, Gurney, Hale, Hanley, Hichborn, Holt, Hussey, Hutchins, Jacques, Jalbert, Joseph, Ketover, Kilkelly, Libby, Look, Luther, Mahany, Marsano, Marsh, Marston, Martin, H.; McHenry, Michaud, Moholland, Parent, Pederson, Rotondi, Sheltra, Sherburne, Smith, Stevens, A.; Strout, D.; Swazey, Tammaro, Tardy, Telow, Townsend, Tracy, Whitcomb.

NAY - Adams, Aliberti, Allen, Anthony, Ault, Boutilier, Brewer, Butland, Carroll, D.; Cathcart, Chonko, Clark, M.; Coles, Conley, Constantine, Cote, Curran, Daggett, Dexter, Dipietro, Donald, Dore, Duffy, Farnsworth, Farnum, Foss, Greenlaw, Gwadosky, Handy, Hastings, Heeschen, Hepburn, Hickey, Higgins, Hoglund, LaPointe, Larrivee, Lawrence, Lebowitz, Lisnik, Lord, MacBride, Macomber, Manning, Mayo, McCormick, McGowan, McPherson, McSweeney, Melendy, Merrill, Mills, Mitchell, Murphy, Nadeau, G. G.; Nadeau, G. R.; Norton, Nutting, O'Dea, O'Gara, Paradis, E.; Paradis, J.; Paradis, P.; Paul, Pendleton, Pineau, Pines, Plourde, Pouliot, Reed, Richard, Richards, Ridley, Rolde, Rydell, Seavey, Simpson, Skoglund, Small, Stevens, P.; Stevenson, Tupper, Walker, Webster, M.; Wentworth, The Speaker.

ABSENT - Burke, Foster, Jackson, McKeen, Oliver, Priest, Rand, Ruhlman, Strout, B..

Yes, 55; No, 86; Absent, 9; Vacant, 1; Paired, 0; Excused, 0.

55 having voted in the affirmative and 86 in the negative with 9 being absent and 1 vacant, the motion did not prevail.

Subsequently, the Minority "Ought to Pass" Report was accepted, the Bill read once.

Committee Amendment "A" (S-212) was read by the clerk and adopted and the Bill assigned for second reading Friday, June 9, 1989.

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

An Act to Ensure the Confidentiality of Emergency Medical Services Quality Assurance and Peer Review Activities (H.P. 341) (L.D. 460) (C. "A" H-297)

TABLED - June 7, 1989 by Representative GWADOSKY of Fairfield.

PENDING - Passage to be Enacted.

On motion of Representative Mayo of Thomaston, retabled pending passage to be enacted and specially assigned for Friday, June 9, 1989.

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

An Act Concerning Pilferage of Shopping Carts and Bakery and Dairy Product Containers (H.P. 106) (L.D. 143) (H. "A" H-344 to C. "A" H-292)

TABLED - June 7, 1989 by Representative GWADOSKY of Fairfield.

PENDING - Passage to be Enacted.

On motion of Representative Mayo of Thomaston, retabled pending passage to be enacted and specially assigned for Friday, June 9, 1989.

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

An Act to Reform the Maine Board of Professional Surveyors Law (H.P. 513) (L.D. 693) (H. "A" H-320 to C. "A" H-311)

TABLED - June 7, 1989 by Representative GWADOSKY of Fairfield.

PENDING - Passage to be Enacted.

On motion of Representative Mayo of Thomaston, retabled pending passage to be enacted and specially assigned for Friday, June 9, 1989.

Representative Mayo of Thomaston withdrew his motion to table.

On motion of Representative Allen of Washington, under suspension of the rules, the House reconsidered its action whereby L.D. 693 was passed to be engrossed.

On motion of the same Representative, under suspension of the rules, the House reconsidered its action whereby Committee Amendment "A" (H-311) as amended by House Amendment "A" (H-344) thereto was adopted.

The same Representative offered House Amendment "B" (H-432) to Committee Amendment "A" (H-311) and moved its adoption.

House Amendment "B" (H-432) to Committee Amendment "A" (H-311) was read by the Clerk and adopted.

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

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

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

HOUSE DIVIDED REPORT - Majority (9) "Ought to Pass" as amended by Committee Amendment "A" (H-388) - Minority (4) "Ought to Pass" as amended by Committee Amendment "B" (H-389) - Committee on Taxation on Bill "An Act to Provide Comprehensive Property Tax Relief" (H.P. 776) (L.D. 1088)

TABLED - June 7, 1989 by Representative CASHMAN of Old Town.

PENDING - Motion of same Representative accept the Majority "Ought to Pass" as amended Report.

On motion of Representative Cashman of Old Town, retabled pending his motion that the House accept the Majority "Ought to Pass" as amended Report and later today assigned.

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

HOUSE DIVIDED REPORT - Majority (7) "Ought Not to Pass" - Minority (6) "Ought to Pass" as amended by Committee Amendment "A" (H-380) - Committee on State and Local Government on Bill "An Act Concerning the Public Advocate" (H.P. 1070) (L.D. 1492)

TABLED - June 7, 1989 by Representative JOSEPH of Waterville.

PENDING - Motion of same Representative accept the Minority "Ought to Pass" as amended Report.

The SPEAKER: The Chair recognizes the Representative from Wilton, Representative Heesch.

Representative HEESCHEN: Mr. Speaker, Men and Women of the House: What this bill does as amended is provide that the Public Advocate would serve a two year term beginning with the governor's term in 1991 and be subject to review by the Joint Standing Committee of the Legislature having jurisdiction over Public Utilities and confirmation of the legislature at that time.

The Public Advocate would continue to serve at the pleasure of the governor during that term and the Public Advocate may be reappointed. The office of the Public Advocate was created about 8 years ago out of the controversy surrounding the push to achieve an elected public utility commission or an energy commission. The office of the Public Advocate is charged by statute for representing the using and consuming public. The Public Advocate by that statute is not suppose to regulate but the charge in the statute is to advocate for this segment of the public. I don't believe that the statute would anticipate that the office of the Public Advocate would carry out the policies of the Executive Branch. I think the role is well defined and with this charge we can reasonably expect or should reasonably hope that the office of the Public Advocate would be independent of outside influences. Our experience with the two past governors is neither have overly politicized the office of Public Advocate but there is potential there and moreover, there is already a potential perception of, is it the Public Advocate or is it the governor's advocate?

Part of the reason for that is because it is lodged in the executive. The Executive Department more directly works for the governor. In the statute it says that the Public Advocate shall serve at the pleasure of the governor. The budget is an Executive budget. Actually for the past few years, the office of Public Advocate is fairly flat funded, they don't have a lot of leeway.

I want to give you some examples of why the perception problem exists and what the potential problems are. There has been a long-standing concern about this location of the office of Public Advocate and I am going to quote to you from the House Record of April 13, 1984. "We happen to have an outstanding Public Advocate, for the governor will not stay there indefinitely and believe me, the Public Advocate, Paul Fritzsche, won't be there either, I am say to say. Are you going to leave the consuming public and their interests up to the whim of the governor completely?" The speaker at that time was Representative Matthews.

During the course of the hearing on this bill, proponents to the measure spoke and frankly, I felt that some of the comments that they made boosted the case for adding additional levels of responsiveness to the Public Advocate's office and for making sure that it doesn't just respond to the Executive office. Gordon Weil spoke, a former Public Advocate, one of the earliest and he noted that the Public Advocate's office was instituted because there was a public interest and increasing consumer representation. He then went on to say that the office of Public Advocate should be responsive to the governor's policy even though he also said that most matters be submitted to the governor except minor matters. He also stated that governors have allowed Public Advocate's to be independent so the system is

working. I think the key here is that governors "have allowed" and that points out the potential if we get a governor who decides to politicize the office, it is wide open.

Mr. Weil also stated that he had been part of the inner circle of the governor he served under, that he attended cabinet meetings. To his credit, the existing Public Advocate does not take part in cabinet meetings, does not feel that he is part of the inner circle. However, in public meetings he has stated that his job is to represent consumers and that includes everybody in this room but then goes on to state that "Our office and the Administration with whom we work has looked at the pros and cons and hasn't yet taken any position. Further, we will be able to make a recommendation and it will be a recommendation that will be consistent with what the Administration is doing. I work for the governor directly, I am part of the Executive Branch." I feel that if we really don't want to be wondering whether the position of the advocate is representing at the moment is the executive position, the solution is to have the office be somewhat more independent and more responsive to other segments of the public. The Public Advocate should be independent enough to fully take different viewpoints into account, that is why I urge you to support the motion for the Minority Report.

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

Representative WENTWORTH: Mr. Speaker, Members of the House: I guess the idea was to create a distinction between the control of the governor and no control. Both advocate's before our committee said that they had never had any interference from either governor in their work. They do turn in reports so he will know they are still working but the only difference in this bill today, from what is now in operation, is the fact that he must be reconfirmed every two years. It is a conflict, I think, if he serves at the pleasure of the governor and yet must come back for reconfirmation every two years. I think if he is reconfirmed by the legislature, he should serve until there is a reason not to.

I would ask you to vote against the motion so that you may vote for the Majority Report, "Ought Not to Pass."

The SPEAKER: The Chair recognizes the Representative from Augusta, Representative Daggett.

Representative DAGGETT: Mr. Speaker, Ladies and Gentlemen of the House: I would like to move indefinite postponement of this bill and all its accompanying papers.

I would like to explain just a little what the bill will do and what the current status is of the Public Advocate for those people who are not familiar with the position and how it is appointed.

Currently the position is appointed by the governor, confirmed by the legislature. There are other schemes of appointments by the governor. Those that serve at the pleasure of the governor and are confirmed by the legislature, this would include cabinet members and department heads. There is no fixed term for those. There is another scheme where there are some departments and most outside agencies that are nominated by the governor but they serve fixed terms. They are independent and do not serve at the pleasure. This bill would blend these two schemes so that the Public Advocate is, not only serving at the pleasure of the governor, but also serving a fixed term.

In the original decision to create the position, there was a concern that the advocate needed latitude

and autonomy and so there was no term stated for the position. The two year term I believe will place that autonomy in jeopardy so I would like to ask you to consider several questions when you are thinking of your vote on this matter. There is no other appointment that has such a short term. If we need to be back in the confirmation process after only two years, perhaps we should scrutinize our own involvement in the first place.

I would ask you, what kind of person would be attracted by a two year term? Bear in mind, this is a highly technical, specialized part of a professional field. Many of the cases in which the advocate is involved are very long and complicated -- do we wish to encourage turnover? Do we want an advocate who may need to pay more attention to reappointment and the confirmation process than to the ratepayers whose interests should be represented? Will a two year term serve to overly politicize the position instead of helping to insulate it as designed? When we look to make a change such as this, I think we should first feel that there are problems with the current arrangement, I don't believe there was any testimony that indicated that there was a problem. We should also feel that there are real and reasonable and measurable reasons for a change, not just change for change's sake or benign change.

Mr. Speaker, I would request a roll call.

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

Representative JOSEPH: Mr. Speaker, Men and Women of the House: I would like to ask you to vote against the pending motion of indefinite postponement of this particular legislation. L.D. 1492, which presently is the House Paper 380, says that we will be changing the process in which the Public Advocate is named. First of all, what we are not changing is that the Public Advocate will continue to be appointed by the governor. The concerns of those in the committee who voted in favor of this piece of legislation was that this position serves at the pleasure of the governor. I couldn't agree more that the Public Advocate needs latitude and autonomy and that is what we seek to do here. We are attempting to clarify the position of the Public Advocate. We are attempting to make the Public Advocate more independent from one branch of the government from the other and who does the Public Advocate presently represent? The Public Advocate represents the using and consuming public in utilities matters and representing the workers' compensation policyholders.

I guess another question we addressed is, what is the public perception of the Public Advocate? It seems that the public perception is that the Public Advocate is an arm of the governor. We would hope that you would approve this measure if you would vote against the pending motion because the testimony before this committee, the State and Local Government Committee, was that, in no case, had the past two advocates had disagreed with the governor's position. This is not an attempt to deal with the present advocate or the present governor, this is an attempt to clarify the position, to deal with the public perception and it is an attempt to assure the public that the Public Advocate will represent the public interest.

I guess one of the questions I had to ask for myself was, is there conflict? The public's interest vs. the Public Utility Commissioners and the Superintendent of Insurance and the answer to my question was, there is an inherent systemic conflict. The Public Utilities Commissioners are appointed by the governor, the Superintendent of

Insurance is appointed by the Governor and the Public Advocate is appointed by the Governor. This is not a new concern, it has been a concern since the office of the Public Advocate has been created. Because they are all appointed by the same appointing authority, we are now concerned with, again I will repeat myself by saying, the consumers interest, the perception of the public. This has nothing to do with the present governor or the present Public Advocate, it has to do with relieving the appearance of conflict.

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

Representative WENTWORTH: Mr. Speaker, Members of the House: I ask you to follow the motion by Representative Daggett and vote to indefinitely postpone the bill and all the accompanying papers.

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

Representative PARADIS: Mr. Speaker, Ladies and Gentlemen of the House: I have been fortunate to have served on the Utilities Committee for several years and during that period of time, the Public Advocate has had a great deal of experience appearing before this committee and it appears to me to consume a good portion or almost half of his time. I don't know where else he would be in that he has been before that committee so very often. In those years of experience, I have seen three different Public Advocates appear before us, Mr. Gordon Weil, Paul Fritzsche and now the current Public Advocate, Steve Ward. The state has had the good fortune of having all three of these gentlemen to represent the constituency of our people out there and to bring their case forward in a highly intelligent, professional manner. I think they all deserve much credit and any credit that we may care to bestow upon them for their performance of duty.

I have confidence in the process of nomination from the Executive Branch, confirmation by the Legislative Branch, which occurs in our committee process and then appear before the other body. I think this supports direct principle of separation of powers and this is the second time we have heard this today and this almost appears to me to cloud the issue and to impose the legislative process more directly into the executive process. I think it has no real value other than that.

I agree with Representative Daggett's calling attention to the short term of this proposal which would call for a review of each two years. We have no other nomination which is of such short duration and I think this is an extremely short tether to put on this particular office.

I would encourage before us for the indefinite postponement and I certainly hope that you vote that way.

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

Representative LARRIVEE: Mr. Speaker, Ladies and Gentlemen of the House: I would ask you to vote against the pending motion. I think what the good Representative just mentioned is one of the reasons. This position is called the Public Advocate's position, this is not a part of the executive process and I believe this gives us one more opportunity for the public to have input into the process of this nomination. The amendment clearly states that the Public Advocate may be reappointed, there is no reason under this amendment why the Public Advocate who is representing the views of the public certainly could not be reappointed again and again in the two year process. However, I do believe that, as we represent the public, there is an opportunity for the

public to come to us with concerns regarding that Public Advocate and I would ask you to vote no so we may pass the report as amended.

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

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

To any member of the committee, under the present system that we have for the Public Advocate, if any governor is reelected for an additional four year term after the conclusion of a current four year term, does the Public Advocate have to be reappointed and thus go through a reconfirmation for the second gubernatorial term or is a Public Advocate appointment under the system as such so that he is only appointed and goes through confirmation once if the governor is reelected? Once over an 8 year period?

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

The Chair recognizes the Representative from Augusta, Representative Daggett.

Representative DAGGETT: Mr. Speaker, Members of the House: I would like to say that it is my understanding that the Public Advocate serves coterminous with the governor and is considered the same and is dealt with the same as the cabinet members as far as when there is a reelection or a change.

I would like to add something as well -- there have been some comments that concerns the public's representation and I would say that the legislature does have direct oversight over the PUC through its Utilities Committee. The Utilities Committee approves the budget yearly as it is a budget that is funded by users. The PUC is in fact doing something that the legislature itself used to do in the early 1900's. As far as representation of consumers, the legislature has a person to advocate before the Bureau of Insurance or the PUC in the Attorney General's position. As a matter of fact, there was a case earlier this year in which the courts affirmed the fact that the Attorney General has the right at all times to request to intervene. In fact, the statute itself states that the Public Advocate's statute in no way limits the right of the Attorney General's office to speak so I would submit to you that, in fact, that the Attorney General can speak for the public and the Public Advocate can speak for the public.

The SPEAKER: The Chair recognizes the Representative from Wilton, Representative Heeschen.

Representative HEESCHEN: Mr. Speaker, Men and Women of the House: I, too, urge you to defeat the motion to indefinitely postpone.

In response briefly to some of the comments that this short term would be a disincentive -- in fact, the average term the Public Advocates have served so far has been about two years. I agree with the Representative from Augusta that one reason for the shorter term and not a longer term is that this is a public advocate and it is not supposed to be carrying out policies of the executive office.

The Attorney General may in theory represent consumers but in a number of issues when the Attorney General's office was asked if they would be involved, they would not, issues that properly could be taken up by the Public Advocate.

I think one thing that is confusing the issue about the public misperception about the role of Public Advocate is some of the things that the Public

Advocate has done that aren't actually necessarily part of the statutory role -- for instance, the current Public Advocate is acting for the Executive Branch in the role of trying to work out some arrangement with other states for nuclear and hazardous -- that is not part of the Public Advocates charge. Also he has taken part in confirmation proceedings for several nominees for positions. In fact, they acknowledged that this was probably not a good thing to have done. I should note, it was not at the request of the Executive but it was his own feeling that it should be done.

I think the question of the location in the Executive Department and the question who is representing it -- it is no surprise that someone would say (as someone I know in western Maine did) that the problem is not that people perceive the Public Advocate as not representing the public but the problem was that people perceive that the Public Advocate does represent the public. Do we want to be in the position of wondering who is being represented when the Public Advocate is before a committee, whether it is for the public or the executive? Even if there is not overt pressure on the Public Advocate, and I don't believe that there is, I think there is possibly the subtle pressure -- do we want to be wondering whether the Public Advocate is always thinking about what the governor's position is in a particular thing?

There has been some comment that there has been no problem with the Public Advocate. I would like to give you a little analogy, a parable if you will. Let's suppose that you are manufacturing a car, any car, let's call it a Pinto -- now suppose someone comes to you and says that that gas tank in the way it is constructed could be a real problem in an accident. Is the response, there is no problem, no one has been injured yet? If people drive carefully, there won't be any problems. Is that car broken, should it be fixed, is the Public Advocate's office broken -- I take that back, I wouldn't say it is broken, actually I like the Public Advocate's office, I think it is a good one, I think we need it, I think we need as much input on utility decisions as possible but it has only existed under two governors. We have only had four full public advocates.

Going back to former advocate -- Gordon Weil stated that the governor wisely allowed independence in the Public Advocate. There is the key, "allowed" and the other word "wisely" so is this system working? The pinto is too as long as people drive carefully.

I think the office of Public Advocate is a fairly new office, we are still trying to sort out and clarify its proper role, its proper responsibility. I believe as a Public Advocate that it deserves more oversight than it has now.

I urge you to vote against the pending motion so you may accept the Minority Report.

The SPEAKER: The Chair recognizes the Representative from Waldoboro, Representative Begley.

Representative BEGLEY: Mr. Speaker, Ladies and Gentlemen of the House: As a member of the State and Local Government Committee who voted with the 7 people on the "Ought Not to Pass" Report, I encourage you to support this motion to indefinitely postpone this bill.

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

Representative MARSH: Mr. Speaker, Men and Women of the House: I was not going to speak because most of what I was going to say has been said. Last night

I sat down and came up with nine pages of notes on this and sitting as a freshman on the Utilities Committee, I have got to say that I have studied the process and I have studied the statute and I am very impressed with the concept of the Public Advocate's office as it stands now.

I think the good Representative from Wilton, the last time he spoke, perhaps was arguing against himself. I strongly urge that you listen to the testimony from Representative Daggett of Augusta as I think she has hit most everything that I have here and I would support her in her motion to indefinitely postpone.

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 Daggett of Augusta that L.D. 1492 and all its accompanying papers be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 65

YEA - Aikman, Allen, Anderson, Anthony, Ault, Bailey, Begley, Brewer, Butland, Carroll, J.; Cashman, Clark, H.; Coles, Constantine, Curran, Daggett, Dellert, Dexter, Dipietro, Donald, Duffy, Dutremble, L.; Farnsworth, Farnum, Farren, Foss, Garland, Gould, R. A.; Greenlaw, Gurney, Hale, Hanley, Hastings, Hepburn, Hichborn, Hickey, Higgins, Hussey, Hutchins, Jacques, Kilkelly, Lebowitz, Libby, Look, Lord, MacBride, Marsano, Marsh, Martin, H.; McCormick, McPherson, McSweeney, Melendy, Merrill, Michaud, Murphy, Nadeau, G. G.; Norton, Nutting, O'Gara, Paradis, E.; Paradis, P.; Parent, Paul, Pendleton, Pines, Plourde, Priest, Reed, Richard, Richards, Ridley, Ruhlin, Seavey, Sherburne, Skoglund, Small, Stevens, A.; Stevenson, Strout, D.; Swazey, Tardy, Telow, Townsend, Tupper, Walker, Webster, M.; Wentworth, Whitcomb.

NAY - Adams, Aliberti, Bell, Boutillier, Carroll, D.; Cathcart, Chonko, Clark, M.; Conley, Cote, Dore, Erwin, P.; Graham, Gwadosky, Handy, Heeschen, Hogleund, Holt, Jalbert, Joseph, Ketover, LaPointe, Larrivee, Lawrence, Lisnik, Mahany, Manning, Marston, Mayo, McGowan, McHenry, Mills, Mitchell, Moholland, Nadeau, G. R.; O'Dea, Paradis, J.; Pineau, Rand, Rolde, Rotondi, Rydell, Sheltra, Simpson, Smith, Stevens, P.; Tamaro, Tracy.

ABSENT - Burke, Carter, Crowley, Foster, Jackson, Luther, Macomber, McKeen, Oliver, Pederson, Pouliot, Strout, B.; The Speaker.

Yes, 89; No, 48; Absent, 13; Vacant, 1; Paired, 0; Excused, 0.

89 having voted in the affirmative and 48 in the negative with 13 being absent and 1 vacant, the motion did prevail. Sent up for concurrence.

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

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

- In Senate, Passed to be Engrossed as amended by Committee Amendment "A" (S-184)

TABLED - June 7, 1989 by Representative MANNING of Portland.

PENDING - Adoption of Committee Amendment "A" (S-184).

On motion of Representative Manning of Portland, retabled pending adoption of Committee Amendment "A" (S-184) and later today assigned.

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

An Act Relating to Smoking in Nursing Homes and Boarding Care Facilities (H.P. 920) (L.D. 1286) (C. "A" H-288)

TABLED - June 7, 1989 by Representative MANNING of Portland.

PENDING - Passage to be Enacted.

On motion of Representative Manning of Portland, retabled pending passage to be enacted and later today assigned.

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

An Act to Clarify Procedural Aspects of the Forcible Entry and Detainer Law (H.P. 446) (L.D. 611) (C. "A" H-265)

TABLED - June 7, 1989 by Representative GWADOSKY of Fairfield.

PENDING - Passage to be Enacted.

On motion of Representative Gwadosky of Fairfield, retabled pending passage to be enacted and specially assigned for Friday, June 9, 1989.

BILL RECALLED FROM GOVERNOR

(Pursuant to Joint Order H.P. 1234)

An Act to Increase the Compensation for Part-time Deputy Sheriffs (H.P. 788) (L.D. 1100) (C. "A" H-209) - In House, Passed to be Enacted on May 24, 1989. - In Senate, Passed to be Enacted on May 25, 1989.

On motion of Representative Joseph of Waterville, under suspension of the rules, the House reconsidered its action whereby L.D. 1100 was passed to be enacted.

On motion of the same Representative, tabled pending passage to be enacted and specially assigned for Friday, June 9, 1989.

The Chair laid before the House the following matter: Bill "An Act to Establish the Medicaid Advisory Committee on Mental Health" (S.P. 467) (L.D. 1252) which was tabled earlier in the day and later today assigned pending adoption of Committee Amendment "A" (S-184).

Representative Manning of Portland offered House Amendment "A" (H-434) to Committee Amendment "A" (S-184) and moved its adoption.

House Amendment "A" (H-434) to Committee Amendment "A" (S-184) was read by the Clerk and adopted.

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

By unanimous consent, the Bill was read a second time.

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

The Chair laid before the House the following matter: An Act Relating to Smoking in Nursing Homes and Boarding Care Facilities (H.P. 920) (L.D. 1286) (C. "A" H-288) which was tabled earlier in the day and later today assigned pending passage to be enacted.

On motion of Representative Manning of Portland, under suspension of the rules, the House reconsidered its action whereby L.D. 1286 was passed to be engrossed.

On further motion of the same Representative, under suspension of the rules, the House reconsidered its action whereby Committee Amendment "A" (H-288) was adopted.

The same Representative offered House Amendment "A" (H-433) to Committee Amendment "A" (H-288) and moved its adoption.

House Amendment "A" (H-433) to Committee Amendment "A" (H-288) was read by the Clerk and 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 in non-concurrence and sent up for concurrence.

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

PETITIONS, BILLS AND RESOLVES REQUIRING REFERENCE

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

Legal Affairs

Bill "An Act to Amend the Laws Governing the Purchase of Liquor from Agency Liquor Stores" (H.P. 1239) (L.D. 1731) (Presented by Representative ALLEN of Washington) (Cosponsored by Senator BRAUN of Knox) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.)

Ordered Printed.

Sent up for Concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

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

ORDERS

On motion of Representative NADEAU of Lewiston, the following Joint Order: (H.P. 1240)

ORDERED, the Senate concurring, that the Joint Standing Committee on Housing and Economic Development report out a bill, "RESOLUTION, Proposing an Amendment to the Constitution of Maine to Commit State Support of Affordable Housing," to the House.

Was read and passed and sent up for concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

Representative Paradis of Frenchville was granted unanimous consent to address the House:

Representative PARADIS: Mr. Speaker, Ladies and Gentlemen of the House: This is not a notice, but you are absolutely right, we have been having problems in this row today. Therefore, on L.D. 1692 my light inadvertently became red when it should have been green.

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

On motion of Representative JOSEPH of Waterville, the following Joint Order: (H.P. 1241)

Ordered, the Senate concurring, that the Joint Standing Committee on State and Local Government

report out a bill "An Act Regarding Governmental Ethics" to the House.

Was read and passed and sent up for concurrence.

On motion of Representative Duffy of Bangor,
Adjourned until Friday, June 9, 1989, at
one-thirty in the afternoon.

STATE OF MAINE
ONE HUNDRED AND FOURTEENTH LEGISLATURE
FIRST REGULAR SESSION
JOURNAL OF THE SENATE

In Senate Chamber
Thursday
June 8, 1989

Senate called to Order by the President.

Prayer by Father John Skehan of Notre Dame Catholic Church in Waterville.

FATHER SKEHAN: Let us pray. Creator God, as we begin this day we do so giving You thanks. We thank You for the opportunity to serve our fellow human beings, we thank You for the chance to care for them and for the world around us. We thank You for the wisdom and insight that enables us to make proper decisions. We thank You for this day. Be with these men and women today and guide them in their role as leaders, so that all may benefit from their dedication and service. Empower them to care for all people, the poor, the homeless, the widowed, the orphaned, those who are lacking in any of the basic human needs, and for all the people of this state. Bless these leaders in their work. We make our prayer in Your name. Amen.

Reading of the Journal of Yesterday.

PAPERS FROM THE HOUSE
Non-concurrent Matter

Bill "An Act to Improve Compliance with Truck Weight Limits"

H.P. 36 L.D. 36
(S "A" S-169 to C
"A" H-277)

In House, May 25, 1989, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-277).

In Senate, May 26, 1989, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-277) AS AMENDED BY SENATE AMENDMENT "A" (S-169) thereto in NON-CONCURRENCE.

Comes from the House PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-277) AS AMENDED BY HOUSE AMENDMENT "A" (H-420), thereto in NON-CONCURRENCE.

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

Non-concurrent Matter

Bill "An Act to Provide Public Access to Records and Proceedings of Local and County Government Associations"

S.P. 314 L.D. 819
(C "A" S-187)

In Senate, June 2, 1989, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-187).

Comes from the House PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-187) AS AMENDED BY HOUSE AMENDMENT "A" (H-401), thereto in NON-CONCURRENCE.

The Senate RECEDED and CONCURRED.

Non-concurrent Matter

Bill "An Act to Require the Licensure of Ambulatory Surgical Facilities"

H.P. 891 L.D. 1235