

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred And Fourteenth Legislature

OF THE

State Of Maine

VOLUME V

SECOND REGULAR SESSION

March 20, 1990 to April 14, 1990

Index

HOUSE & SENATE LEGISLATIVE SENTIMENTS

December 7, 1988 to April 14, 1990

ONE HUNDRED AND FOURTEENTH MAINE LEGISLATURE
SECOND REGULAR SESSION
48th Legislative Day
Wednesday, April 11, 1990

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

Prayer by Reverend Kenneth Woodhams, Wayne Community Church.

The Journal of Tuesday, April 10, 1990, was read and approved.

Quorum call was held.

Committee of Conference

Report of the Committee of Conference on the disagreeing action of the two branches of the Legislature on: Bill "An Act to Exempt Medical Malpractice Captive Insurance Companies from the Requirement to Obtain Certificates of Authority to Transact Insurance in the State of Maine" (S.P. 705) (L.D. 1843) have had the same under consideration and ask leave to report:

That the Senate recede from its action whereby the Bill was passed to be engrossed as amended by Senate Amendment "A" (S-625) in non-concurrence, recede from adoption of Senate Amendment "A" (S-625) and indefinitely postpone the same, read and adopt Conference Committee Amendment "A" (S-689), and pass the Bill to be engrossed as amended by Conference Committee Amendment "A" (S-689) in non-concurrence.

That the House recede and concur with the Senate.

(Signed) Senator THERIAULT of Aroostook, Senator BUSTIN of Kennebec, and Senator COLLINS of Aroostook - of the Senate.

Representative RYDELL of Brunswick, Representative ERWIN of Rumford, and Representative GARLAND of Bangor - of the House.

Came from the Senate with the Committee of Conference Report read and accepted and the Bill passed to be engrossed as amended by Conference Committee Amendment "A" (S-689) in non-concurrence.

Subsequently, the Committee of Conference Report was read and accepted.

The House voted to recede and concur.

PAPERS FROM THE SENATE

The following Communication:

Maine State Senate
Augusta, Maine 04333

April 10, 1990

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 the following:

Upon the recommendation of the Joint Standing Committee on Judiciary:

Honorable Alexander MacNichol of Cape Elizabeth for appointment as Judge, Maine District Court.

Honorable Alexander MacNichol is replacing Bernard Devine.

Leigh I. Saufley of Yarmouth for appointment as Judge-at-Large of the Maine District Court.

Leigh I. Saufley is replacing Alexander MacNichol.

Sincerely,
S/Joy J. O'Brien

Secretary of the Senate

Was read and ordered placed on file.

The following Communication:

STATE OF MAINE
OFFICE OF THE GOVERNOR
AUGUSTA, MAINE 04333

April 10, 1990

To the Honorable Members of the 114th Legislature:

I am returning without my signature or approval H.P. 1648, L.D. 2281, "An Act to Amend the Laws Relating to Whitewater Rafting." While I agree with many of the provisions of L.D. 2281, I feel that the Senate Amendment restricting the right of whitewater outfitters to sell assets of their business is improper and unacceptable.

L.D. 2281 was unanimously reported out of the Joint Standing Committee on Inland Fisheries and Wildlife, and in its original form, it received and deserved widespread bipartisan support. The bill was designed with careful thought and the input of many parties to allocate rights to the use of Maine's rivers among competing whitewater rafting outfitters. Without the provisions worked out by the Committee for these allocations, some of the smaller outfitters could be adversely affected, and for that reason I am introducing legislation today to accomplish the purposes of L.D. 2281 as drafted by the Committee.

The amendment added to L.D. 2281 in the Senate, however, makes the bill as a whole unacceptable. Under present law, licensed whitewater outfitters may operate on Maine rivers only after receiving allocations from the Department of Inland Fisheries and Wildlife. If the outfitter chooses to operate on more than one river, as many do, they must receive individual allocations to each of these rivers, although they are required to hold only one license. Under the amendment adopted in the Senate, a whitewater outfitter that chooses to sell any portion of its business must surrender all allocations it holds on any river in the State, along with its entire license to do business in the State. Furthermore, the amendment removes the requirement in current law that the Department automatically reissue the allocations to the purchaser provided that the purchaser meets certain licensing requirements of the Department.

The amendment added to L.D. 2281 in the Senate improperly leverages the right of a whitewater rafter to sell a portion of its business against its license to do business in the State. The people of the State of Maine hold the flow of its rivers in common trust, and for that reason they have a right to regulate the use of these rivers through the allocation procedure used for whitewater rafting. But the people also have the right to expect that such regulation shall be prudent and forthright, and shall be conducted in a manner that is fundamentally fair, and respectful of the rights of all parties involved. To adopt a regulatory scheme which purposely requires an outfitter to surrender its license on all of the rivers in the State whenever the outfitter chooses to sell any portion of its assets on a single river is fundamentally unfair, and I cannot believe that the people of the State of Maine would find this means of regulation acceptable.

Barring a compelling public interest to the contrary, any business has a right to sell its assets. An attempt by the State to directly prohibit a business from selling its assets would have obvious constitutional implications. The State should not be allowed to do indirectly something which it would be prohibited from doing directly. Yet, by requiring a whitewater outfitter to surrender its license whenever it makes an effort to sell any portion of its business effectively requires that outfitter to

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stay in business forever, or to go out of business entirely. For the State to force this kind of choice is improper and intolerable.

For this reason, I urge you to sustain this veto. Thank you.

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

Was read and ordered placed on file.

The accompanying Bill "An Act to Amend the Laws Relating to Whitewater Rafting" (Emergency) (H.P. 1648) (L.D. 2281).

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

ORDERS

On motion of Representative KETOVER of Portland, the following Joint Resolution: (H.P. 1827) (Cosponsors: Speaker MARTIN of Eagle Lake and President PRAY of Penobscot) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 35)

JOINT RESOLUTION COMMEMORATING YOM HASHOAH, THE "DAYS OF REMEMBRANCE" OF THOSE WHO SUFFERED AS VICTIMS OF NAZISM

WHEREAS, 45 years ago, 6,000,000 Jews were murdered in the Nazi Holocaust as part of a systematic program of genocide and millions of other people suffered as victims of Nazism; and

WHEREAS, the people of the State of Maine should always remember the atrocities committed by the Nazis so that such horrors are never repeated; and

WHEREAS, the people of the State of Maine should continually rededicate themselves to the principle of equal justice for all people, remain eternally vigilant against all tyranny and recognize that bigotry provides a breeding ground for tyranny to flourish; and

WHEREAS, April 24, 1990, has been designated internationally as a Day of Remembrance of Victims of the Nazi Holocaust, known as Yom Hashoah; and

WHEREAS, the national community pursuant to an Act of Congress will be commemorating the week of April 22nd to April 29th as the Days of Remembrance of the Victims of the Nazi Holocaust; and

WHEREAS, it is appropriate for the people of the State of Maine to join in this international commemoration; now, therefore, be it

RESOLVED: That We, the Members of the One Hundred and Fourteenth Legislature of the State of Maine now assembled in the Second Regular Session, on behalf of the people we represent, pause in solemn memory of the victims of the Nazi Holocaust, and urge one and all to recommit themselves to the lessons of the Nazi Holocaust through this international week of commemoration and express our common desires to continually strive to overcome prejudice and inhumanity through education, vigilance and resistance; and be it further

RESOLVED: That suitable copies of this Resolution, duly authenticated by the Secretary of State, be sent to the United States Holocaust Memorial Council in Washington, D.C., on behalf of the people of the State of Maine.

Was read.

On motion of Representative Ketover of Portland, tabled pending adoption and specially assigned for Thursday, April 12, 1990.

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

**PASSED TO BE ENACTED
Emergency Measure**

An Act to Establish Municipal Cost Components for Services to be Rendered in Fiscal Year 1990-91 (H.P. 1771) (L.D. 2441) (H. "A" H-1110 to C. "A" H-1028)

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. 111 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 Correct Errors and Inconsistencies in the Laws of Maine (S.P. 927) (L.D. 2345) (H. "A" H-1104, H. "D" H-1108 and H. "B" H-1106 to C. "A" S-682)

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

The SPEAKER: The Chair recognizes the Representative from Presque Isle, Representative MacBride.

Representative MACBRIDE: Mr. Speaker, Ladies and Gentlemen of the House: I would like to take just a moment this morning to strongly commend the Legal Council of the Judiciary Committee for the excellent work that they did on this Errors and Inconsistencies Bill and the tremendous amount of work that has gone into it. The committee has scrutinized all of the amendments carefully and, as far as I know, they are all in order and there are no problems. This morning I will be voting for this bill.

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 Make Supplemental Allocations from the Highway Fund for the Fiscal Years Ending June 30, 1990, and June 30, 1991 (H.P. 1776) (L.D. 2444) (H. "A" H-1103 to C. "A" H-1064)

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. 117 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 Fund and Implement a Collective Bargaining Agreement with the Maine State Troopers Association (H.P. 1804) (L.D. 2475)

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.

**FINALLY PASSED
Emergency Measure**

Resolve, for Laying of the County Taxes and Authorizing Expenditures of Androscoggin County for the Year 1990 (H.P. 1826) (L.D. 2499)

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. 111 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.

**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 to Authorize the Maine State Lottery to Enter into an Agreement with Other States to Join the Multi-State Lottery Association, Known as Lotto*America, for the Purpose of Operating a Joint Lottery" (H.P. 1711) (L.D. 2362)

-In House, Majority "Ought Not to Pass" Report of the Committee on Legal Affairs was read and accepted on March 27, 1990.

- In Senate, Minority "Ought to Pass" as amended Report of the Committee on Legal Affairs read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (H-972) and Senate Amendments "B" (S-629) and "D" (S-632) in non-concurrence.

TABLED - April 10, 1990 (Till Later Today) by Representative GWADOSKY of Fairfield.

PENDING - Further Consideration.

On motion of Representative Gwadosky of Fairfield, retabled pending further consideration and later today assigned.

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

Bill "An Act to Establish the Department of Child and Family Services" (EMERGENCY) (H.P. 1199) (L.D. 1666) (H. "B" H-1109 to C. "C" H-820)

- In Senate, Passed to be engrossed as amended by Committee Amendment "C" (H-820) as amended by House Amendment "A" (H-1008) and Senate Amendment "B" (S-672) thereto in non-concurrence.

TABLED - April 10, 1990 (Till Later Today) by Representative GWADOSKY of Fairfield.

PENDING - Passage to be engrossed as amended by Committee Amendment "C" (H-820) as amended by House Amendment "B" (H-1109) thereto in non-concurrence.

On motion of Representative Gwadosky of Fairfield, retabled pending passage to be engrossed as amended by Committee Amendment "C" (H-820) as amended by House Amendment "B" (H-1109) thereto in non-concurrence and later today assigned.

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

Bill "An Act to Establish a Five-year Medical Liability Demonstration Project" (S.P. 782) (L.D. 2023)

- In House, Bill and accompanying papers were indefinitely postponed on April 6, 1990.

- In Senate, Passed to be engrossed as amended by Senate Amendment "A" (S-683) in non-concurrence.

TABLED - April 10, 1990 (Till Later Today) by Representative GWADOSKY of Fairfield.

PENDING - Further Consideration.

On motion of Representative Gwadosky of Fairfield, retabled pending further consideration and later today assigned.

(At Ease)

The House was called to order by the Speaker.

The Chair laid before the House the following matter: Bill "An Act to Establish a Five-year Medical Liability Demonstration Project" (S.P. 782) (L.D. 2023) which was tabled earlier in the day and later today assigned pending further consideration.

On motion of Representative Marsano of Belfast, the House reconsidered its action whereby the House failed to recede on L.D. 2023.

Subsequently, the House voted to recede.

On motion of Representative Gwadosky of Fairfield, retabled pending further consideration and later today assigned.

(Off Record Remarks)

(At Ease)

The House was called to order by the Speaker.

TABLED AND TODAY ASSIGNED

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

HOUSE ORDER relative to Propounding Questions to the Justices of the Supreme Judicial Court. (Relative to H.P. 1776, L.D. 2444)

TABLED - April 10, 1990 by Speaker MARTIN of Eagle Lake.

PENDING - Passage.

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

Representative CARTER: Mr. Speaker, Men and Women of the House: The problems that I had with the Supplemental Highway Allocation Bill, L.D. 2444, was primarily in two areas of the State Constitution. However, an amendment was put on dealing with both problems and the first one was listed as in conflict in Article 4 of Section 16, which was the third condition listed which any bill has to meet. This deals with renting or purchasing any facility in an emergency situation whereby the Constitution states quite clearly that it should not go beyond five years. That problem was effectively dealt with by the removal of the emergency provision in dealing with that section.

The second area that I had problems with is listed in Article 9, Section 19, which deals with the highway trust fund revenues. That sentence also has been deleted from the bill. Consequently, I now believe that the Highway Supplemental Allocation Bill, as drafted, meets the constitutional test and I respectfully request permission leave of the House to withdraw this order.

On motion of Representative Carter of Winslow, the Order was withdrawn.

The Chair laid before the House the following matter: H.P. 1648, L.D. 2281, "An Act to Amend the Laws Relating to Whitewater Rafting." which was tabled earlier in the day and later today assigned pending reconsideration.

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

Representative JACQUES: Mr. Speaker, Men and Women of the House: Today, I will be voting to override the veto of the Governor and you can do whatever you want.

The Fish and Wildlife Committee came out with a unanimous committee report which was a by-product of the Outdoor Rafting Commission and the Department of Inland Fisheries and Wildlife recommendations. The rafters brought their case forward on some other issues and were unanimously rejected by the committee.

After we reported it out, Representative Marsh approached me and asked if someone could sell part of their business on the river. I wasn't quite sure of the answer, I believed they could. We set up a meeting with Representative Marsh, Representative Farren, myself, John Selser, who is our committee assistant, and Alan Clark from the Department. After some discussion, we concluded that indeed someone could sell part of their business, not the allocation, that is against the law and that the persons buying would then have to apply for that allocation and, if they could meet the criteria, the Department would pass that allocation on to them.

I am somewhat confused by the veto message because it is clear that whoever wrote it doesn't understand what they are talking about. Originally, it was my understanding that all parties were in agreement.

I know that one of the rafters, Mr. Hockmeyer from the Forks, went down and spent considerable amount of time with the Commissioner of Inland Fisheries and Wildlife, Commissioner Vail. They proceeded from his office to the Governor's Office and the discussion was based around the addition of the amendment that was added on in the other body. Someone is under the assumption that that amendment would prohibit someone from selling their business on one of the rivers.

As I told my caucus, I am not sure what happened, there is a skunk in the woodpile somewhere, I can smell it but I just can't find it. Unfortunately, the skunk is going to affect a piece of legislation that had many major improvements to the whitewater rafting system. This morning, I called Cab Howard who told me that he had talked to Mr. LeDuc of the Governor's Office and tried to explain this matter to him for a considerable length of time. He told me apparently his efforts were in vain because in reading the veto message, somebody didn't understand what the problem was.

The issue of allowing Mr. Hockmeyer to sell his allocation on the West Branch of the Penobscot will not be affected by this bill before the addition of the Senate Amendment or after the addition of the Senate Amendment.

What the action of the Senate Amendment does is makes it clear that, if I have a whitewater rafting business and choose to sell it to three, two, five, ten different individuals, that I can do so by surrendering my license and my allocation and those will be divided amongst the people buying on a proportionate share based on their meeting the criteria of being in the business. That is all that the Senate Amendment addressed.

If the legislature wants to make it legal for someone to sell their allocation, not their assets,

but their allocation, then someone should put a bill in to do so. I do not support that. The Whitewater Rafting Commission never supported that and I don't believe the Fish and Wildlife Committee would support that, but if that is the direction we want to go, we certainly cannot address that issue in three or four days. It is very complex. It has many legal ramifications. If someone should be allowed to sell their allocation, then my belief is they should be buying it from the State of Maine. It is a limited resource, a valuable resource, and it is a natural resource.

The problem we have here today is that someone has convinced the Governor that if he vetoes this legislation that it will be easier for Mr. Hockmeyer to sell his allocation and thereby sell his campground at Pocwockamus as the base camp, as I said during the debate on this bill last time. I have news for Mr. Hockmeyer and, unfortunately, I have news for the Governor. Current law will not allow Mr. Hockmeyer to sell his allocations. He can sell his assets, he cannot sell his allocation. If he does sell his assets on the West Branch, there is no guarantee under the current law that the buyer will be automatically given the same amount of allocations that Mr. Hockmeyer sold to them. They will apply, if they meet the criteria, they will receive the allocations. If they don't meet the criteria at the highest level, the allocations that will not be given out would then go into the unallocated pool that the department has and then all of the rafters, small or large, could then apply for those allocations that may be made available.

Since the time we met with Mr. Clark from the Fish and Wildlife Department, I guess someone has interpreted the law to be different than what all the parties agree. This morning I met with Mr. Howard from the AG's office, John Selser who is our committee assistant, myself (and I talked to Deputy Commissioner Trask) and we are all in agreement on what this law will allow to be done and what it definitely will not allow to be done.

Someone made the claim that the Senate Amendment was there to go after one outfitter, who happens to be the only one at this time or the major one that would like to sell his business on the Penobscot River. That is not the case. I discussed the Amendment at length with the person who proposed it and all her attempts were to make it clearer in the law that indeed you could sell your business to one or more owners and those owners would be at least assured that they would be able to buy your assets and receive the allocation if they met the criteria established by law.

I think the unanimous committee report was a good one when it came out. I think it was a better one with the addition of the Senate Amendment but understanding things as they are, at this particular point, I really do not care how you vote one way or the other.

I have heard that there is another bill coming along the line. If that bill does anything to stray from the current law, we will be doing a big mistake and I kind of look forward to the other bill coming because now that the Governor has articulated his position and that Mr. Hockmeyer has, through whatever powers he has, and it amazes me how much power this man has in this state for someone who wasn't even elected to office, now that we have that position articulated, there are many of us that look forward to presenting some amendments that we think will make a much better whitewater rafting law all the way around. It will follow the direction that is articulated in the veto message and I welcome and

thank the Governor for the opportunity to maybe go back and repair some of the areas that we were lax on.

I intend to vote to override because I still stand by the committee's original convictions that we did not intend to address the selling of allocations. This bill does not deal with the selling of allocations. If vetoed, they will not be able to sell allocations under the present law. The Department again reiterated to me very clearly that they do not support the concept of allowing allocations to be sold. I certainly do not support changing a good long-term whitewater rafting law that has met constitutional muster so that one individual (who happens to have a little more clout than some of the smaller rafters) can have us take care of his own particular situation so he can feather his pocket with a little more money of the people of this state's expense. That is the choice you have to make. Believe me, I leave the choice up to you.

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

Representative WEBSTER: Mr. Speaker, Ladies and Gentlemen of the House: There is sometimes a tendency for us to try and make simple measures more complicated than they are, measures that are somewhat complicated, very complicated, so that no one can understand them. Then things become quite confused and it is possible to argue a point that might not otherwise carry the day if people looked at the very essence of what the issue is about.

I am going to just read to you five sentences from the Governor's veto message because I think this issue can be made very simple and it can become very clear to you what the essence of the problem with this bill is.

"Under present law," the Governor's veto message reads, "licensed whitewater outfitters may operate on Maine rivers only after receiving allocations from the Department of Inland Fisheries and Wildlife. If the outfitter chooses to operate on more than one river, as many do, they must receive individual allocations to each of these rivers, although they are required to hold only one license." "Under this bill," I am paraphrasing a little, "a whitewater outfitter that chooses to sell any portion of its business must surrender all allocations it holds on any river in the state, along with its entire license to do business in the state. Furthermore, the amendment removes the requirement in current law that the department automatically re-issue the allocations to the purchaser provided that the purchaser meets certain licensing requirements of the department".

Finally, a sentence that I think says the essence of the veto message, "To adopt a regulatory scheme which purposely requires an outfitter to surrender its license on all of the rivers in the state whenever the outfitter chooses to sell any portion of its assets on a single river is fundamentally unfair."

I hope that you will vote no and that this bill does not become law.

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

Representative JACQUES: Mr. Speaker, Men and Women of the House: I appreciate the Minority Floor Leader bringing up that point. I addressed that very question to Mr. Howard this morning. He says that the statements made in the veto message are clearly not accurate. The Senate Amendment that is talked about says and I quote, "When a licensed whitewater outfitter's business is sold, the license and any allocations must be returned to the department." The amendment does not deal with selling part of your

business on a river. The amendment was addressed to selling your business not part of your business, your business. It was done so to clarify that if you get out of the business that you have to turn over your license because you are now abandoning your allocation and you cannot turn around and automatically expect to come back, get another license, and have those allocations returned to you because what you in effect would be doing is selling someone a pig in a poke.

The law that has been vetoed does not address selling part of your business. We addressed that through our questions to Mr. Clark, based on the current rules that are adopted by the department when we asked the question, Representative Marsh, Representative Farren and myself. If anyone has changed their mind about how they interpreted the rules, I have not been notified. To make it clear, the amendment that is the reason for the veto does not address or affect someone selling part of their business. It is designed for dealing with someone who sells their business. It does so in a very responsible manner.

Whether this veto is sustained or not, the issue of selling part of your business will still be clouded and, up until now, is left to the rules promulgated by the department. Mr. LeDuc said to me that the rules were not law. He, unfortunately, does not have any legislative experience because we all know that, once rules are adopted, they indeed have the force of law. The department says they have no intention of changing their rules because they firmly believe that, in the event that someone did sell part of their business, the assets of their business, if the person coming in could meet the criteria established the department would then give the allocation. If Mr. Clark and the department have changed that point of view, if Commissioner Vail does not see it that way, we have not or at least I have not been made aware of that. If that is what they want to do, then we should put a bill in to address that issue. You are not going to be able to address that issue in three or four days because I think all the rafters should be down here to tell you what they really feel about this whole issue. After the hearing when they got up and testified, some of them got Representative Clark aside outside and said, "Look, we got up and agreed with this proposal, we don't like it because we were told by the big guys that if we didn't go along with it, they were going to pound us." I don't think that is democracy at its best.

The SPEAKER: The Chair recognizes the Representative from Millinocket, Representative Clark.

Representative CLARK: Mr. Speaker, Men and Women of the House: I will be very very brief. I think Representative Jacques explained what we have been doing with whitewater rafting for a number of years. It is very, very complicated. A few of us had the privilege by the Speaker appointing us to a commission, I wonder if it was a blessing or not, but we put a lot of time in it.

When I was coming upstairs from my committee on Utilities and I had this with me, I was trying to read the message that the Governor was sending to the members of this body. I read it two or three times and I still haven't got the message. Apparently whoever put the message together had very little information on whitewater rafting.

I hope when we do take the vote, we take the vote to override the Governor's veto because I think the bill that we sent down to him was a very good bill, it was very well put together. A lot of time was put into it. I think we mentioned some time ago when we

dealt with the bill itself here in the House that we were trying to help the small companies. I think you can see today what is happening with small companies. The king is trying to rule again. When you vote today, I hope you vote to override.

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

Representative WEBSTER: Mr. Speaker, Ladies and Gentlemen of the House: I would just like to read two more sentences from the Governor's veto message because I think the Representative from Waterville, Representative Jacques, was correct when he said that the issue has become clouded. These two sentences are, "By requiring a whitewater outfitter to surrender its license whenever it makes an effort to sell any portion of its business effectively requires that outfitter to stay in business forever or to go out of business entirely. For the state to force this kind of choice is improper and intolerable."

Representative Jacques of Waterville was granted permission to address the House a third time.

Representative JACQUES: Mr. Speaker, Men and Women of the House: I will say it one more time, the department has made it very clear that someone will have to surrender their license because their license will enable them to go on two rivers. The department has told us that in that event, the person would be reissued their license to operate on the river that they did not sell. This bill has nothing to do with that issue, does not affect it one way or the other. If you want to clarify that provision, all you have to do is introduce a bill that says that, in the event that someone sells their allocation on one river, they do not have to turn their license in and the state shall make sure they keep that license and they indeed will keep it forever and ever. The only time they are going to want to sell their allocation on one river is because they can't meet the allocations on that river and they don't want it held against them and you don't have to be a genius to figure that one out.

The SPEAKER: The Chair recognizes the Representative from Millinocket, Representative Clark.

Representative CLARK: Mr. Speaker, Men and Women of the House: One thing that we overlook when we talk about the rivers, particularly the Penobscot, this body of water belongs to everybody in the State of Maine, not only the whitewater rafting people, but everyone in the State of Maine who wants to use that river. That is one reason why I feel that that allocation itself should be turned back into the state. Why grant one company the right to own a river? The river itself belongs to everybody in the State of Maine, not just the rafters. That is the point I want to make.

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

Representative MARSANO: Mr. Speaker, Members of the House: As many of you can tell, I am not a rocket scientist, I am not sure exactly what I am, after having listened to the Representative from Waterville. I didn't want to get up too early because he was talking about something that he could smell and I was afraid he was going to get around to talking about lawyers.

I guess that is probably what the difficulty is because, as I see this Senate Amendment, it looks to me as though this is something that any lawyer, I want to use the phrase "worth his salt", would get nervous about if he were trying to represent a seller and was trying to tell a buyer what the potential would be. That kind of fear is confirmed by what Representative Clark just said.

When I first heard this debate and Representative Gould was talking about these things and I plead guilty to not knowing very much about whitewater rafting, I thought it sounded like an interesting situation and it reminded me a whole lot of like the airline industry. As the Representative from Millinocket said, rivers are free and belong to everybody, so does the airways. I was thinking about how if you have got some equipment and all these other things, like airplanes or rafts that go down river or fly in the sky and you were talking about the right to fly into Logan Airport, as an illustration which may be more familiar to you and you were Eastern Airlines and you had the right to fly in Friday afternoon when everybody is trying to get back from Washington, (though I don't know why anybody wants to go to Washington in the first place) then you would realize that that was a fairly valuable asset and you would want to have at least some kind of way of thinking that it would be transferred. I realize that if you were like Northwest Airlines and you were going to buy Eastern and you wanted to fly under Eastern, why you wouldn't be able to use the licenses or the air rights or whatever without getting them transferred somehow. What this amendment did was to foreclose the possibility by specifically making it as a matter of statutory law, the fact that it wasn't an asset of the business and that it couldn't be considered an asset, that is the allocation or the license. A license is clearly not part of the business and probably the allocations are equally not a part since they are something within the public domain.

It would seem as though this means that nobody but a fool would buy this business. I guess that is why the Governor vetoed it and why I hope his veto will be sustained so that there can be a kind of sensible arrangement in the language which comports with what the Representative from Waterville wants which is not a problem for me. I don't have any problem with what he wants, it is just that the language doesn't seem to allow that and it does seem to make the seller of the business a prisoner. That is all the Governor is objecting to. I think, in this instance, he is interested in the seller. I can't fault him for that because I think people that go to work and try to put money into a Maine business ought to have some kind of right to transfer. Even though you can't make a grant of a license which is a kind of a property interest and an allocation is a somewhat similar type of property interest, an asset, you can certainly do something that suggests it is not foreclosed and, therefore, there would be some opportunity to profit from your investment.

That probably is as much help as you need from me as a lawyer but I would feel that way if I were representing a seller in this kind of situation. I would say, gosh, we have a tough road to hoe and, if I were representing a buyer, I would say, gosh, you are crazy to buy the rafts, you may have no place to put them. That is what the veto is all about. I hope you vote to sustain.

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

Representative KILKELLY: Mr. Speaker, Ladies and Gentlemen of the House: I know little about whitewater rafting other than having watched it and my kids have said that they would like to do it. One of the things that concerns me about being able to sell the license and to sell the rights along with the business is that, as a consumer or potential consumer, I would want to make sure that the person that had purchased the business was in fact qualified

to take my life and the lives of my children on a raft down a roaring river. It seems to make sense to me that this could be a very interesting public health and safety issue. I would like to make sure that the person that is doing that is qualified. I don't want them only to be able to afford to purchase an asset which may mean that my life could be in danger. I would urge you to override the veto.

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

Representative MARSANO: Mr. Speaker and Members of the House: I agree with Representative Kilkelly. The problem is that that is the reason why the license is transferred to the state and the transfers back do ensure that, that is somewhat similar to what happens with liquor licenses. When you give up a liquor license because you have sold off your business and so on, it goes out, then it comes back. You do the same thing, you want to ensure that the public safety is protected but there ought to be an nexus between the two and not absolute disqualification. What unfortunately happens with the Senate Amendment is that there is a perceived statutory absolute disqualification which is unfair to the seller.

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

Representative MOHOLLAND: Mr. Speaker, Ladies and Gentlemen of the House: This seems to be quite an argument but I would like to know why the man on the second floor wouldn't veto the color, odor bill but he would veto a bill for some businessman?

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

Representative HALE: Mr. Speaker, Ladies and Gentlemen of the House: I, too, know nothing about whitewater rafting. I am certainly not a legal beagle but if I can understand this amendment which I just went and got again and I looked at it and I read it, and having no piece of paper saying that I have any expertise in the area, I can understand it, and it certainly does clarify that this allocation must be reapplied for and does not go with the sale of the assets. then I don't understand why Representative Marsano, as a lawyer, as a professional person, cannot understand it. Perhaps he could explain?

The SPEAKER: After reconsideration, the pending question is, Shall this bill become law notwithstanding the objections of the Governor? Pursuant to the Constitution, the votes will be taken by the yeas and nays. This requires a two-thirds vote of the members present and voting. Those in favor of this bill becoming law notwithstanding the objections of the Governor will vote yes; those opposed will vote no.

ROLL CALL NO. 245V

YEA - Adams, Aliberti, Allen, Anderson, Anthony, Bell, Boutillier, Brewer, Burke, Cahill, M.; Carroll, D.; Carroll, J.; Carter, Cashman, Chonko, Clark, H.; Clark, M.; Coles, Conley, Constantine, Cote, Crowley, Daggett, Dellert, Dexter, DePietro, Dore, Dutremble, L.; Erwin, P.; Farnsworth, Farren, Foss, Gould, R. A.; Graham, Gurney, Gwadosky, Hale, Handy, Heeschen, Hichborn, Hickey, Hogle, Holt, Hussey, Jacques, Jalbert, Joseph, Ketover, Kilkelly, LaPointe, Lawrence, Lisnik, Luther, Macomber, Mahany, Manning, Martin, H.; Mayo, McGowan, McKeen, McSweeney, Melendy, Michaud, Mills, Mitchell, Moholland, Nadeau, G. G.; Nadeau, G. R.; Nutting, O'Dea, O'Gara, Oliver, Paradis, J.; Paradis, P.; Paul, Pederson, Pendleton, Pineau, Plourde, Pouliot, Priest, Rand, Ridley, Rolde, Rotondi, Ruhlin, Rydell, Sheltra, Simpson,

Skoglund, Smith, Stevens, P.; Strout, D.; Swazey, Tammaro, Townsend, Tracy, The Speaker.

NAY - Aikman, Ault, Bailey, Begley, Butland, Curran, Donald, Farnum, Foster, Garland, Greenlaw, Hanley, Hastings, Hepburn, Higgins, Hutchins, Lebowitz, Libby, Look, Lord, MacBride, Marsano, Marsh, McCormick, McPherson, Merrill, Murphy, Norton, Paradis, E.; Parent, Pines, Reed, Richards, Seavey, Small, Stevens, A.; Stevenson, Strout, B.; Telow, Tupper, Webster, M.; Wentworth, Whitcomb.

ABSENT - Cathcart, Duffy, Jackson, Larrivee, Marston, McHenry, Richard, Tardy, Walker.

Yes, 98; No, 43; Absent, 9; Vacant, 1; Paired, 0; Excused, 0.

98 having voted in the affirmative, 43 in the negative, with 9 being absent and 1 vacant, the veto was not sustained. Sent up for concurrence.

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

(Off Record Remarks)

On motion of Representative Gwadosky of Fairfield, the following was removed from the Tabled and Unassigned matters:

HOUSE DIVIDED REPORT - Majority (9) "Ought to Pass" - Minority (4) "Ought Not to Pass" - Committee on Housing and Economic Development on Bill "An Act to Encourage International Awareness in Maine and Improve International Trade Services to Maine Companies" (H.P. 1578) (L.D. 2185)

TABLED - March 15, 1990 by Representative GWADOSKY of Fairfield.

PENDING - Motion of Representative NADEAU of Lewiston to accept the Majority "Ought to Pass" Report.

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

Representative GWADOSKY: Mr. Speaker, I move that L.D. 2185 and all accompanying papers be indefinitely postponed.

Mr. Speaker, Ladies and Gentlemen of the House: This particular issue was one of two bills that came before the Housing and Economic Development Committee dealing with this particular area. As you know from your caucuses, the committee has now folded their recommendations in regards to reorganization of the Department of Economic and Community Development into one package. That package is now represented in the budget document itself and this issue was dealt within the budget itself so the bill before us is no longer necessary. I hope you would support the motion.

Subsequently, L.D. 2185 and all accompanying papers were indefinitely postponed. Sent up for concurrence.

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

(Off Record Remarks)

On motion of Representative Dexter of Kingfield, Adjourned until Thursday, April 12, 1990, at nine o'clock in the morning.