

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

LEGISLATIVE RECORD

OF THE

One Hundred And Fourteenth Legislature

OF THE

State Of Maine

VOLUME I

FIRST REGULAR SESSION

December 7, 1988 to May 10, 1989

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

In Senate Chamber
Monday
March 20, 1989

Senate called to Order by the President.

Prayer by Father Raymond Melville of St. Mary's Church in Augusta.

FATHER MELVILLE: We want to praise You Lord in all we say and do. Rest in us so that our work may be guided by Your wisdom. Direct our words so that they may be just and clear and not become soiled by slander or lies. Pierce our thoughts with the light of Your truth since the ties are ears that we will hear the cries of the poor whose lives are plunged in need and fear. Divine Father, we pray that You make us more understanding of our limitations and desires. Father we pray that You echo in the deepest recesses of our being Your friendly call, indicating the right path to take in the decisive moments of our lives. Only You can guide us right, install in each of us the thoughts and language of love which can be translated into concrete acts, not just nice words, when we are faced with the highest demands of human solidarity. We ask this through Christ our Lord. Amen.

Reading of the Journal of Thursday, March 16, 1989.

PAPERS FROM THE HOUSE
House Papers

Bill "An Act to Protect Lakes and to Develop Educational Programs on Boating Safety"
H.P. 592 L.D. 810

Comes from the House referred to the Committee on APPROPRIATIONS AND FINANCIAL AFFAIRS and ORDERED PRINTED.

Which was referred to the Committee on APPROPRIATIONS AND FINANCIAL AFFAIRS and ORDERED PRINTED, in concurrence.

Bill "An Act to Require Country of Origin Labeling on Fresh Produce"
H.P. 591 L.D. 809

Bill "An Act to Simplify Pesticide Inventory Requirements" (Emergency)
H.P. 593 L.D. 811

Come from the House referred to the Committee on AGRICULTURE and ORDERED PRINTED.

Which were referred to the Committee on AGRICULTURE and ORDERED PRINTED, in concurrence.

Bill "An Act to Create the Youth-at-Risk Alternative Education Program"
H.P. 585 L.D. 789

Committee on APPROPRIATIONS AND FINANCIAL AFFAIRS suggested and ORDERED PRINTED.

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

Which was referred to the Committee on EDUCATION and ORDERED PRINTED, in concurrence.

Bill "An Act to Clarify the Affirmative Defense of Breach of Warranty of Habitability"
H.P. 596 L.D. 814

Comes from the House referred to the Committee on LEGAL AFFAIRS and ORDERED PRINTED.

Which was referred to the Committee on LEGAL AFFAIRS and ORDERED PRINTED, in concurrence.

RESOLUTION, Proposing An Amendment to the Constitution of Maine to Allow for the Popular Initiation of Amendments to the Maine Constitution
H.P. 590 L.D. 808

Bill "An Act to Establish the Boundary Line between the Town of Falmouth and the City of Westbrook"
H.P. 594 L.D. 812

Bill "An Act to Subject Municipal Rulemaking to Statutory Administrative Procedures"
H.P. 595 L.D. 813

Come from the House referred to the Committee on STATE AND LOCAL GOVERNMENT and ORDERED PRINTED.

Which were referred to the Committee on STATE AND LOCAL GOVERNMENT and ORDERED PRINTED, in concurrence.

Bill "An Act to Restrict Post-legislative Activity"
H.P. 573 L.D. 777

Committee on LEGAL AFFAIRS suggested and ORDERED PRINTED.

Comes from the House referred to the Committee on STATE AND LOCAL GOVERNMENT and ORDERED PRINTED.

Which was referred to the Committee on STATE AND LOCAL GOVERNMENT and ORDERED PRINTED, in concurrence.

SENATE PAPERS

Bill "An Act to Establish an Affordable Housing Demonstration Program"
S.P. 315 L.D. 820

Presented by Senator ANDREWS of Cumberland
Cosponsored by Representative NADEAU of Lewiston, Representative MILLS of Bethel and Senator DUTREMBLE of York

Bill "An Act Providing for the 1989 Amendments Pertaining to the Finance Authority of Maine Act"
S.P. 316 L.D. 821

Presented by Senator CLARK of Cumberland
Cosponsored by Senator PERKINS of Hancock, Representative KILKELLY of Wiscasset and Representative NADEAU of Lewiston

Which were referred to the Committee on HOUSING AND ECONOMIC DEVELOPMENT and ORDERED PRINTED.
Sent down for concurrence.

Off Record Remarks

Bill "An Act to Define the Compensation Period for Injuries Resulting in Partial Incapacity under the Workers' Compensation Act"
S.P. 313 L.D. 818

Presented by Senator EMERSON of Penobscot
Which was referred to the Committee on LABOR and ORDERED PRINTED.

Sent down for concurrence.

Bill "An Act Regarding High-speed Chases"
S.P. 310 L.D. 815

Presented by Senator RANDALL of Washington
Cosponsored by Representative LOOK of Jonesboro
Committee on LEGAL AFFAIRS suggested and ORDERED PRINTED.

On motion by Senator HOBBS of York, referred to the Committee on JUDICIARY and ORDERED PRINTED.
Sent down for concurrence.

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

S.P. 314 L.D. 819

Presented by Senator HOBBS of York
Committee on LEGAL AFFAIRS suggested and ORDERED PRINTED.

On motion by Senator HOBBS of York, referred to the Committee on JUDICIARY and ORDERED PRINTED.
Sent down for concurrence.

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

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

Senate called to order by the President Pro Tem.

Bill "An Act to Provide a Referendum to Abolish County Government and Authorize Reassignment of its Functions and Duties to Appropriate State and Municipal Departments and Agencies"

S.P. 312 L.D. 817

Presented by Senator KANY of Kennebec
Cosponsored by Senator BERUBE of Androscoggin, Speaker MARTIN of Eagle Lake and Senator DILLENBACK of Cumberland
Which was referred to the Committee on STATE AND LOCAL GOVERNMENT and ORDERED PRINTED.
Sent down for concurrence.

Bill "An Act to Increase Safety on Maine Roads and Protect the General Welfare"

S.P. 311 L.D. 816

Presented by Senator TWITCHELL of Oxford
Cosponsored by Representative WALKER of Norway, Representative ROLDE of York and Representative McPHERSON of Eliot
Which was referred to the Committee on TRANSPORTATION and ORDERED PRINTED.
Sent down for concurrence.

ORDERS

Joint Resolution

Senator PRAY of Penobscot, requested that the RULES BE SUSPENDED BY UNANIMOUS CONSENT to present a Joint Resolution on behalf of Senator GAUVREAU of Androscoggin (Cosponsored by: Representative RYDELL of Brunswick, Representative MANNING of Portland, Senator RANDALL of Washington) (Approved for Introduction by the Legislative Council pursuant to Joint Rule 35) the following Joint Resolution:

S.P. 317

JOINT RESOLUTION MEMORIALIZING THE CONGRESS OF THE UNITED STATES TO ALLOW STATES MORE DISCRETION IN UTILIZING FUNDING AVAILABLE FROM THE ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH BLOCK GRANT CONTAINED IN THE ANTI-DRUG ABUSE ACT OF 1988

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

WHEREAS, the Alcohol, Drug Abuse, and Mental Health Block Grant Program contained in the federal Anti-Drug Abuse Act of 1988 has established significant changes in the requirements imposed on the several states for utilization of these block grant funds; and

WHEREAS, some of these changes reflect the needs of larger states and do not reflect the needs of smaller states, such as Maine, whose alcohol, drug and mental health problems and solutions are not the same as those of the larger states; and

WHEREAS, it will be particularly difficult for Maine to comply with or effectively utilize available funding in connection with the following new requirements:

1. The required allocation of substantial funds for services to intravenous drug users. The diversion of significant funds for services to intravenous drug users in Maine is out of proportion to the severity of the problem in Maine in relation to other alcohol and drug problems. Funding which could have been available for other necessary programs will revert back to the Federal Government, resulting in a significant loss of essential services;

2. The requirement that a substantial portion of block grant funding be reserved for new services. The Anti-Drug Abuse Act of 1988, as amended, requires a state to spend not less than 55% of the mental health allotment on new services and programs not available on October 1, 1988. It also requires that 50% of the amount reserved by a state for services to seriously emotionally disturbed children and adolescents be used for new or expanded programs that were not available prior to October 1, 1988. This substantial new service requirement, combined with the estimated \$212,000 decline in mental health block grant funding, will necessitate either a major increase in state funding to continue programs started with block grant funds or the reservation of block grant funds to short-term projects;

3. The restriction on the obligation of funding for any year to that same year. Reauthorization of block grant funding is often delayed by congressional debate for months after the previous block grant legislation and funding has terminated. States have traditionally carried over funding from the previous year to allow for that delay and for the subsequent 6 to 8-week delay in implementing the new block grants after enactment. Reducing the permissible period in which the funding may be obligated impairs continuing state programs by eliminating continuing funding for staff salaries and contractual services. Vital alcohol, drug abuse and mental health services will have to be terminated for that 2 to 4-month period;

4. The reduction in funding which can be dedicated to administrative expenses from 10% to 5%. This reduction shifts the burden of administrative expenses disproportionately to the states. The reduction in administrative expenses is accompanied by additional administrative requirements which have significant costs. New requirements include independent peer review to assess the quality and appropriateness of treatment services provided by entities that receive funds and data collection on mental health activities including the number and demographic characteristics of individuals receiving treatment, the type of care received and such other data as may be appropriate; and

5. The requirement to establish a revolving loan fund to make available loans to enable groups of 4 or more recovering substance abusers to set up group homes. Maine's experience cannot justify the utilization of that level of funding for that purpose. Unused funds will revert to the Federal

Government and be unavailable for necessary programs designed to address Maine needs; and

WHEREAS, the current federal law includes limited waiver provisions to allow for an adjustment period to the new federal requirements, this waiver provision only addresses the transition period to the new requirements and does not address the underlying problem. The real issue is the restrictions imposed on Maine's ability to apply available substance abuse and mental health block grant funding to Maine's unique problems and the failure of the federal legislation to recognize that different states will have different substance abuse and mental health problems; now, therefore, be it

RESOLVED: That We, your Memorialists, respectfully recommend and urge the Congress of the United States to recognize that federal legislation affects 50 states and that, among those states, the variations in the types and severity of substance abuse and mental health problems and issues are significant; and be it further

RESOLVED: That Congress allow each state to exercise more discretion in the utilization of the Alcohol, Drug Abuse, and Mental Health Block Grant funds, granting them the flexibility to address their unique problems and issues; and be it further

RESOLVED: That Congress address the following specific problems with the current Alcohol, Drug Abuse, and Mental Health Block Grant Program by:

1. Enacting a 3-year waiver provision for the requirement that a specific amount of funding be utilized exclusively to provide services to intravenous drug users;

2. Providing additional mental health block grant funding as necessary to cover expenses for new service requirements; and

3. Reinstating the authorization for the states to obligate federal funding during a 2-year period; and be it further

RESOLVED: That Congress address the following specific problems when enacting additional alcohol, drug abuse, and mental health block grant programs:

1. Authorizing administrative expenses of up to 10% of the block grant and providing additional funding for administrative expenses to each state in an amount sufficient to meet additional administrative requirements imposed by the legislation; and

2. Enacting a waiver provision for the requirement that unspent funds in the revolving loan fund established for recovering substance abusers to set up group homes be returned to the Federal Government. These funds should be carried over and be available for use at a later date if requested by loan applicants; and be it further

RESOLVED: That suitable copies of this memorial, duly authenticated by the Secretary of State, be transmitted to the Honorable George H.W. Bush, President of the United States, the President of the Senate and the Speaker of the House of Representatives of the Congress of the United States and to each member of the Maine Congressional Delegation.

Which was READ and ADOPTED.

Sent down for concurrence.

COMMITTEE REPORTS

House

Leave to Withdraw

The following Leave to Withdraw Report shall be placed in the Legislative Files without further action pursuant to Rule 15 of the Joint Rules:

The Committee on TAXATION on Bill "An Act to Define Taxation of Natural Resource Protection Areas"
H.P. 73 L.D. 104

Ought to Pass

The Committee on BUSINESS LEGISLATION on Bill "An Act to Require Insurance Agents, Brokers and Consultants to Participate in Continuing Professional Education"

H.P. 217 L.D. 297

Reported that the same Ought to Pass.

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

Which Report was READ and ACCEPTED, in concurrence.

The Bill READ ONCE.

The Bill TOMORROW ASSIGNED FOR SECOND READING.

Senate

Leave to Withdraw

The following Leave to Withdraw Report shall be placed in the Legislative Files without further action pursuant to Rule 15 of the Joint Rules:

Senator CAHILL for the Committee on AGING, RETIREMENT AND VETERANS on Bill "An Act to Allow State Employees and Teachers to Purchase Retirement Credit for Time Worked Under Contract to the Governor's Office from 1974 to 1978"

S.P. 141 L.D. 261

SECOND READERS

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

House

Bill "An Act to Promote Thorough Consideration of Governatorial Appointments"

H.P. 173 L.D. 238

Resolve, to Extend the Reporting Deadline for the Study of Low-level Radioactive Waste in the Town of Greenbush (Emergency)

H.P. 195 L.D. 258

Which were READ A SECOND TIME and PASSED TO BE ENGROSSED, in concurrence.

House As Amended

Bill "An Act to Require the Maine Land Use Regulation Commission to Return in a Timely Fashion Applications for the Approval of Permanent or Seasonal Structures That Have Been Destroyed by an Act of God"

H.P. 111 L.D. 148

(C "A" H-8)

Which was READ A SECOND TIME and PASSED TO BE ENGROSSED, as Amended, in concurrence.

Senate As Amended

Bill "An Act to Provide a Sales Tax Exemption for Materials Purchased by Certain Religious Institutions"

S.P. 94 L.D. 99

(C "A" S-12)

Which was READ A SECOND TIME and PASSED TO BE ENGROSSED, as Amended.

Sent down for concurrence.

ENACTORS

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

An Act to Adopt New Life Safety Requirements for Adult Boarding Care Facilities

S.P. 76 L.D. 66

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

HELD BILL

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

President PRAY: Thank you Madam President, is the Senate in possession of L.D. 755?

THE PRESIDENT PRO TEM: The Chair would answer in the affirmative, having been held at the Senators request.

On motion by Senator PRAY of Penobscot, the Senate SUSPENDED THE RULES.

On further motion by same Senator, the Senate RECONSIDERED whereby it PASSED TO BE ENACTED:

Emergency

An Act Relating to Municipal Funding

H.P. 557 L.D. 755

(In House, March 15, 1989, PASSED TO BE ENACTED.)

(In Senate, March 16, 1989, PASSED TO BE ENACTED, in concurrence.)

On further motion by same Senator, Tabled 2 Legislative Days, pending ENACTMENT.

President PRAY of Penobscot was granted unanimous consent to address the Senate off the Record.

Senator CAHILL of Sagadahoc was granted unanimous consent to address the Senate off the Record.

On motion by Senator ERWIN of Oxford, RECESSED until the sound of the bell.

After Recess

Senate called to order by the President.

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

COMMITTEE REPORTS

Senate

Ought to Pass As Amended

Senator THERIAULT for the Committee on TRANSPORTATION on Bill "An Act to Clarify the Law Authorizing the Use of Warning Devices on Department of Corrections' Vehicles"

S.P. 74 L.D. 64

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (S-15).

Which Report was READ and ACCEPTED.

The Bill READ ONCE.

Committee Amendment "A" (S-15) READ and ADOPTED.

The Bill as Amended, TOMORROW ASSIGNED FOR SECOND READING.

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

COMMUNICATIONS

The Following Communication:

HEALTH CARE FINANCE COMMISSION

STATE HOUSE STATION 102

AUGUSTA, MAINE 04333

March 9, 1989

The Honorable Charles P. Pray
President, Maine Senate
State House

Augusta, Maine 04333

Dear Senator Pray:

It is my pleasure to transmit the Commission's Annual Report for 1988 to you. My colleagues and I hope that the information it contains will be helpful to you and the members of the Legislature as you seek to improve the hospital payment system we administer.

As you will see, the cost of hospital care is now increasing by approximately 10% per year. However, because the federal government has severely restricted the amounts hospitals are paid for services provided to Medicare and Medicaid beneficiaries, we expect to authorize Maine hospitals to increase their charges to private patients by more than 15%. This "cost shifting" not only increases the price of private health insurance but also places those hospitals that serve many Medicare and Medicaid beneficiaries at a competitive disadvantage. It is essential that this problem be addressed in any changes to the hospital payment system.

As you will also see, we support many of the recommendations made by the Blue Ribbon Commission that was impaneled to study the regulation of health care expenditures in Maine. The changes recommended by the Blue Ribbon Commission would make the hospital payment system more flexible and address several of the problems we have identified. We are concerned, however, that too little attention has been given to the difficulties that will be encountered in the transition from the current hospital payment system to any new arrangements that may be established. We hope that the lessons we have learned can help make this transition a smooth and successful one.

We look forward to working with you to assure that quality hospital care is available to all Maine citizens at an affordable cost.

Sincerely,
S/Rosalyn Bernstein
Chairman

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

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

COMMUNICATIONS

The Following Communication:

COMMITTEE ON UTILITIES

ONE HUNDRED AND FOURTEENTH LEGISLATURE

March 17, 1989

The Honorable Charles P. Pray
President of the Senate of Maine
State House

Augusta, Maine 04333

Dear Mr. President:

In accordance with 3 M.R.S.A., Chapter 6, Section 151, and with Joint Rule 38 of the 114th Maine Legislature, the Joint Standing Committee on Utilities has had under consideration the nomination of Dana C. Devoe of Orono, for appointment to the Public Utilities Commission.

After public hearing and discussion on this nomination, the Committee proceeded to vote on the motion to recommend to the Senate that this nomination be denied. The Committee Clerk called the roll with the following result:

YEAS:	Senators	1
	Representatives	5
NAYS:		7
ABSENT:		0

Six members of the Committee having voted in the affirmative and seven in the negative, it was the vote of the Committee that the nomination of Dana C.

Devoe of Orono, for appointment to the Public Utilities Commission be denied.

Sincerely,

S/Stephen M. Bost
Senate Chair

S/Herbert E. Clark
House Chair

Which was READ and ORDERED PLACED ON FILE.

THE PRESIDENT PRO TEM: The Joint Standing Committee on UTILITIES has recommended that the nomination of Dana C. Devoe of Orono, for appointment to the Public Utilities Commission, be denied.

The pending question before the Senate is: "Shall the recommendation of the Committee on UTILITIES be overridden?"

In accordance with 3 M.R.S.A., Chapter 6, Section 151 and with Joint Rule 38 of the 114th Legislature, the vote will be taken by the Yeas and Nays.

A vote of Yes will be in favor of overriding the recommendation of the Committee.

A vote of No will be in favor of sustaining the recommendation of the Committee.

Is the Senate ready for the question?

The Chair recognizes the Senator from Penobscot, Senator Bost.

Senator BOST: Thank you Madam President. Madam President, men and women of the Senate. I stand before you this morning to urge your support for the majority recommendation from the Joint Standing Committee on Utilities that this nomination be denied. This was not a decision that the Committee made hastily or made with any partisan rancor. The Committee deliberated for more than eight hours last Friday, accepting testimony from a wide-range of individuals and interest groups, as well as, the individual who selected the nominee and the nominee himself.

Several things were clear from the very outset. Among them that the nominee, Mr. Devoe, a former member of this Body and a former Chairman of the Committee over which I now preside, is a man of many qualities. His reputation is one which speaks of integrity, of strong family values, of his commitment to public service to our state and to his community, and is generally acknowledged and held in high regard. If these qualities had been the primary criteria for confirmation, the consensus might well have been different.

Having said that, however, I must convey to the members of this Body the serious concerns which became apparent through the course of the nomination hearing. To begin with, the candidate was, unfortunately, preceded by public statements made by this administration on Mr. Devoe's behalf that it would "rather see the Commission take a more hands off approach" to Maine's utilities and that it advocated a philosophical departure from the current sitting Commission. Coupled with the lack of experience and technical expertise possessed by the candidate this was a very troubling situation to a majority of the Committee. Other than expressing its dissatisfaction with the occasionally pro-active stance of the Commission, and let me define pro-active as to what it means in this particular context, as defined by the administration: Pro-active is the role that the Commission took. An example of which; the role of the Commission took when it advocated, as you all know, the withdrawal from the Seabrook project by Maine utilities several years ago. A decision that is now lauded by Maine utilities as something that needed to be done for the best interest of the state of Maine. Those same utilities, as you will recall, originally opposed that pro-active stance. So, other than expressing its dissatisfaction with this pro-active role, the administration did not, presumably by choice,

articulate why they wanted this shift and how this shift would benefit the delicate dynamics between utility interests and consumer interests. As evidenced by the diversity of groups who expressed their strong reservations - all acknowledging the various attributes of the candidate, but still expressing their strong reservations, these groups, from the Industrial Energy Consumer Group to the Natural Resources Council and everywhere in between that mass spectrum; the balance between those two entities, the utilities and the consumers, has in fact, as acknowledged by these various groups, been a notable achievement of this Commission, and not otherwise.

While we may not always agree on issues, an example being the decision by the Public Utilities Commission to turn down the Hydro Quebec purchase, I, myself, had some reservations about the Commission's decision, but the Commission, nevertheless, has generally reflected sentiments of both the Legislative and Executive branches on most broad issues. As a quasi-judicial Body it is neither meant to win any regulatory popularity contests, nor to unduly reflect utility concerns or interests over consumer concerns and interests. Should the occasion arise that the Legislature or the Executive deem it necessary to intervene, we of course always have that power to do so. Testimony from both those who are regulated and those who would benefit from that regulation indicated at the hearing that the general thrust of the Commission's activities have had a positive effect, not a negative effect, on the manner on which utilities currently conduct their business in this state.

The Committee concern also focused on both the lack of any experience the nominee had in regulatory matters and the fairly conclusive voting record on utility and consumer matters of this nominee during his three terms in the Legislature. On the first area Mr. Devoe, by his own admission, had no specific background which lent itself to the complexities of utility regulation or oversight and had only passing interest and involvement in much of what has taken place on utility matters on the years, since his departure from this Legislature. When asked questions which required specificity or questions of his general philosophical perspective, the nominee generally deferred. However, the Committee also embarked on what I believe to be a very thorough and thoughtful examination of Mr. Devoe's record of six years on utility and consumers' issues; and while the nominee was very forthright in his explanation of those votes and made compelling reference to the political tenor in which those votes were cast, nevertheless, a clear pattern emerged. A pattern which denoted strong and consistent preference to the interests of utilities. While I must note that there is nothing inherently wrong in assuming that role, each and everyone of us brings to this Chamber a set of perspectives upon which we rendered our individual decision. The nominee's record did not assure the Committee that the necessary objectivity and balance were there should the nominee assume the position of Commissioner.

The issues ranged from opposition to the establishment of both the Consumer Complaint Office within the P.U.C. and the establishment of the Public Advocate's Office, to opposition to prohibiting utilities from including non-completed construction costs in their rates, promoting conservation financing to customers by utilities and prohibiting the importation of spent nuclear fuel. Would the nominee chart a different course as Commissioner?

Perhaps, and perhaps not. After a thorough review by the Committee, the majority remain unconvinced.

Finally, I would like to say that I believe the rigors of the job of Public Utilities Commissioner, and I believe that most members of the Committee would concur, demand a background, experience and an insight into the complexities of the field. In Mr. Devoe, the Governor's Office chose a man with many, many fine qualities, but without the necessary qualifications specifically needed for this job.

So, I would ask that this Body follow the recommendations of the majority of the Committee so that the Governor's Office may begin a thorough, thoughtful and perhaps a more comprehensive search for an individual to fill this important role and do so with the interests of both Maine's utilities and its consumers in mind. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from York, Senator Carpenter.

Senator CARPENTER: Thank you Madam President. Madam President, men and women of the Senate. Yes this is my maiden voyage on the Senate floor and I am pleased to do it at this time with such an important issue to me.

I have risen to urge a "Yea" vote on the confirmation of Dana Devoe for Commissioner of the Public Utilities Commission. I spent seven or eight hours on Friday, in my initial confirmation hearing, with the Utilities Committee. I think that was my first introduction to politics. The first two and a half hours were spent entirely asking Richard Silkman questions, which if I did not know Richard Silkman, I might have thought he was the candidate himself for the Commissioner's position. After we broke for a fifteen minute lunch we did start questioning Senator Devoe. I said Senator Devoe because that is one of the main problems with this confirmation and I mentioned this at the Utilities hearing. If he did not have the word Senator in front of his name, the voting record would be mute and in all testimony that we did hear that day, his voting record is mute. The Maine Times article was brought up, that was explained clearly and carefully that it seemed like it was a complete fabrication of the truth. Every single person that testified for Dana Devoe spoke very highly of him as an individual, as a civic leader, as a man of principle, as an intelligent man, not a man who couldn't learn his job because he didn't have the capabilities. Actually a job description, for if you send out a want ad, it seems to me that it would be incorrect to say, must be well versed in all facets of utilities. It seemed to me that at the hearing there was only one utility in the whole state and that would be C.M.P. No one considered the other utilities, the telephone utilities, the water utilities, the gas utilities. During that hearing I found myself thinking as a freshman Senator, which I am, that maybe I better and maybe everyone here better start watching their votes more carefully. These (gesturing to questionnaires) are starting to come back to me now, piles of them, should I throw them in the waste can, who knows, maybe myself or someone else will be looking for an appointment to a Commission sometime.

As I understand it, these are to help guide you on some of your votes, it is very possible that if you had an overriding number of votes on a certain issue, even though you didn't agree with it one hundred percent, that you should in fact support that issue. You are elected by the people in your district to follow out their orders, not your own. You are not elected to come up and be a one man or woman show.

As the hearing progressed even further, we had the opponents, every opponent that got up said the same thing. Excellent man, very high moral character, absolutely nothing wrong with him. They just kept bringing up his past votes. I ask you, seven or ten years ago is the dollar worth the same as it is today? No. Things change, the economy changes, the direction of the state changes. I think it is unfair and it is not correct to even consider votes in the past that were explained very clearly to me that just because a vote was a "Yea" or a "Nay" there weren't other considerations. I think one of the opponents said that they opposed Dana Devoe because they know he is going to raise electric charges. I didn't know he had that much power all by himself. Some of the other opponents, it seemed to me what they were saying is, 'yes, we are going to oppose Dana Devoe because he is not going to vote the way I want him to.' There were definitely undercurrents. We are not sure how he is going to vote and if we don't know how he is going to vote, we are going to oppose him. The last point that I do want to bring out is during the Committee hearings, if we had the "for" and we had the "against" and we had "neither the for nor against," that would have been the end of the hearing. But the Chair then asked if Mr. Davies wanted to speak, so at that point, they sort of dragged him out of the audience to get up and supposedly after the facts then he spoke in opposition. I think there are probably a lot of other good Senators who want to speak on this issue, so I will close by urging a Yea vote on the confirmation of Dana Devoe. Thank you.

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

Senator BOST: Thank you Madam President. Madam President, men and women of the Senate. Just a couple of points of clarification to my good seat mate, the Senator from York, Senator Carpenter. First, Senator Carpenter questioned perhaps the advisability of asking the representative from the Governor's Office, Mr. Silkman, a series of, at times, very delicate, but, I think, some very probing questions with regard to not only the nominee, but the process by which the nominee was selected. Mr. Silkman, after all, is the individual who conducted the interview of the candidate, who asked the questions of the candidate, who presumably received the answers from the candidate and who selected the candidate. We therefore felt it more than appropriate to make certain that the man that had such a pivotal role in placing former Senator Devoe before the Utilities Committee be allowed to state his case and he did so.

The second point I would like to make as a point of clarification for the Record. Both the House and Senate Chair of the Utilities Committee requested, by letter, the presence of Mr. Davies to the Committee so that he would be available to answer questions with regard to specifically the article in the Maine Times that was drawn into question, and legitimately so, by the nominee and by members of the Committee. It was our understanding, particularly after Mr. Davies had an opportunity to discuss the issues that were brought forth in that article, that there is a great deal more than meets the eye when discussing any one of our voting records in this Body, or in the House. A title can be very deceptive, a statement of fact can have no bearing on the substance of the Bill. I think the Committee, upon scrutinizing Mr. Davies involvement, realized that, and I think it was very appropriate for us to give him an opportunity to speak and for the Committee an opportunity to grill him.

The one point that must be mentioned that the good Senator did not share with this Body is that the Chairs of the Committee made certain that after all was said and done, all the proponents, all the opponents, all those that spoke for or against, including Mr. Davies, that Mr. Devoe had the last word. We gave him an opportunity to reappear before the Committee and respond if he so chose to any of the remarks that were made about his candidacy. He did so and paraphrasing his remarks he indicated to our Committee that he had been dealt with justly and fairly by all members of the Utilities Committee. I think the process worked, it was not an easy task, it is not easy for me to stand before you and urge this particular action on this particular candidate, but the majority of the Committee spoke and I hope that we abide by their decision. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from York, Senator Carpenter.

Senator CARPENTER: Thank you Madam President. Madam President, men and women of the Senate. Just on one point; when Senator Bost of Penobscot mentioned that the Chairs had invited Mr. Davies to testify on the Maine Times article, I didn't realize they had done that, because his first statement was, 'I never read it and I don't know anything about it.' Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Kennebec, Senator Kany.

Senator KANY: Thank you Madam President. Madam President, men and women of the Senate. I rise to speak on this nomination. About a week ago, I got a call from a mutual friend of former Senator Devoe's and mine, who asked if I would please support that nomination and I said I am sure I probably will, if I can't, I will get back to you.

That call started me thinking and of course my first thought was, as most of yours would be I'm sure who know former Senator Devoe, that is; what a nice person he is. He is very kind, he is a marvelous gentleman, he is a very reflective sort of person and he reminds one of a judge. He has that judicial temperament. Thinking about it, I think I would support him for such a position as a judge, but not as a member of the Public Utilities Commission.

I did serve for four years on the Utilities Committee and I was very much involved in much of the legislation of the times when Senator Devoe was present in this Chamber and that legislation is generally well thought of now. At the time a lot of it was controversial and I can remember sponsoring the Public Advocate Bill for Governor Brennan and being very much involved in that debate. Senator Devoe was very much opposed to that concept. That of course is something that almost everyone now appreciates because a public advocate balances just the utilities representation before the Commission. Generally, in the late seventies, the utilities had many lawyers appearing before the Public Utilities Commission, but the other consumers were not generally represented. Occasionally a very large business might have an attorney representing it, and upon occasion, Bruce Reeves might be representing some consumers, but that was about it. There simply was not a balance of representation for the consumers. The Public Advocate and the establishment of that office really provided that balance. Because, from that day on, once that legislation was passed, immediately represented both the business and the residential customers throughout the state. I think that was very important legislation and I understand that Senator Devoe now in hindsight supports that. Unfortunately, we need Public Utility Commissioners who have more than hindsight. We need

Public Utility Commissioners with foresight, because their decisions are just too important to all the customers, including the businesses and the future of our economy. I can remember back in 1979 questioning further investments by our utilities in Seabrook. Central Maine Power was planning on making a large subsequent investment to its first investment in Seabrook and Bangor Hydro was planning on purchasing a portion of Seabrook for the first time and I objected, analyzing it, on the economics of the plan. It should have been entirely clear to those people at that time that demand was done. Three Mile Island had just occurred, it was not a good investment. Public Service of New Hampshire was a tiny, tiny little utility trying to be the major shareholder in building two huge reactors, not just Seabrook I that you hear about today.

I sponsored legislation more than once to try to at least require the Public Utility Commission to disapprove or to approve of purchases of out-of-state electrical facilities by our utilities. Senator Devoe fought that legislation. It was poor economics, a very bad investment decision and on that basis of Mr. Perl, really at a very late date, suggesting to our Public Utility Commission that the Seabrook owner should be retained even when it was going to cost twenty-two cents a kilowatt hour for Seabrook I alone. Can you imagine what a kilowatt hour costs of Seabrook II would be? Very poor investment decisions. In hindsight people realized that.

We were talking a little earlier that when John Rowe came to be President of C.M.P. he really came into an utility industry which had a certain mind set, a mind set in which decisions were made which were not even best for the utility industry in the state or the electrical utilities at all. The decisions were made based on an ideological mind set, in my opinion, and fortunately he changed all of that. John Rowe himself did not really want to see C.M.P. and other utilities in the state get out of Seabrook, but went along with it when our good Public Utilities Commission at that point finally recommended it. Do you know that because of that decision, that the consumers and customers of electric utilities in this state only have to pay almost one hundred and fifty million dollars for electricity from Seabrook I and Two that they will never see? Do you know that the stockholders are absorbing another loss of about fifty million dollars, the stockholders of our three electrical utilities in the state of Maine, for electricity that they will never see? Thank goodness that we had a reasonable Public Utility Commission at that point because we would be absorbing a heck of a lot more, both customers and stockholders. No foresight, lousy investment decision and unfortunately I am afraid looking back that I do see former Senator Devoe standing up for that old mind set and consistently supporting such legislation that did not thoroughly evaluate the economics of any situation. It is for that reason that I am sorry to say that I simply could not support his nomination.

I ask the Governor, in choosing new nominees for the Public Utilities Commission, please look for those who have vision, who look to the future, who understand energy, telecommunications and those who will take a pro-active stance to help our businesses, to help our residential customers in trying to cope with the future. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Sagadahoc, Senator Cahill.

Senator CAHILL: Thank you Madam President. Madam President, men and women of the Senate. Dana

Devoe is one of the most honest, intelligent individuals that I know. I think I have heard that statement about twenty-five times over the weekend, but I couldn't agree more. I served with Dana for one term during the 110th Legislature, my freshman term, and I can tell you very honestly that Dana was one of the most frequently sought out individuals for his advice, his guidance and his friendship. His style, his fair-mindedness, his logical approach to a decision making are assets that any Legislator would do well to emulate. If this Senate rejects Dana Devoe's nomination, I believe we are doing a terrible disservice to the people of the state of Maine. At Friday's hearing, the good Senator from Penobscot, Senator Pray, and today the good Senator from Kennebec, Senator Kany, suggested that Dana is the type of individual well suited for a judgeship. Suited, I assume, because of his fair, logical and judicial approach. A man that is eminently suited to decide the fate of people's lives everyday, but unsuited to disseminate information and make decisions of the regulatory process. I would remind the good Senators of this Chamber that a judges duties frequently are to make and review decisions of the regulatory bodies of this state.

Dana Devoe was chosen by the McKernan administration because of balance, ladies and gentlemen. The current Chairman of that Commission, Kenneth Gordon, has regulatory expertise and Commission Harrington is consumer oriented. Dana Devoe has legislative and judicial experience to make the P.U.C. a fair, unbiased regulatory agency.

During Friday's hearing, Dana openly admitted that he had no preconceived notions or fixed agenda. I can tell you that a Commissioner Devoe would collect and study all the data available and make an honest and fair judgement based on the facts. Dana Devoe's loyalty would be to the facts, not to any one interest or another. Apparently, a majority of the Utilities Committee is not interested in a person capable of independent and unbiased reasoning.

I have also heard that a lot of people feel that Dana Devoe is unqualified to be a member of the Public Utilities Commission. I can only think of each and everyone of us as Senators, what qualification makes us Senators? What qualifies us to make six hundred new laws every year that effect the lives of every citizen in this state? What qualifies a Presiding Officer of this Senate to become Governor, should that situation ever arise? What qualifications did the former administration place on their nominees? I have come, rather recently, to know more about partisan politics than I ever thought I would need to know serving in the State Senate. I have learned to appreciate the role of the majority party more than I ever thought I would. I realize that our partisan differences that we have are necessary and ultimately they lead toward compromise and better government. I hope today that if there are any partisan differences that exist, that we will set those aside so that we can muster the necessary two-thirds vote to override the Utilities Committee's rejection of Dana Devoe and confirm him as the latest member of the Public Utilities Commission. Not because he is a Republican, not because he was appointed by a Republican administration, but because he is an outstanding candidate. A legal mind; Dana received his law school's Moot Court competition award for his outstanding speaking ability and legal reasoning. He has legislative experience, including two years as Chairman of the Judiciary Committee and two years as Chairman of the Utilities Committee. Dana enjoys public service; he has time, and he is willing to

serve the people of the State of Maine once again. He, himself, admits that he would enter into this position with no predetermined agenda and no bias. Dana is exactly the type of person we need to help regulate our utilities. Please vote "yes." Thank you.

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

Senator PRAY: Thank you Madam President. Madam President, men and women of the Senate. I have to first of all stand up and congratulate the Senator from Penobscot, Senator Bost, in the fair and impartial hearing that he did hold last Friday and to all of the members of both branches and of both political parties who sat there throughout the day and into the early evening hearing a fair amount of testimony and also I would say a fair amount of grilling, if you would, by members of the Committee, of the Governor's Office in its interview process, as well as the nominee. I must also state that its rather adamant questioning of those people who both stated not only in support, such as Dr. Silkman, but also those who testified against Senator Devoe's nomination. One particular group came and had made some rather, what I would consider, inflammatory comments and quickly members of the Committee, of the majority party of this Legislature, took them to task for those types of statements.

In reference to the nomination of the Public Utilities Commission that is before us now, more than three centuries ago, Lord Hale, Chief Justice of the Court of England, took notice that certain kinds of businesses had special characteristics. He noted that it is observed that to certain kinds of businesses the common welfare of the population depends, to a considerable extent, on the availability of the services which they render. At that time, those services were ferry services, toll bridges, stagecoaches and highways. The court of England noted that the interest of the people to be harmed if the operation of these enterprises refused to provide service or to discriminate their services to the people of England or tried to charge exorbitant rates for these very same services. It was from Lord Hale's court in England that the foundation of the American Utility Regulatory Commission was established. In Maine, the Public Laws of 1913, by proclamation and by referendum on October 30, 1914, the Public Utilities Commission was created and established forever in Maine's history. It serves today as one of the highest rated Utility Commissions in the country. It receives recognition and awards throughout the fifty states and throughout the neighboring provinces in the north, in Canada. Past Commissioners and present Commissioners have been asked to tour many of these provinces and states and share with them the activities and actions that have taken place in Maine. They are not drawn to those attentions because of their political or philosophical beliefs, but by the fact that they have been recognized fairly by utilities and consumers as one of the leading Commissions in the country. The Utility Commission, when first created at that point in time, involved rail services, water storage, buses and freight transportation. Obviously, time has evolved and time has changed and today we are dealing with basically the utilities that provide electric, telephone, water and sewerage to the communities and to the individuals that make up the residents of our state. The Commission is divided into five divisions; the administrative, legal, finance, technical analysis and consumer assistance. The last division is charged with receiving, analyzing and responding to the complaints of the utilities

customers, our constituency, the citizens of the State of Maine. It is this division that brings to the attention of the Commission the practices of utilities of which the public may be unhappy with. Let's look at the 1987-88 record of the Public Utilities Commission. Maine was the only state in country to complete necessary rate adjustments in 1987 to reflect the Tax Reform Act of 1986 and declining interest rates. The result was fifty million dollars in rate decreases for Maine rate payers. The Commission initiated an investigation of competition in the telecommunication industry and issued a proposed rule. The draft rule embodies a system of access charges that permit open competition where competing carriers can provide network components at cost that are equal to or less than the cost of the existing utilities. The access charge structure was designed to preserve universal service, of which the Legislature in the past has taken a positive position on. It is these types of decisions that are at the basis of my concern as a member of the Utilities Committee and to where the Governor's nominee stands. Let me make it perfectly clear that no one questioned Senator Devoe's integrity or character. What is at debate here today is philosophy. A philosophy in which we in the confirmation process must determine as to whether or not the nominee meets not only character and integrity, but also that he meets the philosophy that is to the best interest of the citizens of this state.

The Senator from Sagadahoc, Senator Cahill, asked the questions of what qualifications do we sit here in this Chamber and pass judgement and make laws. The qualifications are the Constitution. The Constitution of our state determines by what right we have to sit in this Chamber and it gives us not only the right through the elective process, but it also charges us with responsibilities. In the confirmation process, one of the responsibilities is to weigh the nominees, to make a judgement as to what is in the best interest of our constituency. Each and everyone of us sit here on nominee after nominee, issue after issue, and make that type of determination. If one would want to check the track record, this particular Senator has voted far more against his own Governor, the past Governor, on nominations than I have this Governor of an opposite political party. I don't sit in this Chamber to reflect my Governor's opinion on a nominee. I stand in this Chamber to reflect the opinion of my constituency as I best perceive it. When I agreed with Governor Brennan, I supported his nominees and when I opposed him, I voted against his nominees. I carry that same charge with this Governor not because of a political label, because he is of the opposite political party, but because of my belief of what that individual best does for my constituency. I think that the Senator from Sagadahoc, Senator Cahill, has attempted in her remarks to paint this with a broad political partisan brush and let me assure you that is not the case. Each and every one of us have to evaluate in our own minds as to the individuals who we think could best represent our point of view and I want to make the Record clear that the Democratic party has not taken a partisan or party position on this nominee. In a caucus, the colleagues were told that they had the prerogative of voting any way that they wanted to, we presented the reasons that we came to our conclusion and our decision.

Let me share with you some of the things that I had considered in the hearing last Friday. As the Dean of this Chamber, I served with Senator Devoe, I served in this Chamber when he was a member of the

other Body. I had the chance to work with him because we are a co-equal Houses here and you need to get legislation through the entire process to be able to achieve success. I served with him in this Chamber for four years and he was in the majority party and I the minority. We debated issues. A number of the issues we debated were ones that I had either sponsored or cosponsored. Some of the issues, of which I am about to read to you, I voted with him on and some of them I voted opposite him. But, my concern is that I went through his record and I could not find where he ever left the utilities. Issue, after issue, after issue, a clear philosophy was established that he voted unanimously with the utilities. When I looked at other consumer oriented issues, Landlord Tenant legislation, Anti-Trust legislation, I could not find where he had crossed the line to the other side on at least one or two occasions. Let me share with you the record that you have all heard about. On March 1, 1977, he voted to reject L.D. 127, "An Act Relating to the Telephone Directory," which would require telephone directories to correct errors or leaving off names in the directory, which is now a law. At that time it did not become law. March 10, 1977, he voted in opposition to L.D. 352, "An Act Granting Implied Powers to the Public Utilities Commission," this would grant them the powers to rule on insulation fees charged by New England Telephone. On May 19, on two occasions he voted in opposition to L.D. 208, "An Act to Establish a Consumer Complaint Office Within the Public Utilities Commission," and I have already pointed out a couple of their accomplishments in the 1987-88 fiscal year. On June 3, 1977, he voted against L.D. 1314, "An Act Prohibiting a Utility From Automatically Passing on Fuel Cost Increases to Customers by a Fuel Cost Clause." On June 24, 1977, on June 28, 1977, he voted in opposition to L.D. 1258, "An Act to Prohibit Telephone Charges for Information or Directory Assistance Calls." On July 7, 1977, he voted against a Resolution directing the Joint Standing Committee on Energy and Natural Resources to study the various ways in which wood could be used as an energy source. On July 11, 1977, he voted to oppose L.D. 1867, "An Act to Provide Lifeline Electrical Services." February 27, 1978, he voted to oppose L.D. 2107, "An Act to Provide Residents of the Island in Casco Bay With Additional Transportation Services." On May 2, 1979, he voted to oppose L.D. 1043, "An Act to Provide Lifeline Electrical Services," not to be confused with the vote two years before. The one in 1979, that Bill would have guaranteed electrical services to those individuals sixty-five years of age and older and with an income of less than sixty-five hundred dollars a year. On May 10 and May 14, 1979, he voted against L.D. 783, "An Act to Require the Public Utilities Commission to Study the Safe and Proper Decommissioning of Nuclear Generating Facilities in Maine." On May 17, 1979, he voted to reject L.D. 1041, "An Act to Prohibit Rate Discrimination by the Public Utilities." May 18, 1979, he voted to oppose L.D. 1444, "An Act to Reduce the Minimum Public Utilities Monthly Electric Charge to Two Dollars to Prohibit the Use by Electrical Utilities of an Estimated Meter Reading as a Basis of Customer Billing." June 14, 1979, he voted against L.D. 1590, "An Act to Prohibit Unreasonable and Unjust Fuel Charges on Being Passed onto Consumers." February 12, 1980, he voted to oppose L.D. 1922, "An Act to Provide Low Interest Loans for Middle and Lower Income Families for Residential Energy Conservation Improvements."

March 11, 1980, he voted in favor of a Bill, "An Act Relating to Bonds and Notes Issues by Sanitation Districts." He proposed an amendment to that Bill and argued in opposition to an amendment which would have provided municipal referendums on bond issues dealing the sanitation districts to oppose referendum questions.

On March 12, 1981, he voted to oppose L.D. 472, "An Act to Require the Office of Energy and Natural Resources to Make Analysis of Sources of Fuel for the Replacement of Maine's Power Entitlement from the Maine Yankee Nuclear Power Plant." April 16, 1981, he voted to oppose, L.D. 1203, "An Act to Limit the Storage of Spent Fuel at Nuclear Reactors." On May 13 and 14, 1981, he voted to oppose An Act to Prohibit the Importation of Spent Nuclear Fuel." On March 25, 1982, he voted against L.D. 1911, "An Act Concerning On-sight Storage of Spent Nuclear Fuel." March 30, 1982, L.D. 2022, he voted in opposition to "An Act to Create State Set Aside Program for Petroleum Products." March 31, 1982, he voted in opposition to L.D. 2113, "An Act to Provide That Corporate Reorganizations Effecting Public Utilities be Subject to the Approval of the Public Utilities Commission." On March 31, 1982, he spoke against L.D. 2121, "An Act to Require Public Utilities to Submit a Plan to the Public Utilities Commission to Provide Financing to Customers for Energy Conservation and Renewable Resources." On April 1, 1982, he voted in opposition to L.D. 2121, "An Act to Require Certain Public Utilities to Submit a Plan to the Public Utilities Commission to Provide Financing to Customers for Energy Conservation and Renewal Measures." On April 1, 1982, he voted in opposition to "An Act to Prohibit Public Utilities from Including Uncompleted Construction Costs in their Rates."

The votes that I have referred to are not all the ones that are on the paper that I have. Some of these I voted with him on and some I voted against. But, I was fluctuating on various issues, weighing them, but I couldn't find issues where he supported the concerns of a balanced approach as the Senator from Sagadahoc, Senator Cahill, stated that the Governor wanted in this nominee.

A balance, the question was a balance. Well, the present Commission, or the position that the Commission is now in, the Chair, is a person who I supported in that nomination. He was nominated only because the Senate rejected the previous nominee by the Governor, Dr. Perl, an individual who I testified against after looking at his record and his relationship with the utilities and what his stands were on utility issues. Again, an individual who had a record of being totally with the utilities. The same arguments were advanced that he was knowledgeable, that he was a fair person who could provide a balance, that he wasn't predetermined to any position. Well, I was hoping at his hearing Senator Devoe would convince me that his insight, his philosophy in dealing with the consumers of utilities had somewhat faded since his days in this Legislature. He did explain some of his votes, he stated why he was for certain issues, but I did not hear him state that his votes were wrong. He only explained the reason he voted the way that he had. The argument was made that if all of these Bills had passed, the utilities would have been in an adverse situation. But, we are all veterans of this process, the vast majority of us, and we understand that all of it does not pass. We are talking about a six year history of rejection after rejection of the concerns of the people of this state. Storage of Nuclear fuel, at one time on one of the Bills that I read,

Maine Yankee was the only licensed facility in the United States to store spent nuclear fuel. The Bill was to limit the amount of fuel that they could store to that of the life of the plant itself. He voted against it.

At the hearing, Senator Devoe made the statement that telephones were a necessity, I would like to respond in kind to the comments of the Senator from York, Senator Carpenter, who said the only thing that one would walk away from that hearing with the feeling that C.M.P. was the only utility in the state. There were a number of questions and concerns expressed about this same voting record which talked about telephone communications. It talked about this opposition to municipal utility districts, which he also voted against. It was pointed out, of course, that there have been none established, although you may want to argue that Dirigo is basically a company that represents municipal utility districts.

As we went through the list and we went through all the different types of utilities, the statement that telephones were a necessity, how can a man vote against lifeline legislation that guarantees a person who is sixty-five years or older with an income of less than sixty-five hundred dollars a year an electrical service. He never said that he was wrong or that we ought to have it. When I look at the rulings and the decisions that are made, I feel very comfortable, though it's not pleasant, in opposing the nomination, because my concern is the thirty-four thousand constituents that I represent. Piscataquis County is the second eldest county in the state, it is the second poorest county in the state.

I am concerned about a philosophy that is being approached by this administration for a hands off approach to regulating public utilities. Let the utilities run the show and the P.U.C. will deal with what specifically the Legislature tells them they can and cannot do. If it is spelled out in statute, in bold print not legislative intent, but clear direction as to what they can and cannot do, then the Commission will deal with it. That is the philosophy that this nominee and this administration wants to bring to the Public Utilities Commission.

I had the opportunity since they advanced the philosophy argument themselves so much on the hands off approach to it. They talked about the balance of the Commission. Then was it the intent of this administration to reappoint Cheryl Harrington to guarantee that balance? They gave the answer that I thought they would, Cheryl Harrington is not up for consideration at this time because her term of office is another year and so many months, but if they are so concerned about the balance, then why weren't they willing to commit that they wanted to keep that type of balance? They didn't have to say that it would be Cheryl Harrington, but that they would be looking for somebody of that consumer orientated type of philosophy. They were silent on that as well. I know that it was not easy for anybody sitting on that Committee that day to vote against the nominee because of his character and I want to compliment the Senator from Sagadahoc, at least on that portion of her remarks of quoting us right as to the question of the integrity and the character of the individual. That has never been the question. The question is to each and everyone of us now as we prepare to vote on this nominee, does he bring the philosophy which best represents your constituency? Thank you.

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

Senator COLLINS: Thank you Madam President. Madam President, men and women of the Senate. The good Senator from Penobscot, Senator Pray, has indeed

done his homework well and brings to us the record which for many of us are difficult to dispute, since we do not have them available to us at this moment. I would like to elaborate a little bit upon the things that I think are most important in determining the qualifications of the nominee.

I thought about it a bit and I put down at the top of my list character. I thought to myself we have a situation here, unlike the nomination of John Tower before the Congress recently, where everyone seems to agree that Dana Devoe is a man of the highest personal integrity and a man whom we deeply respect. We agree on that. I would suggest to you that is indeed the most important consideration for all of us to consider. Secondly, why we have to measure, if we can, the ability, the experience of the candidate to perform the job in which he will be entrusted. If we look at the history of the nominees to the Public Utilities Commission, I think that we will find that the majority of them were not professional regulators. I recall very well when we looked among certain businesses and professions for candidates and we looked first to attorneys. To my knowledge there was always an attorney that was a member of the Commission. That attorney frequently did not have a background in litigation involving utilities.

Secondly, we used to look at business people, accountants, we looked at engineers. Once upon a time we used to think it was very important to have either a civil or electrical engineer as a member of that Commission because we were concerned with the technical parts of distribution, of electricity and telephone service and it was important to have someone who perhaps understood those things. That is the type of background that most of the members of that Commission through the years have had. Unfortunately, there aren't many colleges or universities that offer a degree in utility regulation. They offer law degrees, engineering degrees and business degrees, but they don't offer a course in utility regulation. It seems to me that those who find the candidate unacceptable for this reason are way out of line if we look at past history and if we look at the capability that a person of Mr. Devoe's background can live up to. It seems to me that we sort of ignored things.

I had the occasion to serve in this Body in 1977-78 and I served on the Public Utilities Committee. As I recall, on the Commission at that time was Ralph Gelder, Lincoln Smith and if memory serves me right, Mr. Smith was an educator, I think he had a background in economics, but he was primarily an educator. Mr. Gelder came to us from the Superintendency of Banking. I remind you of these things because this was a situation that did in fact exist and it was in the memory of many of us that are currently in the Body today.

I submit to you that first on character Dana Devoe wins. Secondly, I am satisfied, as I think many of you are, that he has the capability to perform the duties of a Commissioner. Third, we look at the record and the good Senator from Penobscot, Senator Pray, has indeed examined that well and I find it difficult to debate the record with him since I don't have immediate access to all the material that he has in front of him. I do, however, remember one of the things that was mentioned in the Lifeline Bill, which appeared many times before this Body. I remember that many of the people at that time opposed that Bill because it transferred the cost of it to the rest of the rate payers that the utility would be sending bills to. In essence, the argument went something like this: We are transferring a bill from

the elderly to those of low-income with families who can ill afford it. There was no alternative to transfer that money to a fund that was provided by state funds from the general fund and included everybody in it. It was a transfer within the rate structure. Many people felt that was not appropriate, they said we are giving something to the elderly and that is a good thing, but we are putting an increased burden on other low-income people who can ill afford it. Knowing Dana, I suspect that he may have felt that way also. Another Bill I recall had to do with the provision of "pass-through" of fuel costs, except it wasn't exactly called that at that time. I believe it was a Bill that said to the utility managers, don't pay too much for fuel oil we want to make sure that it doesn't go through at some inflated cost to the consumer. I had a hard time myself trying to understand that because I couldn't see why a utility company who was in business to make money would want to pay an excessive amount for fuel. It seemed to me that they would operate as business people usually do and try to get the most for their buck. That particular situation has been resolved, as all of you know, because it is now an automatic pass through of costs only on fuel and utility companies have been operating under that rule for some time.

I suggest some of these things to you because I think if you remember the years 1977, 1978, 1979 and 1980, you will recall it was a time of escalating costs for energy and a great many of us were deeply concerned about it. Many people came up with ideas that they wanted to try and these were translated into Bills. Some of these things were probably good, some were bad, some eventually became part of law and some did not. I think in determining what happened during that time, we have to remember it in the context of that period in our economic history, because it was difficult and energy costs were soaring and it was advantageous for Legislators to present a Bill that would solve that problem in some fashion. I suggest to you that not all of that legislation was advisable and much of it did not pass because this Legislature agreed that it ought not to pass. That is the record that we are dealing with when we consider Dana Devoe. That is the time frame that we are talking about when we talk about Dana's record.

The other thing that has been brought to the attention of the Senate has to do with philosophy. Well, I'm not quite sure that Dana has a set agenda, any particular theory that he would describe as his philosophy. I remember Dana as a very moderate, modest, responsible person and it seemed to me that he had a sort of middle of the road approach to most legislation. I don't particularly find that particular philosophy objectionable. It seems to me that the Governor of this state, the Chief Executive, has some prerogative appointing the people that he appoints to the various positions in state government. It is pretty much an accepted idea that the Governor gets to appoint his Commissioners, his people that feel like-minded in policy making positions. I am not convinced that the P.U.C. is entirely a policy making position. I think that this Legislature creates an environment in which the P.U.C. performs its duties and we do that with legislation, we pass laws, and the Commission makes judgement calls based upon those laws. I think that from time to time some of us forget that among the Commission's duties are to see that utility companies operate at a fixed level of income. In other words, they make a determination on how much money the investor owned utility should make, it might be

twelve percent one year or fourteen percent another year. That determines the rate setting structure and that money has to be enough so that the utilities can provide for the appropriate service, the consumers can be well served and it is sort of a balancing act that the Commission is charged with. It is not charged with the task of just providing for one part of our public sector, it has to provide for all parts. It seems to me that the Commission does that, it has to do it, it has to do it by law. It seems to me that the Governor has the prerogative of identifying people whom he thinks share his views, with whom he is satisfied as to their ability and their character and their record. It seems to me that Dana Devoe fits that test rather well.

It was interesting for me to listen to a part of the testimony the other day and today in this Chamber and to have people suggest that they thought Dana Devoe might make a good judge. Well, I have been under the impression that part of the duties of the Commission were of a quasi-judicial nature. They make judgement calls, they do act as a judge. Let us assume that Dana Devoe was nominated to the court and that this Body approved him and then there was a case that came to that court from an utility that disputed a case and Judge Devoe would be making a judgement call on the Public Utilities Commission. Yet, we have said that he didn't have the ability, the talent, to serve on that body and yet we let him review the determination that the body has made. I find it very difficult to make much sense out of that point of view.

I hope today we will think long and hard about this nomination and I hope that we will override the Committee Report and confirm Dana Devoe. Thank you Madam President.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Kennebec, Senator Kany.

Senator KANY: Thank you Madam President. Madam President, men and women of the Senate. I wish to respond to some of the remarks of the good Senator from Aroostook, Senator Collins, particularly about the Public Utilities Commission being in an adjudicatory body. It is basically an adjudicatory body and it should be and can be now fortunately more since we have the office of the Public Advocate to make certain that the public's interests are kept in mind. But, beyond that, there is a difference between being a judge and being a member of the Public Utilities Commission because the decisions made by the adjudicatory body of the P.U.C. revolve around not what did happen as a result of its decision, but what will happen as a result of a decision. In other words, what is important is foresight, not hindsight. A judge in a Judicial Body, in the Judicial Branch, would primarily be looking at something that occurred before and examining it. Thank you.

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

Senator MATTHEWS: Thank you Madam President. Madam President, men and women of the Senate. I sometimes enjoy, as I listen to the debate on issues on the floor, going to the Statutes, the Laws of our State, and looking at how decisions were made back a long time ago. I found it very interesting looking at the Public Utilities Commission and listening to the debate and I would share with you a very short little part of the law: "The Public Utilities Commission, its Organization and General Powers. The purpose of this is to insure that there is a regulatory system for public utilities in this state, which is consistent with the public interest and with other requirements of the law. The basic purpose of

this regulatory system is to assure safe, reasonable, and adequate service at rates which are just and reasonable to the customers as well as the utilities." Ladies and gentlemen of the Senate, I found it very interesting to hear the supporters of this nomination say that we shouldn't look at the record, that is an interesting way to set policy.

Ladies and gentlemen, as Senators of this Chamber, sworn to uphold the Constitution and to do what is right for the people of the state, consumers, the rate payers, the residential rate payers as mentioned by the good Senator from Kennebec, and also business rate payers. We have to look at the records and the record is why I will vote against this nomination today. On every consumer Bill, while the good gentlemen of the high integrity and I am sure with compassion for the things he believes, but on every Bill effecting the consuming public this particular gentlemen said no. Ladies and gentlemen, we have to look at that. When we created the Public Advocate, as mentioned by previous speakers, to protect the using and consuming public the good gentleman, Mr. Devoe, said no. Ladies and gentlemen, I will look at the past history and the record because that is my job and with all due respect I can't support confirmation today. Thank you.

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

Senator BALDACCII: Thank you Madam President. Madam President, men and women of the Senate. I know Dana Devoe very well, he is a friend of mine and a person of great qualities and a great amount of class. I always have the utmost respect for Dana in that regard and I take particular umbrage at the administration for miscasting Mr. Devoe in this type of a position which he does not have tools to use in order to operate the automobile. The special thing about the Utilities Commission, as having served as Chairman of that Committee for two terms, is a great deal of knowledge in utility matters and utility law. Whether it is with the Federal Energy Regulatory Commission, the Federal Communications Commission, with the groups that bring petitions before the Supreme Court as any decision by the Utility Commission is appealable to the Supreme Court. I think it is a great umbrage that I cast at the administration in this particular appointment of Mr. Devoe, because Mr. Devoe is a good and decent person with a tremendous amount of respect and integrity, but he lacks the tools in order to see that the job of the Commission, which regulates cable television and regulates New England Power Pool and regulates a whole host of other areas, he does not have the background. One of the biggest problems that I had, and I probably would be voting with Senator Devoe on many of these issues that were being discussed in his record. I probably would be arguing with the good Senator from Kennebec, and I have in the past, and the other good Senator from Kennebec, but the fact of the matter is when you are looking at a Commissioner who is making decisions and operating a staff that makes reports to the Commissioners, I want somebody who knows and has the tools in order to keep the staff and the bureaucracy in check. It takes a long time before that decision comes to the Commission to make a decision on. They have staff investigators, they have hearing officers, they have reports in front of the Commission. If you have a Commissioner who does not have the tools in which to decipher the meat from the bologna or the wheat from the chaff, then the fact of the matter is you are going to have a problem there because anybody would be able to propose an argument of any technical nature and put that person at a disadvantage.

It is with that umbrage I think that when the administration is choosing future nominees for the Commission, and I stood here in this Chamber and supported Mr. Perl, who was proposed by the current administration, for the basic fact that there was a gentleman who knew, he had qualifications, he had expertise, he could rule the Commission. That is so important over there. It is not Democratic or Republican, it's a bureaucracy that is over there that just keeps going on, and on, and on and the only ones that can change that are going to be the appointees that this administration makes or the future administration makes and it is going to be incumbent upon those people to have the tools to work with.

That is the problem with this particular nominee in this particular position. I think that is something that should be considered. I have supported Mr. Perl in his nomination and others, but this particular case I don't think it is so much the burden of Mr. Devoe. Mr. Devoe doesn't have to explain anything and as far as any other member of this Chamber, the reason that we are here today is because we are elected by the people to represent them and that is the standard that we have to operate by today in this Chamber and that is what gives us the right to make laws. We are here reviewing a nominee because the people aren't going to be voting on it. We are going to be making a decision about that nominee and I have a tremendous amount of respect for Mr. Devoe and I don't think Mr. Devoe's reputation and qualifications should be tarnished, but the job needs to have somebody that has the tools in order to operate and oversee and administrate and help out Mr. Gordon or whoever else is at the Commission to make sure the Commission does what it is supposed to do. That is why we need to have somebody with expertise. So, I will not be supporting the nomination of Mr. Devoe on this particular capacity. Thank you Madam President.

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

Senator GILL: Thank you Madam President. Madam President, men and women of the Senate. I rise to speak on behalf of the nominee today, because I think I probably know Dana Devoe longer than anyone else in this Body. Over twenty years ago, my husband and I, Dana Devoe and his wife, and Elmer Violette and his wife all belonged to a group in our church to help families understand good ethics, good morals. It was a wonderful experience for us all to be involved in.

If you want to talk about history today, I have to say that twenty plus years ago, I didn't look at Elmer Violette as being in the position he is today, nor did I look at Dana Devoe rising to the position that he is today, nor did I ever even consider that I would be in the position that I am in today and so history does play games with us. I think that we have to consider history, but we also have to consider what transpires throughout the years and what experience and what learning and education has done to us over the years to bring us to the point where we are today.

I think Dana Devoe is very highly qualified. At the hearing, people talked about admiration for the man, they talked about him as being a man of character, they talked about his integrity, they talked about his training, they talked about him not being biased and not being an activist. I think the problem that we face here today is that Dana Devoe is not an activist, he is not biased in that area. If he came in and he was biased for one low-income, one advocacy group, then he probably would be voted on today very easily, but I think the fact that he comes

in and people can't pin-point him and they can't stick him up and hold him up and say this is how he is going to vote on everything is the problem that we face here today.

I appreciated Senator Pray going through the list of L.D.'s. I would like to know, since he put so much effort into going through that list, whether there was any additional information as to how the Public Utilities Commission testified on behalf of all those L.D.'s at the hearings that were held. I would like to know where the Governor of the state of Maine was and whether his people testified on behalf of those L.D.'s as they came before the Legislature. I would also like to know what the cost of all of those L.D.'s to the state would have been had all of those L.D.'s passed. I think that there was a considerable amount of money involved and we all know how legislation is handled. One party puts one piece forth, another party puts another piece forth and we bargain and we negotiate to try to see which piece can win out and which L.D. will go forth. I think there is a lot of information that we have not been given. We have been given some information, but we haven't been given the whole picture.

I read in the newspaper that a former member of the other Body was at the hearing and took issue with the nominee and he mentioned that there were at least thirteen people in the room that he felt were more qualified. I think that is a matter of perception, I think each of us here, all thirty-five members of this Body and each of us has our own perception of who is a wonderful Senator, who is a so - so Senator, who could be better placed doing something else. I think for us to say that our perception is the only correct perception is improper. I can look at former appointees, I voted against a Commissioner that came up before a Committee that I served on in my years here and it was eight years ago, but I know I gave my reasons for voting against that person because he was too involved with labor that I didn't think he could fulfill the job in which he was being put up for and it was a former Senator, David Bustin, who had served with us in the House. I didn't feel he could make that change, and I told him it is like putting a fox in the chicken coop and I don't think you can do it. I think it is too difficult for you to care about the whole management situation and not just look at labor. He proved me wrong, I have since gone to David and said I was wrong and that he did an admirable job while you were there. I think it is unfair on this appointment to not confirm him. I think he has the ability, he has been trained in the legal profession and I would dare say that some of the people that we have put up for appointments in the past have not been trained as well or don't have the responsibility and the admiration from a number of people that Dana Devoe has. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Androscoggin, Senator Gauvreau.

Senator GAUVREAU: Thank you Madam President. Madam President, men and women of the Senate. It is not often that I rise to speak on confirmation matters in general, nor do I often speak on areas of utility regulation, of which I have, at best, a modicum of experience and knowledge. So, I would address my remarks basically in two themes this afternoon.

The first point I want to address in the consternation which has been visited upon certain membership dealing with misgivings that some Senators have expressed regarding this particular nominee for this particular position in light of the general high esteem in which he is held by members of this Body. It seems to me that the remarks of the Senator from

Kennebec, Senator Matthews, and the remarks from the Senator from Penobscot, Senator Baldacci, were more to the point when they indicated that their concerns were based upon the crafting of energy policy for our state and not upon the qualifications of this particular individual. I do not have the pleasure of knowing Senator Devoe, but from all accounts he is a man of keen intelligence, high intellect and a genuine commitment to public service and those are all attributes that he has received due to his many years of public service. So, clearly we are not debating in many respects, we are not debating whether or not former Senator Devoe should hold a responsible position in Maine state government. It is clear that the people of his district have felt he was entitled to and deserved that representation, that honor, in the past and from all accounts he in fact is a good candidate for many positions in state government.

The question, of course, is what should be appropriate energy policy in our state? In that respect I think this Body has a very important and legitimate role to play in surveying the particular philosophy, or particular views, which a particular nominee would have for this particular position. Clearly, we would have difficulty and in fact would probably not arrive at a modicum of cerebral propinquity, we would not agree upon a uniform policy on energy. It seems to me given the divergent ranks and view points which are represented in this esteemed Body, but that really isn't the issue. The issue is should the people of the state of Maine, represented through the Executive Branch of government and also represented in the Legislative Branch of government be entitled to a thorough discussion and representation of their views in the confirmation and nomination process? Clearly, if this nomination is rejected there will be some people who will be keenly disappointed. I can respect that because those people know Senator Devoe and respect his intellect and respect the abilities he could bring to the Public Utilities Commission. From my impression from the testimony and the evidence that I have heard today, it would seem to me that rather than being an individual of no particular philosophy on utility matters, my impression is that Senator Devoe would probably be rather conservative and tend to be aligning himself on many matters of utility regulation. That is appropriate for him to take that position. I think many of us in the Chamber have some reservations about that position. We would probably opt for a public policy which was perhaps more consumer oriented. I think it was very fair and appropriate for critics of the Committee vote to ask and to take to task members of the Committee as to would they really want to view this nominee solely upon his public record which occurred several years ago.

It seems to me that an equally important question had to be asked and I gather was asked by members of the Committee and that is what is his current position? What is his thinking now? It seemed to me that if there had been a pronounced or significant change in his thinking as presented by his testimony and the evidence of record before the Joint Standing Committee on Utilities, it seems to me that would be germane and probative and evidence which all of us in this Body should consider.

Ultimately, I suspect that there is an inescapable element of subjectivity inherent in our review of any Governor's nominations. We simply do not have a set of clear discernable criteria by which we will assess all nominees. We will in fact bring to this process our own particular philosophies, our

own particular view points. I do not find that offensive, I find that totally congruent with the constitutional scheme of government which our forefathers and foremothers have crafted for us. It seems to me, to take the other approach to indicate that not only would the Chief Executive have some prerogative in choosing the nominees, because clearly I would hope that all of us in this Chamber would strongly endorse the leadership role of the Chief Executive in making nominations for public offices, but it should not be ultimate suzerainty, the Chief Executive should not have the only say. There is, after all, a coordinate articulation of public policy aspect here which we have to appreciate. This Legislature does have an important role to play. I suspect that if a majority of the populous in our state take umbrage or offer a different policy point of view, than that expressed by the majority, there will in fact be a change in two years. That is the evolutionary concept of legislative democracies and that is totally appropriate.

I rise this afternoon not so much to speak on this particular nominee as far as whether I will vote for or against him, but I think it is important that we consider the legitimate role the Legislature has to play in assessing the appropriateness of a particular nomination. This is not, I do not think, an act of brazen partisanship. Clearly, a majority of the members of the Democratic party would have a significantly different perspective on matters not only in utility regulation, but in a broad array of areas than members of the Republican party. That is appropriate. So, I think we have a legitimate role to play.

The second point I would speak to, however briefly, would be on the remarks of the Senator from Aroostook, Senator Collins, in his excellent and reasoned presentation to us today. Senator Collins expressed the viewpoint that the P.U.C. would be more of an adjudicatory body and clearly it does have quasi-adjudicatory responsibilities. As many of you may know, I had occasion during the course of the last two years to Chair a blueribbon Commission which surveyed the appropriateness and the efficacy of health care regulation in Maine. Ultimately, our Commission has recommended a significant restructuring of health care regulation and we are recommending a reconstitution of the rate setting body which oversees the health care regulation in Maine and we purposely viewed and took from the Public Utilities Commission certain principles of organization when we styled our new rate setting body. We viewed that this type of independent agency should have a clear role in policy development. So, there is a fusion of its adjudicatory and policy making roles and that, in fact, is *sui generis* in this type of agency. So, I think that there is a legitimate policy role to be played by the P.U.C. and it is for that reason precisely that many of us who would stand on our own personal political philosophies to want to have more of a consumer orientation in the representation of the Commission. I find that is not, in fact, an affront to the legitimate prerogative of the Executive to make appropriate nominations for public office, it is simply an appropriate and legitimate exercise of our responsibility as Legislators to review and pass judgement upon the appropriateness of particular nominees for particular positions as we see is constant with the needs of the people of the state of Maine. Thank you.

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

Senator EMERSON: Thank you Madam President.

Madam President, men and women of the Senate. I rise in support of the nomination of Senator Devoe. I had the privilege to serve with him in the 109th and 110th Legislatures and since that time I have had occasion to work with him on a professional manner. I believe that he is well qualified, in my experience with him, to take this position. I also believe he has one of the most important tools for this position, good judgement. Whether or not he is up to speed in the current utility issues, I don't know, but I do believe that for the time that he spent being a lawyer, the time he spent here in this Body and serving on the Utilities Committee, I believe he has the capability of listening to the pros and cons on the issues and making judgement with the right judgement. Whether or not he is pro utility or pro consumer, I don't know, and I don't know that it makes a lot of difference to me anyway, because the P.U.C. Commission sets the rate of return that a utility can make and it is a fairly narrow range, I believe it is in the ten to twelve percent area. So, on that basis it seems to me that anything that is good for utilities has got to be good for consumers as a whole in the end. Maybe some particular group of consumers, but I never did believe that we should be settling social issues in the rate making process anyway.

There seems to be some concern here of the administrations position on policy on utility issues, which I guess suggests to me that if Dana was approved for this position that he would be a pawn of the administration and I don't believe that is so. I believe Dana is capable and would be his own man. So, I think it would be a mistake not to confirm Senator Devoe for this position. Thank you.

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

Senator DILLENBACK: Thank you Madam President. Madam President, men and women of the Senate. I have no prepared presentation today, but I have been listening very carefully to all the fine presentations that have been made. I think it is difficult to vote in a certain way, sometimes. I know today it is going to be very difficult for many of my Democratic friends to vote against Senator Devoe. I served with him in the 110th and as a freshman before his Committee I was impressed with his intelligence and his ability to govern the Committee and how he operated. He is a very fine gentleman. He has done a good job for the state and I think he would make an excellent person on this Commission.

Unfortunately, you know what the vote was, it was six to seven, and you talk about philosophy. There are eight Democrats on the Committee and there are five Republicans. Every Republican voted for him and one Democrat voted for him and I think there are more Democrats in this Body that would like to vote for him. When you talk about philosophy, that is a difficult thing, but we have a Governor who was elected by the people of the state. He is supposed to represent the people and he is supposed to put candidates in office that represent not only his views, but the views of the majority who voted for him. It is very difficult to vote against some items, it takes courage. I have had to vote against many things I would have liked to voted for, but you can't always do that because you have to look at what is best for the state, what's best for business, what's best for the community, and what's best for the people that have to pay the bills, and the poor people.

So, I think it is rather unfortunate that this whole thing has come about this way. This is the

second person that you people have turned down, so don't talk about philosophy to me because we know what the philosophy is. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Knox, Senator Brawn.

Senator BRAWN: Thank you Madam President. Madam President, men and women of the Senate. I did plan to rise and I did plan to rise near the end and now I am glad that I did.

I was not here when Dana Devoe cast those votes, I am here now and, God willing, I will be here when we confirm someone so we can help the consumers of this state at filling out this role. Last year I was here when this Body rejected the nomination of Lewis Perl, who was very qualified for the position. Now, I feel you are going to reject Senator Dana Devoe, another qualified nominee, who would certainly balance the Public Utilities Commission. Just answer me one question please. What specifically do you want?

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Hancock, Senator Perkins.

Senator PERKINS: Thank you Madam President. Madam President, men and women of the Senate. I rise like many of my previous speakers because I served with the candidate. He is a Maine man, like many of you, I have gently suggested to the Governor that perhaps we have some people within the confines of our state who could well serve when we were searching outside our state. As for being pro utility, I am not sure, but I suspect that a man with as many in his family as Dana had, could be anything but pro utility. After all, when you fight for the hot water and the telephone with the family that he had, it would seem to me you would be on the other side of the utility question.

Did I like everything that Dana stood for? I hated his pipe, it could stand alone today and probably still does. Good President Joe Sewall made it a point after a while that he couldn't even ride with Dana unless he would leave the pipe at home, because there was not room enough to breathe and have the pipe at the same time. Our President, the President Pro Tem, and I fought vigorously with Dana Devoe over a title search piece of legislation. I wouldn't remember if we hadn't won, we did with their help. So, it isn't that I have always agreed with Dana Devoe, quite the opposite. It is the fact that regardless of who won or lost, he had the ability to look forward and project that there was a bigger factor in this Legislature and in this state than a single issue. This I credit to Mr. Devoe because I think he would have lent this facility to the Public Utilities Commission and I am hoping you will join me so that he may yet, though I have my doubts.

I think if we had a job description then it would be easier for all of us to stand here because we then, in one form or another, say what variances there were and these variances then disqualified this or that candidate. I do know that many of my utilities and others are saying to me that I hope soon you will have some third member on this Commission because indeed it does need the three members. The balance that is lent to you and me, as a member of this Legislature, because not always do you and I agree on particular issues, but we agree that we are here for the betterment of the state. That balance I think Dana was capable of as a member an appointed member of the Public Utilities Commission, because definitely his opinion would not always agree with the existing members or with future members because there is a balance reached and I am hoping that we could reach this balance here today.

I think it is a sad, sad commentary on us and our abilities to look ahead as well as look back on the candidates and the future of our good state if we must look through the microscope in every minute point, qualify or disqualify on this or that single issue. So, while I urge you to do what I hope is the proper thing for our state, put aside our twenty-twenty hindsight and move forward with a third member on the Public Utilities Commission, whom we all know, have all praised, and know has the ability to grow as our state grows. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Sagadahoc, Senator Cahill.

Senator CAHILL: Thank you Madam President. Madam President, men and women of the Senate. I rise and I will be very brief because I know that we have talked the morning away and I would remind the good Senator from Hancock, Senator Perkins, that he is a bit remiss in forgetting to mention that while we have talked the morning away, Spring has arrived. More to the point, on the voting record of Dana Devoe. I asked Dana when I was talking to him to justify some of his votes when he was a Senator and particularly the one about the Public Advocate and he explained to me that he voted against establishing a Public Advocacy because at that time there was a Public Advocacy within the Public Utilities Commission and he felt that was a duplication at great expense, a three hundred thousand dollars expense, to the citizens of the state of Maine.

I asked him about the Lifeline Bill, which would give electrical service to the elderly and he explained to me, as the good Senator from Aroostook, Senator Collins, put it well that, that Bill would have increased the burden of the rate payers at the other end of the age and economic spectrum. I asked him about the legislation known as the CWIP Bill, which was quite controversial, and he told me that not only did he oppose that legislation, but the then Governor Brennan and also the Public Utilities Commission did too.

I would like to point out to you, as far as Dana Devoe's record, that during the 110th Legislature, both years, there were one hundred and sixty-eight Bills before the Utilities Committee then. One hundred and sixty-five of those Bills were voted out of Committee unanimously. Now, were all those Bills pro utility Bills? No, they were not. Of the list that Senator Pray, of Penobscot, speaks of so eloquently, how many actually passed this Legislature and why didn't he mention the Bill that Dana Devoe voted for that is recognized as the cornerstone of our regulatory system today, the Act which has provided incentive for alternative energy in Maine, that is the Cogeneration Bill. But that is Dana Devoe the Senator. Today we are talking about Dana Devoe the Commissioner of the Public Utilities Commission. An appointee by the Chief Executive Officer of the State of Maine. 'How would he vote' someone asked? The Bangor Daily News said how he would vote, "He did not approach the P.U.C. with any set agenda. I have no preconceived notions, no fixed agenda."

We have talked about Dana Devoe's integrity, his intelligence, his character, yet we are suggesting that Dana does not have the integrity to be independent in his actions as a Commissioner for the Public Utilities Commission. Anyone here suggesting that doesn't know the same Dana Devoe that I know.

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

Senator PRAY: Thank you Madam President. Madam President, men and women of the Senate. To set the record straight, what the Senator from Sagadahoc,

Senator Cahill, meant to say about the reason that Dana Devoe voted against the consumer assistance division within the Public Utilities Commission is because in the Executive Branch there was already a Public Advocate position, not that there was already one in the Public Utilities Commission, just to clarify that particular point.

I do want to respond to several of the comments that have been made and I will start with the good Senator from Aroostook, Senator Collins, who knows far more about utility rate structure than I do. He is a Director on Maine Public Service, Maine's northern most utility, which also services my district as well as does C.M.P. and Bangor Hydro. I was the sponsor of the Hydro Quebec legislation, a cosponsor of the CWIP Bill, and a number of other legislative proposals that have gone before the Public Utilities Commission, of which we have discussed here today, I have been involved with. I have a great deal of interest in the energy future of our state.

The prerogative of the Governor, I think the Senator from Androscoggin, Senator Gauvreau, responded to that adequately, but still the comments come up even after his remarks that it is the Governor's prerogative. We also have a responsibility as well and that is our prerogative. The comments by the Senator from Cumberland, Senator Dillenback, again the broad partisan political paintbrush. I ask of my Democratic colleagues, has anybody here been told how to vote? If you have been, if you have been told that this is a partisan political vote and you are to cast your vote in support of the Chair of the Committee and myself, because that is the "Democratic Position" then I wish you would rise and say that, because it is my understanding in the caucus that I attended with my colleagues, the question was asked as to why we voted the way we did and we related the concerns that we had as well as we have here today.

The Senator from Cumberland, Senator Gill, mentioned her long relationship with the Senator from Penobscot, Senator Devoe, and also she mentioned the Senator from Aroostook, Senator Violette, who served as the Assistant Minority Floor Leader in this Chamber. What she didn't mention is that after the completion of his term in the Legislature, he was nominated for the Public Utilities Commission and was rejected by the Executive Council, controlled by the Republicans. Are we to stand here today and say that it was partisan politics? Was he qualified or was he not? Only those individuals who served at that time can answer that question and we all know that Senator Violette went on to become a member of the State Supreme Court and he is an Active Retired Justice now and held in high esteem by, I would imagine, everyone in this Chamber.

It has been mentioned that the Governor should have whomever he wants to serve as a Department head or as a Public Utility Commissioner. A Commissioner of a department serves at the pleasure of the Governor. A P.U.C. Commissioner serves for six years, they can't be removed by the Governor. This is a nomination to a six year term, a period in which significant policy changes may occur. The purpose that our Constitution gives the check and balance in government is to make sure that a deliberate process takes place and that we consider each and every individual. Sometimes we will agree. I look across this Chamber and I see people who have voted with me against nominations, as well as I see people who have voted opposite me for nominations. But, I never questioned the purpose for which they voted. Did they vote because of their political party

affiliation or did they vote because they thought that the individual was not the proper individual, or that they thought the person was the proper individual?

The Senator from Aroostook, Senator Collins, also made reference to the recent effects in Washington, D.C. on the Tower nomination. I happened to be in the Senate Chamber that day in Washington and I have to commend our own United States Senator, George Mitchell, for the remarks and the tenure in which he made those remarks on that process. The obligations and responsibilities to the United States Senate and those are just as true with us here today. I could steal a line from the last election, Dana Devoe is no John Towers. There was nobody that ever questioned his integrity, so let's not make a reference that this is Democrats running roughshod over an administration and a political partisan fight. We have been given the charge of weighing this nominee and we must cast a decisive vote.

The Public Utilities Commission now has three members and will have until a nominee is confirmed, unlike the previous vacancies which Dr. Perl and Dr. Gordan were nominated to fill. The previous Commissioner had left the state for other employment and at this time the existing nominee, as far as I understand, is still serving. I did not list a single issue and advise for people to vote for or against him on a single issue. I gave you a list of twenty-five Bills that I was concerned about.

The Senator from Sagadahoc, Senator Cahill, is correct on the reference of the numbers of Bills, but she also made reference to the term in which Senator Devoe had moved up from the Utilities Committee to the Judiciary Committee. A new Chair had taken over, the Senator from Penobscot, Senator Trotsky, had become Chair of the Utilities Committee and it was in that year that a wide variety of legislation passed. I asked the Senator from Penobscot, Senator Devoe, in the nomination process, why he assumed that may have happened. 'Could it have happened because you are now Chair of the Judiciary Committee and you did not have time, as we all understand for those who serve on more than one Committee, to fully be involved in both?' The Judiciary Committee at that time was the busiest of all the Joint Standing Committees. At that time that they had more than two hundred Bills in a session, they did the Errors and Inconsistency Bill and anybody who served on the Judiciary Committee can well remember that these people would stay in from nine in the morning until midnight or past dealing with that type of legislation. The basic response that Senator Devoe gave was: that perhaps was true because he had the responsibility of the Judiciary Committee, as its Chair, and that he may have gone along with the rest of the Committee because of his commitment to the Judiciary Committee.

I would repeat, one more time, to make sure everybody clearly understands that every member of this Chamber has the right to cast their vote on this nominee as to what they feel is best for their constituents, what they feel is the best for the State of Maine. Thank you Madam President.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Hancock, Senator Perkins.

Senator PERKINS: Thank you Madam President. Madam President, men and women of the Senate. I appreciate being made aware that Spring has sprung and if I didn't have the reminder I guess I would know it now because I see how much longer the days are getting. Thank you.

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

Senator BOST: Thank you Madam President. Madam President, men and women of the Senate. I will try to make my parting remarks brief, but I, like Senator Pray, wanted to correct some of the things that were said by various members of this distinguished Body. Before I do that I wanted to share with you, lest members of this Body believe that we acted in the Utilities Committee on this nomination with particular bias and that we are bringing those biases here, that are not substantiated by any constituent groups, I would like to share with you a couple of perspectives here.

The first, from the Natural Resources Council of Maine. Not all of you will agree nor do I agree with everything of the Natural Resources Council of Maine. But, some of their remarks bear repeating. "We are taking this position in opposition because we believe this nomination is critical, in light of the importance of the energy issues that will be decided in the immediate future by the Public Utilities Commission. We do not believe that Mr. Devoe has the necessary background and qualifications to make objective, informed, and wise decisions on these issues. As part of our assessment of Mr. Devoe's qualifications to serve of the P.U.C. for the next six years, we reviewed his Legislative record on utility related issues." I read this so that this Body recognizes that our Committee was not the only entity within this state that took a long hard look at this nomination and its implications. They go on; "His voting record gave us no confidence that Mr. Devoe will protect the interest of Maine's rate payers, in fact, the voting record demonstrates a reasonably consistent pattern of voting in alignment with utility interests." That record has been enumerated here this afternoon and I don't intend to go into it again. Finally they say; "This record of alignment with utility interests is not appropriate for one who will sit as an adjudicator on a quasi-judicial agency. While Mr. Devoe cast many of these votes nearly a decade ago, these are his only actions on the record which indicate his views on the questions he will be asked to regulate as a Commissioner." As Senator Matthews stated earlier, we have got to consider the record, we can't skirt that issue, it is too important.

On the other end of the political spectrum, if you will, was the Industrial Energy Consumer Group. These are not people that typically stand up at public hearings on anything that I promote and speak in favor of, but they took a long hard look at this nominee as well. They stated, and I might note a difficult position for them to be in, they were not comfortable opposing someone who could eventually be on the Commission. They stated: "The I.E.C.G. is a group of large industrial energy customers in the State of Maine ranging from plastics manufacturing to wood manufacturing to paper companies. We all depend very heavily on a reliable and economical supply for electricity, we want to pay our fair share, but we must remain competitive or close our plants and send jobs out of state. In the last five years, we have spent considerable time and dollars dealing with the P.U.C. members on a variety of issues, including rate design, fuel clause adjustment, avoided costs, conservation, and cogeneration. Our group has also discovered the tremendous complexity in these areas in our very rapidly changing economy. We have had the pleasure of working with some very knowledgeable Commissioners and while our view has not always agreed with theirs we were able to discuss intelligently and thoroughly these very important issues." They conclude by stating; "The I.E.C.G. experience taught us how very complicated and

involved the subject of energy rates and energy rate regulation can be and we feel that a regulator without good knowledge in this field, would not be able to handle the job in the best interest of the people of the State of Maine. We have no problem with Mr. Devoe as a person." That has been stated here by virtually every member of this Body. "But, we strongly feel the position of Public Utilities Commissioner needs to be filled by a person more knowledgeable and experienced in energy related and regulatory matters." There you have some perspectives from opposite ends of the spectrum, if you will.

The good Senator from Sagadahoc, Senator Cahill, said that if we vote today to deny this nomination, we will be doing a terrible disservice to Maine people. I think that has got to be the overstatement of this debate thus far today. My question to her and others to ponder perhaps, when we are talking about balance, should we place in statute three separate roles for three separate Commissioners on the Public Utilities Commission? One for the technically gifted and technically trained? One for the Legislatively adept, which would perhaps apply to Senator Devoe? One for the consumer oriented? Think what precedent that would set. The issue of balance here, ladies and gentlemen, should include the qualities that each individual Commissioner brings to that Commission, not a given orientation or predisposition on an issue, but a balance. That is what we are talking about. It was stated earlier by the good Senator from Cumberland, Senator Gill, that had this nominee been totally consumer oriented it somehow would have breezed right through this Chamber. I can tell you, ladies and gentlemen, that I don't believe that is so. As Senator Pray alluded to in some of his earlier remarks there was testimony that came before our Committee that both Democrats and Republicans on our Committee felt did a disservice to the reputation and the record of Senator Devoe, we called them to task on that because we wanted a fair and balanced hearing and that is what Senator Devoe received.

Another Senator stated that: "what is good for utilities is good for consumers." I maintain, ladies and gentlemen, that is precisely the philosophy that Senator Kany alluded to earlier that greeted John Rowe when he entered this state several years ago and that John Rowe made every effort to correct. When he left, I think he left it in pretty good stead. Let's not go back. The Kennebec Journal issued an editorial before we went in to make our decision on Friday. I certainly am not in agreement with many of the things that the Kennebec Journal editorializes on, but I found that some of their comments were worth noting. It is entitled, "P.U.C. Nominee Needs Scrutiny: Though Gubernatorial appointments get relatively little attention in the press, they are among the most significant choices a Governor can make. In the case of the P.U.C., three Commissioners wield considerable power. Over the past two decades the P.U.C. has become one the state's most important agencies making decisions that will effect Mainers' for years to come. The Legislature and the Governor often defer to the P.U.C., as they did in the Hydro Quebec case, and since they serve six year terms, the performance of the Commissioner rarely comes up for review. Will Devoe be able to balance fairly the interests of residential, consumers, businesses, and the utilities? That is one question the Committee should consider. Another, is whether Devoe is suitably qualified, aside from his brief service on the Legislative Committee, he has no obvious

credentials." We delved into that, ladies and gentlemen, and we made our decision.

Finally, to quell some of the claims here today that this was a partisan decision that this is based on some weilding of partisan muscle, that is not the case, ladies and gentlemen. To give you an idea of how often times the arguments change with the players that are being discussed at the moment, let me quote to you from a press release that was issued from the other party back in 1984 about then nominee, David Moskovitz. It stated: "There must be a delicate balance of pro consumer and pro utility voices on the Commission, the present Commission does not appear to be balanced. The Commissioner vacancy should be filled with someone knowledgeable about utility regulation." I maintain to you that Mr. Perl, although I objected to some of his record, some of the implications of his nomination, had experience. Mr. Gordon, a Ph.D. in Economics, has experience. We looked at Mr. Devoe, regardless of our personal feelings, we decided that he didn't and that is how I am basing my vote today. Thank you.

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

THE PRESIDENT PRO TEM: The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators BERUBE, BRAWN, CAHILL, CARPENTER, COLLINS, DILLENBACK, EMERSON, GILL, GOULD, HOLLOWAY, LUDWIG, PEARSON, PERKINS, RANDALL, TWITCHELL, WEYMOUTH, WHITMORE

NAYS: Senators ANDREWS, BALDACCI, BOST, BRANNIGAN, BUSTIN, ERWIN, ESTES, GAUVREAU, KANY, MATTHEWS, PRAY, THERIAULT, TITCOMB, THE PRESIDENT PRO TEM - NANCY RANDALL CLARK

ABSENT: Senators ESTY, WEBSTER

PAIRED: Senators DUTREMBLE, HOBBS

17 Senators having voted in the affirmative and 14 Senators having voted in the negative, with 2 Senators being absent and 2 Senators having paired their votes, and 17 being less than two-thirds of the Membership present, it was the vote of the Senate that the Committee's recommendation be SUSTAINED and the nomination of Dana C. Devoe, for appointment to the Public Utilities Commission, was DENIED.

The Secretary has so informed the Speaker of the House.

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

ENACTORS

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

Emergency

An Act to Increase the Total Authorized Indebtedness of the Kennebunk Sewer District from \$3,000,000 to \$8,000,000

S.P. 135 L.D. 220

(C "A" S-6)

This being an Emergency Measure and having received the affirmative vote of 27 Members of the Senate, with No Senators having voted in negative, and 27 being more than two-thirds of the entire elected Membership of the Senate, was PASSED TO BE

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

On motion by Senator GAUVREAU of Androscoggin, ADJOURNED until Tuesday, March 21, 1989, at 10:00 in the morning.

ONE HUNDRED AND FOURTEENTH MAINE LEGISLATURE
FIRST REGULAR SESSION
30th Legislative Day
Tuesday, March 21, 1989

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

Prayer by Chaplain Birger Johnson, Maine Youth Center, South Portland.

The Journal of Monday, March 20, 1989, was read and approved.

Quorum call was held.

PAPERS FROM THE SENATE

The following Communication:

Maine State Senate
Augusta, Maine 04333
March 20, 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 denied, upon the recommendation of the Joint Standing Committee on Utilities, the Governor's nomination of Dana C. Devoe of Orono for appointment as a Commissioner for the Public Utilities Commission.

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

Was read and ordered placed on file.

The following Joint Resolution: (S.P. 317)
JOINT RESOLUTION MEMORIALIZING THE CONGRESS OF THE UNITED STATES TO ALLOW STATES MORE DISCRETION IN UTILIZING FUNDING AVAILABLE FROM THE ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH BLOCK GRANT CONTAINED IN THE ANTI-DRUG ABUSE ACT OF 1988

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

WHEREAS, the Alcohol, Drug Abuse, and Mental Health Block Grant Program contained in the federal Anti-Drug Abuse Act of 1988 has established significant changes in the requirements imposed on the several states for utilization of these block grant funds; and

WHEREAS, some of these changes reflect the needs of larger states and do not reflect the needs of smaller states, such as Maine, whose alcohol, drug and mental health problems and solutions are not the same as those of the larger states; and

WHEREAS, it will be particularly difficult for Maine to comply with or effectively utilize available funding in connection with the following new requirements:

1. The required allocation of substantial funds for services to intravenous drug users. The diversion of significant funds for services to intravenous drug users in Maine is out of proportion to the severity of the problem in Maine in relation to other alcohol and drug problems. Funding which could have been available for other necessary programs will revert back to the Federal Government, resulting in a significant loss of essential services;

2. The requirement that a substantial portion of block grant funding be reserved for new services. The Anti-Drug Abuse Act of 1988, as amended, requires