

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred And Fourteenth Legislature

OF THE

State Of Maine

VOLUME I

FIRST REGULAR SESSION

December 7, 1988 to May 10, 1989

with my brother and we both went up, we both played ball in 1955 up there.

I know what Tony has meant to a lot of young people playing ball. I still don't think I fouled that night Tony -- over in Washington Academy nor do I think I traveled in Calais. However, he only called two or three fouls against me and he would always be quick with the words "don't do it." It is a relationship I can't put into words but I know that this award is richly deserved. I just want you to know Tony that I regard you as one of my very best friends and I am tickled to death that you got the recognition you so richly deserve. (applause)

The SPEAKER: The Chair recognizes the Representative from Baileyville, Representative Tammaro.

Representative TAMMARO: Mr. Speaker, Ladies and Gentlemen of the House: Well, I have got to say I am deeply honored to know each and every one of you as I do here. I am a friendly fellow and I have gained a lot of friends over the years, I really have. I had the pleasure of refereeing for John McSweeney, Bill O'Gara and Nat Crowley. Nat was the toughest to referee but it has been a pleasure.

Before I go any further, had I known or had an inkling that this was going to take place today, I would have definitely made my wife, broken ankle and all, come here to Augusta. I am not so sure I wouldn't have had the kids all come too. I am deeply honored with this great honor that was bestowed upon me by you people.

When the Maine Athletic Directors called me I said, there are so many other people that really warrant this honor, but I was the one selected. They said I was selected unanimously and I was very, very proud. I am proud of the statements you people have made about me and I am proud to be your friend and I am happy to be here with you. May God Bless each and every one of you. Thank you all very kindly. (applause, the audience rising)

At this point, the Sergeant-at-arms presented the Order to Representative Tammaro.

The SPEAKER: The Chair would like to extend congratulations as well and wish him the best. I have a feeling that he will still be referring, I agree with Representative Look.

The Chair recognizes the Representative from Baileyville, Representative Tammaro.

Representative TAMMARO: Mr. Speaker, Men and Women of the House: May I add -- you know I tell my wife every spring but she doesn't believe me now -- I tell her, "this is going to be my last year, this is going to be my last year" but I keep working out the year round and she always says, "Why are you working out, why are you working so hard?" Well, I figure I am going to get one more good year, so I will be back next year, the Good Lord willing.

Subsequently, the Order was passed and sent up for concurrence.

(Off Record Remarks)

On motion of Representative Swazey of Bucksport, Adjourned until Thursday, April 20, 1989, at nine o'clock in the morning.

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

In Senate Chamber
Wednesday
April 19, 1989

Senate called to Order by the President.

Prayer by Father Renald LaBarre of St. Philip's Catholic Church in Auburn.

FATHER LABARRE: Let us pray. Almighty and everlasting God, You alone work great wonders, pour down upon us and upon all those committed to our care, the spirit of Your saving grace, that we may truly please You and grow under the continual grace of Your blessing.

O Lord, may we be the recipients of Your choicest favor as we strive to use the time allocated to us for the growth and welfare of Your people. Look favorably, O Lord, on this day and the prayers we offer, for You are the giver of peace and the lover of charity. May no plan of our leaders ever go astray, nor dream of civic improvement not come to fruition, nor prayer be in vain.

May we be ever faithful in the execution of our duties and responsibilities and be an inspiration in improving the quality of life of our citizenry. Ever-loving Father, stretch forth Your hand and bless us that as one, we may glorify Your name and in justice and peace, build Your kingdom on earth. Amen.

Reading of the Journal of Yesterday.

Off Record Remarks

PAPERS FROM THE HOUSE
Non-concurrent Matter

Bill "An Act to Strengthen Financial Disclosure Laws and to Prohibit the Acceptance of Honoraria"

S.P. 437 L.D. 1154

In Senate, April 12, 1989, referred to the Committee on LEGAL AFFAIRS and ORDERED PRINTED.

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

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

House Papers

Bill "An Act to Create a New Crop and Livestock Research and Development Program"

H.P. 869 L.D. 1208

Resolve, to Assess the Needs of the Equine Industry and to Establish a Commission to Study the Creation of a Statewide Horse Council

H.P. 878 L.D. 1221

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 Increase Access to Long-term Care Services"

H.P. 864 L.D. 1203

Bill "An Act to Issue a General Fund Bond Issue in the Amount of \$5,000,000 to Fund a Property Tax Deferral Revolving Fund for Elderly Persons"

H.P. 879 L.D. 1222

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

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

Bill "An Act to Add Consistency to the Retail Sales Law"

H.P. 862 L.D. 1201

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

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

Bill "An Act to Clarify the Definition of Solid Waste Disposal Facility" (Emergency)

H.P. 861 L.D. 1200

Bill "An Act Concerning All-terrain Vehicle Use in State Parks"

H.P. 865 L.D. 1204

Come from the House referred to the Committee on ENERGY AND NATURAL RESOURCES and ORDERED PRINTED.

Which were referred to the Committee on ENERGY AND NATURAL RESOURCES and ORDERED PRINTED, in concurrence.

Bill "An Act to Assure that Probation Does Not Lessen Consecutive Terms of Imprisonment"

H.P. 867 L.D. 1206

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

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

Bill "An Act to Create a Minimum Lot Size for Mobile Home Parks Not Located on Public Water and Sewer Lines"

H.P. 866 L.D. 1205

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.

Bill "An Act to Prevent the Destruction of Lobster Gear"

H.P. 863 L.D. 1202

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

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

Bill "An Act to Permit Municipalities to Set Lower Debt Limitations"

H.P. 874 L.D. 1217

Bill "An Act to Provide for Biennial Review of the Aroostook County Budget"

H.P. 877 L.D. 1220

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 Amending the Guidelines for the Elderly Householders Tax and Rent Refund Program and the Elderly Low-cost Drug Program"

H.P. 868 L.D. 1207

Bill "An Act to Amend the Household Tax and Rent Refund Act"

H.P. 873 L.D. 1216

Bill "An Act Relating to Uniform Taxation of Certain Woods Equipment"

H.P. 875 L.D. 1218

Bill "An Act to Create a Property Tax Option for Elderly Homeowners"

H.P. 880 L.D. 1223

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

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

RESOLUTION, Proposing an Amendment to the Constitution of Maine to Require the State to Pay Property Taxes on State-owned Property

H.P. 851 L.D. 1183

Committee on STATE AND LOCAL GOVERNMENT suggested and ORDERED PRINTED.

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

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

Bill "An Act to Provide Access to Camps"

H.P. 876 L.D. 1219

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

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

Joint Resolution

The Following Joint Resolution: H.P. 881

JOINT RESOLUTION COMMEMORATING THE 100th

ANNIVERSARY OF THE FOUNDING OF THE NATIONAL

SOCIETY OF THE SONS OF THE AMERICAN REVOLUTION

WHEREAS, on April 30, 1889, the National Society of the Sons of the American Revolution was founded in New York City; and

WHEREAS, that society was incorporated by joint action of the House of Representatives and the Senate of the United States under Public Law 59-214; and

WHEREAS, the Sons of the American Revolution is the largest and one of the oldest male hereditary genealogical societies with membership restricted to lineal descendants of an ancestor who rendered actual service as a soldier, sailor, marine, militiaman or minuteman in the forces of the Continental Congress or of one of the several original colonies; and

WHEREAS, the aims of the society are to protect the Constitution of the United States of America; to perpetuate Constitution Day, Flag Day and the Bill of Rights Day; and to encourage historical research and the preservation of documents and relics pertaining to the American Revolution; now, therefore, be it

RESOLVED: That We, the Members of the 114th Legislature now assembled in the First Regular Session, take this opportunity to congratulate the members of the National Society of the Sons of the American Revolution on the Centennial Anniversary of that organization and to extend to each our best wishes; and be it further

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

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

COMMUNICATIONS

The Following Communication: S.P. 454
114TH MAINE LEGISLATURE
April 18, 1989

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

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

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

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

Which was READ and referred to the Committee on JUDICIARY.
Sent down for concurrence.

Off Record Remarks

SENATE PAPERS

Bill "An Act to Sustain and Enhance Children's Mental Health Services"

S.P. 455 L.D. 1240

Presented by Senator BUSTIN of Kennebec
Cosponsored by President PRAY of Penobscot,
Speaker MARTIN of Eagle Lake and Representative BURKE of Vassalboro

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

Presented by Senator ESTES of York
Cosponsored by Senator PERKINS of Hancock,
Representative RYDELL of Brunswick and
Representative FOSTER of Ellsworth
Which were referred to the Committee on APPROPRIATIONS AND FINANCIAL AFFAIRS and ORDERED PRINTED.

Sent down for concurrence.

Bill "An Act to Expand the Maine Job Training Partnership Program"

S.P. 462 L.D. 1247

Presented by President PRAY of Penobscot
Cosponsored by Speaker MARTIN of Eagle Lake,
Senator PERKINS of Hancock and Representative HUSSEY of Milo
Committee on APPROPRIATIONS AND FINANCIAL AFFAIRS suggested and ORDERED PRINTED.

On motion by Senator CLARK of Cumberland,
referred to the Committee on LABOR and ORDERED PRINTED.

Sent down for concurrence.

Bill "An Act Relating to Licensing of State Social Workers"

S.P. 465 L.D. 1250

Presented by Senator BUSTIN of Kennebec
Cosponsored by Representative DAGGETT of Augusta and Representative NORTON of Winthrop
Which was referred to the Committee on BUSINESS LEGISLATION and ORDERED PRINTED.
Sent down for concurrence.

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

Presented by Senator GILL of Cumberland
Cosponsored by Senator CLARK of Cumberland,
Representative REED of Falmouth and
Representative HANDY of Lewiston
Which was referred to the Committee on EDUCATION and ORDERED PRINTED.
Sent down for concurrence.

Resolve, to Study the Development of a System of Ecological Reserves in the State

S.P. 456 L.D. 1241

Presented by Senator PEARSON of Penobscot
Cosponsored by Representative MICHAUD of East Millinocket, Representative O'DEA of Orono and Representative LORD of Waterboro
Which was referred to the Committee on ENERGY AND NATURAL RESOURCES and ORDERED PRINTED.
Sent down for concurrence.

Bill "An Act to Establish the Medicaid Advisory Committee on Mental Health"

S.P. 467 L.D. 1252

Presented by Senator BUSTIN of Kennebec
Cosponsored by President PRAY of Penobscot,
Representative MANNING of Portland and
Representative CLARK of Brunswick
Which was referred to the Committee on HUMAN RESOURCES and ORDERED PRINTED.
Sent down for concurrence.

Bill "An Act to Provide for More Equitable Reimbursement to Intermediate Care Facilities for the Mentally Retarded"

S.P. 458 L.D. 1243

Presented by Senator BUSTIN of Kennebec
Cosponsored by Representative BURKE of Vassalboro, Senator RANDALL of Washington and Representative PENDLETON of Scarborough
Committee on HUMAN RESOURCES suggested and ORDERED PRINTED.

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

Bill "An Act to Amend the Maine Human Rights Act with Regard to Housing Discrimination against Families with Children" (Emergency)

S.P. 457 L.D. 1242

Presented by Senator MATTHEWS of Kennebec
Cosponsored by Representative KETOVER of Portland, Representative PRIEST of Brunswick and Representative KILKELLY of Wiscasset
Bill "An Act to Encourage the Continuation of Obstetrical Services in the Medicaid Program"

S.P. 463 L.D. 1248

Presented by Senator RANDALL of Washington

Senate at Ease
Senate called to order by the President.

Which were referred to the Committee on JUDICIARY and ORDERED PRINTED.
Sent down for concurrence.

Bill "An Act Regarding Appeals Under the Workers' Compensation Law to Prevent Substantial Injustice to Injured Workers"
S.P. 466 L.D. 1251
Presented by Senator BUSTIN of Kennebec
Which was referred to the Committee on LABOR and ORDERED PRINTED.
Sent down for concurrence.

Bill "An Act to Amend the Law Governing the State Capitol Commission" (Emergency)
S.P. 461 L.D. 1246
Presented by Senator CLARK of Cumberland
Cosponsored by Speaker MARTIN of Eagle Lake, Senator PERKINS of Hancock and Representative WEBSTER of Cape Elizabeth
Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.
Which was referred to the Committee on STATE AND LOCAL GOVERNMENT and ORDERED PRINTED.
Sent down for concurrence.

Bill "An Act to Amend Commercial Driver License Laws"
S.P. 460 L.D. 1245
Presented by Senator TWITCHELL of Oxford
Cosponsored by Representative POULIOT of Lewiston, Representative STROUT of Corinth and Representative MACOMBER of South Portland
Which was referred to the Committee on TRANSPORTATION and ORDERED PRINTED.
Sent down for concurrence.

Off Record Remarks

COMMITTEE REPORTS
House
Ought Not to Pass

The following Ought Not to Pass Reports shall be placed in the Legislative Files without further action pursuant to Rule 15 of the Joint Rules:

The Committee on FISHERIES AND WILDLIFE on Bill "An Act to Change the Muzzle-loading Open Season on Deer"

H.P. 506 L.D. 686

The Committee on LEGAL AFFAIRS on Resolve, to Allow Rickie Harvath of Blaine to Bring Civil Action Against the State of Maine

H.P. 204 L.D. 284

The Committee on TRANSPORTATION on Bill "An Act Relating to the Expiration of a Valid Certificate of Inspection on a New or Used Motor Vehicle"

H.P. 526 L.D. 711

Leave to Withdraw

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

The Committee on LABOR on Bill "An Act to Provide Rest Breaks for Certain Persons Exempted from the Minimum Wage Law"

H.P. 53 L.D. 74

The Committee on LABOR on Bill "An Act to Allow All Employees to Observe Religious Holidays"
H.P. 162 L.D. 227

The Committee on LABOR on Bill "An Act to Amend the Labor Laws Regarding Union Strike Activities"
H.P. 166 L.D. 231

The Committee on LABOR on Bill "An Act to Provide Unemployment Compensation for Teachers Aides and Certain Noninstructional Employees of Educational Institutions"
H.P. 483 L.D. 663

The Committee on TAXATION on Bill "An Act to Include Unorganized Territories in the Tree Growth Tax Laws"

H.P. 248 L.D. 360

The Committee on TRANSPORTATION on Bill "An Act Related to Window Film Applied to Motor Vehicles"
H.P. 242 L.D. 354

Ought to Pass

The Committee on STATE AND LOCAL GOVERNMENT on Bill "An Act to Correct Errors in the County and Municipal Law Recodification" (Emergency)
H.P. 859 L.D. 1199

Reported that the same Ought to Pass, pursuant to Joint Order H.P. 738.

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.

The Committee on STATE AND LOCAL GOVERNMENT on Resolve, for Laying of the County Taxes and Authorizing Expenditures of Lincoln County for the Year 1989 (Emergency)

H.P. 870 L.D. 1213

Reported that the same Ought to Pass, pursuant to Joint Order H.P. 9.

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

Which Report was READ and ACCEPTED, in concurrence.

The Resolve READ ONCE.

The Resolve TOMORROW ASSIGNED FOR SECOND READING.

The Committee on STATE AND LOCAL GOVERNMENT on Resolve, for Laying of the County Taxes and Authorizing Expenditures of Sagadahoc County for the Year 1989 (Emergency)

H.P. 871 L.D. 1214

Reported that the same Ought to Pass, pursuant to Joint Order H.P. 9.

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

Which Report was READ and ACCEPTED, in concurrence.

The Resolve READ ONCE.

The Resolve TOMORROW ASSIGNED FOR SECOND READING.

Divided Report

The Majority of the Committee on BUSINESS LEGISLATION on Bill "An Act Relating to Confidentiality of Investigative Records of Boards and Commissions"

H.P. 232 L.D. 316

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-51).

Signed:

Senators:

HOBBS of York
WHITMORE of Androscoggin

Representatives:

SHELTRA of Biddeford
ALLEN of Washington
CONSTANTINE of Bar Harbor
REED of Falmouth
LIBBY of Kennebunk
STEVENS of Sabattus
TELOW of Lewiston
MARSTON of Oakland

The Minority of the same Committee on the same subject reported that the same Ought Not to Pass.

Signed:

Senator:

BALDACCI of Penobscot

Representatives:

GRAHAM of Houlton
GURNEY of Portland

Comes from the House the Majority OUGHT TO PASS AS AMENDED Report READ and ACCEPTED and the Bill PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-51).

Which Reports were READ.

Senator BALDACCI of Penobscot moved to ACCEPT the Minority OUGHT NOT TO PASS Report in NON-CONCURRENCE.

Senator KANY of Kennebec requested a Division.

On motion by Senator BALDACCI of Penobscot, supported by a Division of at least one-fifth of the Members present and voting, a Roll Call was ordered.

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

Senator BALDACCI: Thank you Mr. President. Mr. President, men and women of the Senate. The Bill that you have before you from the Committee on Business Legislation is a Bill that would keep confidential the file of any licensee under the division of Business Regulation until there was a court case or until it got to the point where they would have to hold a public hearing. Then, through the press, it would become open, both to the person that they were investigating and to the public. The problem with that Bill is that it damages the public health and safety. An example of that is an oil burner's license. Recently, you have read where a particular oil burner had to be pulled or reviewed from the market and it was done prematurely, not with a full complete investigation, because of the potential health and safety problems that were associated with it. It is the same reason why we should not allow this mask of confidentiality in these areas where there is licensing that involves the public health and safety. The only one area which is confidential in those investigations, that we now have presently under state law, is the Human Rights Commission.

In those proceedings, under the Human Rights Commission, we are talking about employment. As far as the licensing under Business Regulation, we are talking about public health and safety issues, which should not be held confidential from public review. Now, one little individual situation that occurred to me over the past year involved with this, because there were a lot of people on the Committee that felt that they were protecting themselves or people that they knew that were wrongly or alleged to have committed a violation and read about it in the newspaper and they were innocent. As far as they were concerned, they were guilty because it was on the front page of the paper and they felt that it was inappropriate that this information would become public without a decision having been made. The problem with that, ladies and gentlemen of the

Senate, is that the fact is that if somebody wants to leak information, they are going to leak information. Whether it is the National Security Council or the Maine Real Estate Commission, they are going to leak that information that should be held confidential. The proceeding that I was involved in over the summer was supposed to be confidential. When I went to the Ethics Commission I had to plead with them, I couldn't speak directly to them because of the confidential nature of what was supposed to be reviewed even though it had been on the front page of the newspaper for two consecutive days, I was Legislator one, two or three. We had to request a change of the rules, because of the confidentiality provision because it was important that it be public. I requested that.

What you are asking for here is to further allow those Boards or Commissions, whether it is Democratic or Republican, not to be under public review when they are reviewing somebody's license or their machinery or whatever it is. You are saying that the investigation should not be made public that it is being investigated. The problem with that is that the people who are doing the investigation are not professional investigators, these people are members of those Boards or Commissions and they act as the hearing officer for the Board or Commissioner with an Assistant Attorney General. This person from the Board is not a professional. The reason why you want the daylight to shine on this investigation, through the press, is the fact that it will make them act more responsible, more professional, and to make sure that it is not a witch hunt, make sure that they are not asking friends or associates of a licensee really embarrassing questions and they pretty well know that there is an investigation, but the individual that is being investigated can't look at anything, can't find out anything that is going on.

It is so totally ironic when we open up the Internal Revenue Service for more public scrutiny and more checks and balances that we would here, in the state of Maine, close down that type of review for individuals. There was such a strong feeling on the Committee that they were helping innocent people that had their names thrown on the front page of the paper that it would be better if we kept the investigation confidential unless it warranted a hearing or some type of review. The problem with that is the individual being reviewed has no rights to know anything of what is going on at all as to who they are asking for, what it going on as far as their own investigation, they are kept in the dark, they have no avenues to travel.

It is making it harder and harder for the public, under public health and safety areas, to know what is going on. That is why I think we should be embracing the press, we should be embracing the public to this type of information. We should not be closing the door and shutting out the lights. Let me tell you as bad as it gets, and it gets pretty bad, you want the public to know everything, you want it all to be out there. You don't want that information to be selective and let me tell you that it would be very selective as to what was available to the press or the public. It is just a bad policy and there are many things maybe you say we ought to clamp down and keep these things confidential and maybe they sound great. But the fact of the matter is, if people want to go out and see that you get embarrassed, or if people are out there to get you, it is either going to be somebody from that Board or Commission, or it is going to be somebody that was investigated by them and you are going to be sitting there like I was last year stuck with confidentiality and you couldn't

breach it because of state law, but the fact is everybody knew what was going on. Let me tell you that is a more scary situation then worrying about whether somebody unfortunately or fortunately is going to get tainted with an investigation. That is a worse danger to me and it is with that zeal that I try to say that I have nothing against the Commissioner of Regulation, Susan Collins. She is doing a terrific job and she is a terrific person. We have not had any problems which would warrant this legislation, there were no problems sited. We have been able to work with the press very well and that was sited in the hearing, we have no problems which we are trying to correct, but they could have been problems. I say that there wasn't a problem there and I think it is worse and it is going to create more problems, more innuendoes and allegations in the future by going this route. When you do have problems come back and we will see if we can then review it. I hope that we are able to support that position. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Whitmore.

Senator WHITMORE: Thank you Mr. President. Mr. President, men and women of the Senate. I rise as a supporter of the Majority Ought to Pass Report. L.D. 316 would assure the confidentiality of the investigative records of the licensing Boards and Commissions within the Department of Professional and Financial Regulations. I think that everyone in this Chamber can appreciate that when an investigation takes place, that it be done without the tainting of the additional witnesses. As the law stands currently and if the media is allowed to get into the files with each and every witness interview and that information is released, certainly it is going to affect the investigation and will, in fact, taint the facts and the ability of the investigators to get the correct facts if the previous facts have been released.

I think that most of you would agree that too many times the media acts as not only the judge, but as the jury as well in a good many cases. How many times have we all picked up the newspaper and read in bold headlines on the front page, allegations that have been made against an individual and yet when they are exonerated where do you ever find that kind of information? It is usually buried next to the legal notices, which just precede the classified section. That is not a very level playing field. We are talking about people that are governed by the Department of Professional and Business Regulation that includes all the licensing, that is; physicians, insurance agents, electricians, oil burner people, it just goes on and on. But, assume that your friendly neighborhood physician is charged or an allegation is made that there was some improprieties conducted in his office of sexual misconduct and that is blasted in the paper, "Dr. 'A' is alleged to have committed sexual misconduct with a patient", that is the story that comes out, where is that person for the remainder of his career? The allegation has been made, the investigation has not been allowed to continue to prove whether he is innocent or guilty.

All this piece of legislation does is keep that information confidential. It allows the procedure to continue, which is a practice that is currently allowed within the Human Rights Commission guidelines and statutes. It is currently allowed that the confidentiality of those types of allegations will be held until the presentation by the investigating body to the Board. At that point, the information is turned over and the presentation is made to the Board and that is at a public session. That public session

is at a scheduled meeting on an agenda with an agenda and it is released to the media and the general public at that time.

I know that if my name was being tainted and I was being called in on charges, I would want the investigation to proceed. It is unfortunate that my colleague and Committee member from Penobscot, Senator Baldacci, had a personal experience which he feels would have been or thought that it was detrimental to the existing law, frankly, I can see too many other abuses not to pass this legislation. The incident that the Senator from Penobscot gave with regard to the oil burner and should that or would that have been held confidential. Certainly, the public safety element of that would not have allowed it to remain confidential and that could have been brought out and that could be brought out through the Attorney General's Office, which it was offered to them and submitted to them for advice to publish the fact that there was a safety problem with that burner. That is a public safety issue and there is no element of control as to who has those particular furnaces and who has those burners. That would have been an entirely different situation than a licensee being charged with misconduct.

I would like you to bear in mind, as you cast your vote on this particular issue, who are the licensees that are concerned? We are talking about professionals, physicians, psychologists, psychiatrist, everyone in this state that is licensed just about goes through this process and is under this department. This Bill has the support of the Attorney General's Office. The only people to speak in opposition to this Bill were members of the media and their representatives. I would ask that you vote against the motion that is pending on the floor at this time. Thank you.

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

Senator BALDACC: Thank you Mr. President. Mr. President, men and women of the Senate. Just to underline the fact that the Attorney General's Office now has the confidentiality because it involves a criminal proceeding and it wants that retained. The position that the Attorney General's Office took was that as long as his position remained confidential he wouldn't have a problem with what the Committee was doing and what it was suggesting to do. It was looking to retain the confidentiality because of their criminal investigations and their files they wanted to retain and they didn't want those to be breached. That was the position that the Attorney General's Office had taken at the time.

I think that the thing that probably makes the bottom line decision here is, are the people competent enough to be able to disseminate the information that is being given to them? We are all elected here by the people, by those same people, and I say to you, members of the Senate, that they are very competent, they are very capable of making decisions based on information. It only serves to help make the public more aware of what is going on with their own particular therapists or their own particular oil burner person, or their own particular electrician or plumber, it educates the public and there is nothing wrong with putting that information out to the public. I think that there is no problem with retaining the openness that there is now, when there were no problems that were discussed. So, I hope that you would support the pending motion. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from York, Senator Hobbins.

Senator HOBBS: Thank you Mr. President. Mr. President, men and women of the Senate. As you can see from the Report, I signed along with the good Senator from Androscoggin, Senator Whitmore, on the Majority Report. I did so with some reservations at first, because the initial Bill as written I could not support. In my past service in the Maine Legislature, I have always been very sensitive to the area of the public's right to know and the preservation of the First Amendment rights of individuals. But, after careful analysis and weighing that delicate balance between the public's right to know, which is fundamental, and what this Bill intends to do in amended form, I supported the Bill as amended.

The premature release of investigative information can be traumatic to not only the individual being complained against, but also the consumer or the individual who has been wronged because of unethical professionals. They, in fact, could be victimized twice prior to the investigation.

What this Bill attempts to do is to delicately balance the rights of individuals to have certain information until investigated, until weighed, to find out whether or not there is justification for the complaint or whether or not that complaint about an individual is frivolous that there would not be a release of that investigative information until the investigation was complete.

At the hearing, there was testimony that most of the consumers, who do contact the different licensing Boards, mistakenly believe that their complaints will be treated confidential. Again, in weighing the delicate balance between the public's right to know and the individual who has been complained against and also taking into consideration the victim of the alleged unethical conduct. The victim could be intimidated by the thought that those allegations would become public on day one, the first time that they, in fact, made a complaint to an agency.

So, as I mentioned before, in weighing the delicate balance, I come down with the conclusion that the Bill in the amended form, which has the support of the Attorney General's Office, is appropriate at this time for consideration by this Body. Thank you.

Off Record Remarks

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Whitmore.

Senator WHITMORE: Thank you Mr. President. Mr. President, men and women of the Senate. I would like to pursue just a little bit further the remarks of the good Senator from York, Senator Hobbins, when he makes reference to someone that is weighing in their mind whether to bring an allegation and point it out in the public's interest. I have no problem that the public knows at all and that it be publicized and everything else, I just think that the time should be appropriate. To me, the appropriate time is after the complete investigation is held and not throughout the whole investigation in bits and pieces. If we deter one person from coming forth, because they are intimidated that their complaint is not going to be treated in a confidential manner and they are going to receive all of this publicity, then I think we have taken the wrong action if we hold just one person back. I ask you to consider that during the vote. Thank you.

Off Record Remarks

THE PRESIDENT: The Chair recognizes the Senator from York, Senator Hobbins.

Senator HOBBS: Thank you Mr. President. Mr. President, men and women of the Senate. Just one point of clarification and information. The language of the amended version of this particular legislation significantly tracks the language that is presently used in dealing with complaints before the Maine Human Rights Commission. We are not, in this particular Bill, setting a new frontier. Essentially, what we are doing is tracking the approach and procedure that is followed in handling complaints before the Human Rights Commission. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Clark.

Senator CLARK: Thank you Mr. President. Mr. President, men and women of the Senate. Speaking as the Senator from Cumberland, I have a question that I would invite a response from any member of the Committee. Should this Senate fail to Accept the pending motion and ultimately the Majority Report be Accepted, what provision is built into this proposal that would address the possible leaks, which have occurred in the past, from members of Commissions about complaints and or cases before that Board or Commission and how would that be addressed.

THE PRESIDENT: The Senator from Cumberland, Senator Clark, has posed a question through the Chair to any Senator who may care to respond.

The Chair recognizes the Senator from Penobscot, Senator Baldacci.

Senator BALDACC: Thank you Mr. President. Mr. President, men and women of the Senate. It is my knowledge that in this legislation there isn't anything in here to penalize anybody that does that. As a matter of fact, that isn't a bad idea to pursue, as far as the situation that happened last time around just to set the record straight and to set an example of what was suppose to have been confidential which was leaked by the Commission, because there is nothing in there to penalize.

Off Record Remarks

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Whitmore.

Senator WHITMORE: Thank you Mr. President. Mr. President, men and women of the Senate. I might like to respond to the good Senator from Cumberland, Senator Clark. It is not addressed in this legislation, nor is it addressed in any legislation any where that would stop leaks, short of physically gagging people and I don't think that is appropriate. I think that regardless of the situation people still talk. People who have been in the military and that are held hostage or taken as prisoners of war go through a severe indoctrination period when they first go into the military that they should only divulge their name, rank and serial number, with all kinds of threats being made to them. I think that history will show us that even with all the threats that are waved in front of most people, some of them when they get into tough situations still have a tendency to talk at that point.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Clark.

Senator CLARK: Thank you Mr. President. Mr. President, men and women of the Senate. I apologize for extending this and I was hoping not to, but while I recognize that the response from the good Senator from Androscoggin, has considerable merit, it seems to me that we are making a determination this afternoon in that, should the pending motion fail and this Senate Accept the Majority Ought to Pass Report, we are embracing and accepting a concept that deliberations before a quasi-adjudicatory Commissions Boards and Panels will be confidential. That was what we thought we had in practice and in place before the convening of this 114th Maine Legislature.

The Senator from Penobscot, Senator Baldacci, and all of us who survived the campaign of 1988, recognize that was not the case and that because of the circumstances surrounding that campaign and because of the circumstances surrounding the actions of members of the previous Legislature and for purposes that I do not consider laudatory, a leak was deliberately made to the press in a timely fashion just coincidentally timed before election. If, in fact, there aren't penalties for those breeches of confidentiality incorporated into this legislation, so that those kinds of scurrilous actions will not be repeated, I submit, should we Accept the Majority Report, that we will perpetrate a myth of confidentiality which does not exist and will not exist based on the fact with, which I concur, the remarks of the good Senator from Androscoggin, Senator Whitmore, that human frailties and other motives might, in fact, prevail and confidentiality be, in fact, breached. This individual Senator is supporting the Minority Report. Thank you Mr. President.

Off Record Remarks

Senator WEBSTER of Franklin was granted unanimous consent to address the Senate off the Record.

Senator KANY of Kennebec was granted unanimous consent to address the Senate off the Record.

Senator CLARK of Cumberland was granted unanimous consent to address the Senate off the Record.

Off Record Remarks

On motion by Senator PEARSON of Penobscot, ADJOURNED until Thursday, April 20, 1989, at 9:00 in the morning.