

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD
OF THE
One Hundred And Fourteenth Legislature
OF THE
State Of Maine

VOLUME V

SECOND REGULAR SESSION
March 20, 1990 to April 14, 1990
Index

HOUSE & SENATE LEGISLATIVE SENTIMENTS
December 7, 1988 to April 14, 1990

Adjourned until Wednesday, April 11, 1990, at ten o'clock in the morning in memory of Weston R. Sherburne of Dexter.

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

In Senate Chamber
Tuesday
April 10, 1990

Senate called to Order by the President.

Prayer by the Honorable Muriel Holloway of Lincoln.
HONORABLE MURIEL HOLLOWAY: Good morning. Shall we bow our heads in prayer?

Dear Father in Heaven, we thank You for this day and the opportunity to serve the people of Maine in the Senate Chamber. Please guide us as we deliberate the issues and the problems that confront us. These things we ask in Your name. Amen.

Reading of the Journal of Yesterday.

PAPERS FROM THE HOUSE
Non-concurrent Matter

Bill "An Act to Establish the Office of Substance Abuse"

S.P. 909 L.D. 2312
(C "A" S-639)

In Senate, April 5, 1990, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-639).

Comes from the House PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-639) AS AMENDED BY HOUSE AMENDMENT "B" (H-1102) thereto, in NON-CONCURRENCE.

Senator BERUBE of Androscoggin moved to RECEDE and CONCUR.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator BUSTIN.

Senator BUSTIN: I would have preferred a recede motion because I want to put an amendment on and ask the will of the Body to do that.

THE PRESIDENT: The Chair would advise the Senator that the motion to recede is in order.

Senator BUSTIN of Kennebec moved the Senate RECEDE from PASSAGE TO BE ENGROSSED AS AMENDED.

Senator BERUBE of Androscoggin requested a Division.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator BUSTIN.

Senator BUSTIN: The reason I want a recede motion is simply so that I may put on an amendment. I understand that traditionally we have extended that courtesy to members of this Body. I would attempt to put on an amendment. Thank you and I would appreciate that privilege. I would ask you to vote for the recede motion. Thank you.

Senate at Ease

Senate called to order by the President.

At the request of Senator BERUBE of Androscoggin, a Division was had. 15 Senators having voted in the affirmative and 14 Senators having voted in the negative, the motion by Senator BUSTIN of Kennebec, to RECEDE from PASSAGE TO BE ENGROSSED AS AMENDED, PREVAILED.

On further motion by same Senator, the Senate RECEDED from ADOPTION of Committee Amendment "A" (S-639).

House Amendment "B" (H-1102) to Committee Amendment "A" (S-639) READ and ADOPTED, in concurrence.

On further motion by same Senator, Senate Amendment "A" (S-686) to Committee Amendment "A" (S-639) READ.

Senator CLARK of Cumberland requested a Division.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Bustin.

Senator BUSTIN: Thank you, Mr. President. Ladies and Gentlemen of the Senate, first, let me express a sincere thank you for allowing me the privilege of putting this amendment on. As most of you are aware as you're reading that amendment, although it's a bit confusing, what it really does is merely put back in the dedication of the alcohol premium fund. In other words, strips the undedicated language out of the single state agency substance abuse Bill.

Let me explain why I would like to do that and if you remember correctly, the first time this went through the Body I did not ask for a Division. I did not ask for a stand on this. It went to the other Body and unbeknownst to me until the final moment, I was not aware of the sentiment down there to keep the fund dedicated. The vote from that Body tells me that there is strong sentiment to keep it dedicated and so I feel very strongly and I'm telling you I was not prepared to offer this amendment even after the session last night.

I woke up at 2:00 this morning, obviously something on my conscience. That something was that I was not doing everything that I needed to do to show my position on this issue. The only avenue that I have open to me is to have an up and down vote on the dedication/undedication issue. That's what this is about. One of the reasons that it was weighing on my mind last night was because I rode down in the elevator with a fellow Senator who said to me, aren't you going to put in that amendment, because a lot of us do not want this issue undedicated. I said, at that time, no, I was not, nor was I going to lobby it. I think all of you sitting here know that I have not lobbied this nor have I asked anyone else to lobby for me. It is pure and it is clean. I only decided at 2:30 this morning that this was what I was going to do.

It's a long history. In fact, it goes back to my freshman year. It goes back to when the federal funds were being cut drastically for alcohol services. We were going to suffer greatly in this state because of them. That was the beginning of the federal cutbacks in programs. I happened, after I was elected, to attend a meeting of a group of people who were interested in this issue. The year before, they had tried to put in a similar Bill and had failed. They were saying at this meeting that no, we weren't going to try again because it had been a tough fight the year before and they just didn't have the energy for it.

So, being one of those naive freshmen, I did my best to energize them. I had been a field representative for then U.S. Senator Edmund Muskie, who just visited this Chamber the other day, and knew what the feds were going to do to the states. So I implored them to put in this Bill. We got a group of sponsors together and because of the veterans who were on that Bill, including our own Senator from Hancock County, Senator Perkins, we were able to get that Bill passed as a dedicated fund.

For the first time, and no other state has this, for the first time in state law, we said that indeed, drinking alcohol causes alcoholism. That's why that issue is dedicated. That's why we put that in statute. That's why the lobby lobbied very heavily

against it. I can tell you that the beer and wine distributors were most distressed, not particularly because of the tax issue, although somewhat, but because it was dedicated and because it said in statute that drinking their product did, in fact, cause a societal problem. That's why they fought so long and hard. I had messages being brought to me that I wouldn't think of repeating on this Senate floor. They were not good ones.

This Bill before you, that I'm asking for the dedication to stay in on, was a Bill that I submitted for the Regional Council and others who are very interested in having one agency distribute their money, not a bad concept. It was so controversial, however, that it was turned into a study by the State and Local Government Committee. That study and that Bill never had the issue of dedication/undedication in it, never had it in it. That was put in it by the Committee. I think most people who have been around here any length of time know the continuing fight every single year that we have had with members of the other Body on this dedication/undedication issue. We have fought every year and have sustained the dedication issue. There are many people out there who believe as I believe.

The reason that it faces you today is because I couldn't be defeated. We couldn't be defeated with a pure up and down vote. So they had to sneak it into another Bill. Now I was there, unpaid, mind you, and I had other Committees and sub-committees to run last year during the summer, I was there every time that Committee met. I was right there from the beginning.

You know what happened at the end? I was doing the Corrections stuff. I was giving you your Omnibus Bill. I was giving you your bond issue. I was fashioning that last piece of the Corrections issue. I told the State and Local Government Committee exactly where I was, in the Audit and Program Review room. I asked to be called. I was never called. I was told they wouldn't handle the issue on that day, it would be the next Monday. This was on a Friday. A sub-committee was formed and let me tell you that I suspect a lot of you know that I do my work fairly thoroughly and I had organized the coalition and we had come to an agreement that we wanted the single agency Bill. We would remain tight on dedication unless it came to the point where we thought we would lose the Bill.

Well, not all parties were invited to that sub-committee meeting. The Maine Council on Alcoholism, which I was representing at that time and me, representing myself in particular, were not called. The parties who agreed to stick to dedication took it upon themselves, in that sub-committee, without the other members being called, to fold on the issue. That's the lobby. I have always supported the lobby from the time I was a freshman. I consider them a valuable part of the process up here. In this instance, I am sadly disappointed. I am sadly disappointed in the Committee process that does not have all members present when they know they have a very controversial issue. I am sadly disappointed, because I did not have the option or the privilege in the final instance to make my case after ten years of work on this.

That is all over and above the very real issue of dedication/undedication. I have not lobbied you for a very specific reason. I want to see where you stand in your own thinking. Do you truly believe that alcohol does in fact create a societal problem, that in fact it is the substance that causes the problem? Because, in fact, it is a disease. Two

ways to look at it, lots of people will say, oh, they just choose to drink.

Let me tell you something. It is a well documented fact that alcoholism, in many instances, is a disease. When you take that first drink, and the earlier you take a drink, the more inclined you are to be addicted, your body responds to that. If you have the particular physiological make-up, you will not be able to give up that substance. You will get in trouble with it. You won't be able to handle it on your own. I've been told and I think I really agree, that nicotine is even a worse substance than alcohol because it grabs your body even more. Any of you who have ever smoked and tried to quit, know how very hard that is on your system. Think about what it is on the system of a person who feels the need to have alcohol in order to function.

That is the essence of that amendment. This is what we're talking about. We're talking about keeping a fund dedicated, to keep the issue in the forefront of what is happening in this society. There have been studies in the Corrections system and I have promised the Corrections people for years now that if we ever raised the premium that most of it would go to Corrections because you know why? 85%-90%, and these are documented figures, of the prisoners taking up those cell blocks, that we pay for, are alcohol and drug addicted. I don't know what the percentage is for rape or for child abuse, but I know it's very high. Folks, we have a real problem here, with the effects of this product. I think that we need to keep the fund dedicated to keep it in the forefront. I cannot believe, in these financial times, that anyone, who knows the Appropriations process in the very least, can have any feeling that once this fund is undedicated that you are going to lose money in these programs. You are going to lose money. That is the focus of why I would like to see the fund dedicated. Mr. President, when the vote is taken I'd like it taken by the Yeas and Nays.

On motion by Senator BUSTIN of Kennebec, supported by a Division of one-fifth of the Members present and voting, a Roll Call was ordered.

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

Senator BERUBE: Thank you. Mr. President. Ladies and Gentlemen of the Senate, first of all, I'd like to say that I take strong umbrage with some of the statements that have been made. The Committee, State and Local Government Committee, has not always been in agreement on all issues that come before that Committee. I don't refer to it as my Committee, but it's a Committee made up of 13 people.

We did not sneak any legislation in. Our work sessions throughout the summer and the fall were all, indeed, very open. We had the same lobbies and they were not the liquor lobbies that the previous speaker was referring to. We had lobbies representing the Regional Councils, the National Council, the Department of Education, certainly, was there present, as was the previous speaker. We did not sneak in a final decision in a work session. Everybody knew there was a work session. It was not up to us to call up people all over the state to ask them to come because they were there. I am sorry that the previous speaker was not able to be there, but we felt we had an open, in fact, our doors were literally open.

I'd like to say that the end result of this unanimous Committee decision has the support of the Maine Council on Alcohol and Drug Abuse, some mention was made of that. It has the support of the Maine Association of Substance Abuse Program Providers.

People who give direct service are supportive of this report. The Regional Councils, who certainly are in the forefront of the issue, are supporting this unanimously. The Maine Council on Alcohol and Drug Abuse and I quote, "we are firmly in favor of a strong centralized agency to supervise, administer, coordinate substance abuse programs. This is our priority, even if it means undedication of the premium fund."

Now, let's talk of the premium fund. While the word undedication is there, the monies will nonetheless be allocated in the Bill from the General Fund much in the same way as you all approved a few years ago, the earmarking of dollars for the Fish and Wildlife. They will get the same amount of money that they would have had under the premium. If they get less, it's simply because sales have gone down. They will get exactly the same. They are getting, this year, close to \$5.8 million. Next year, it's estimated, it's going to be probably \$5.5-5.4 million, depending on the volume of sales. We did not take away their ability to function. In fact, our goal was to seek the balance of resources which is allocated and the resources come from three areas, the premium fund, the General Fund and federal grants. They will not be losing anything, but the clients will be much more efficiently served. There will be more information available to the general public, the way it's going to be.

I think we came up with a very, very good report. I'm sorry that there seems to be the feeling that we were lobbied. If you know me, for the many years I've served here, I have never been prey to lobbyists. You know very well that I stand on my philosophy as did all of the Committee. So, the lobbying, I will say, was not done by the group that was mentioned before. The lobbying that I have seen come from a certain Department in the other Body, certainly did not come from that group either. So I ask you to hang firm to not approve this amendment so that we can really, finally, get a single agency that is going to be effective for the people we seek to serve. Thank you very much.

Off Record Remarks

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

Senator CARPENTER: Thank you. Mr. President, Men and Women of the Senate, about everything that I had planned to say has been said. I just stand here now in support of the Committee Bill and urge you to vote against the amendment. Thank you.

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

Senator WHITMORE: Thank you. Mr. President, Men and Women of the Senate, through the Chair, could someone tell me what the results of the Committee Report were?

THE PRESIDENT: The Senator from Androscoggin, Senator Whitmore, requests the Secretary read the Committee. The Chair recognizes the Senator from Kennebec, Senator Bustin.

Senator BUSTIN: Thank you. Mr. President, Ladies and Gentlemen of the Senate, the letter that was referred to by the good Senator from Androscoggin, Senator Berube, was dated April 9, and was sent from Anne Kinter, Chair of the Maine Council on Alcohol and Drug Abuse Prevention and Treatment.

She read you the first part. Let me read you the second part. "...retention of the dedication of the premium fund. We are, however, firmly in support of

an amendment, which we understand is to be filed, the effect of which would be to retain the dedication of the premium fund and to strike the undedicated language from L.D. 2312. This is all so very important, given the relationship between the purchase of alcohol and the possible consequences of its abuse and because of the fiscal constraints facing the state of Maine at this time." That's the kind of thing that I did not appreciate during the discussion.

THE PRESIDENT: The pending question before the Senate is the motion of Senator BUSTIN of Kennebec to ADOPT Senate Amendment "A" (S-686) to Committee Amendment "A" (S-639).

A vote of Yes will be in favor of ADOPTION of Senate Amendment "A" (S-686) to Committee Amendment "A" (S-639)

A vote of No will be opposed.

Is the Senate ready for the question?

Senator WEBSTER of Franklin who would have voted YEA requested and received Leave of the Senate to pair his vote with Senator EMERSON of Penobscot who would have voted NAY.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators BALDACCI, BOST, BRANNIGAN, BUSTIN, PERKINS, TITCOMB, WEYMOUTH

NAYS: Senators BERUBE, BRAWN, CAHILL, CARPENTER, CLARK, COLLINS, DILLENBACK, DUTREMBLE, ERWIN, ESTES, ESTY, GAUVREAU, GILL, GOULD, HOBBSINS, HOLLOWAY, KANY, LUDWIG, MATTHEWS, PEARSON, RANDALL, THERIAULT, TWITCHELL, WHITMORE, THE PRESIDENT - CHARLES P. PRAY

ABSENT: Senator ANDREWS

PAIRED: Senators EMERSON, WEBSTER

7 Senators having voted in the affirmative and 25 Senators having voted in the negative, with 2 Senators having paired their votes and 1 Senator being absent, the motion of Senator BUSTIN of Kennebec, to ADOPT Senate Amendment "A" (S-686) to Committee Amendment "A" (S-639), FAILED.

On motion by Senator BERUBE of Androscoggin, the Senate CONCURRED.

Off Record Remarks

Non-concurrent Matter

Resolve, Creating a Commission on Adult Sentencing (Emergency)

H.P. 1801 L.D. 2471
(S "A" S-654; S "B" S-676)

Joint Select Committee on CORRECTIONS suggested and ORDERED PRINTED.

In House, April 5, 1990, PASSED TO BE ENGROSSED, without reference to a Committee.

In Senate, April 5, 1990, PASSED TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENT "A" (S-654) in NON-CONCURRENCE.

In House, April 7, 1990, PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-1099) in NON-CONCURRENCE.

In Senate, April 7, 1990, PASSED TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENTS "A" (S-654) AND "B" (S-676) in NON-CONCURRENCE.

Comes from the House PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-1099) AND SENATE AMENDMENT "A" (S-654) in NON-CONCURRENCE.

The Senate RECEDED and CONCURRED.

COMMUNICATIONS

The Following Communication:
ONE HUNDRED AND FOURTEENTH LEGISLATURE
COMMITTEE ON LABOR

April 9, 1990

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 Labor has had under consideration the nomination of Pamela Chute of Brewer, for appointment as an Alternate Neutral Member of the Maine Labor Relations Board.

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 confirmed. The Committee Clerk called the roll with the following result:

YEAS: Senators 2
Representatives 10

NAYS: 0

ABSENT: 1 Sen. Matthews of Kennebec

Twelve members of the Committee having voted in the affirmative and none in the negative, it was the vote of the Committee that the nomination of Pamela Chute of Brewer, for appointment as an Alternate Neutral Member of the Maine Labor Relations Board be confirmed.

Sincerely,

S/Senator Donald E. Esty, Jr. S/Rep. Edward A. McHenry
Senate Chair House Chair

Which was READ and ORDERED PLACED ON FILE.

Senate at Ease

Senate called to order by the President.

THE PRESIDENT: The Joint Standing Committee on Labor has recommended the nomination of Pamela Chute of Brewer be confirmed.

The pending question before the Senate is: "Shall the recommendation of the Committee on Labor 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 Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators None

NAYS: Senators BALDACCI, BERUBE, BOST, BRANNIGAN, BRAWN, BUSTIN, CAHILL, CARPENTER, CLARK, COLLINS, DILLENBACK, DUTREMBLE, ERWIN, ESTES, ESTY, GAUVREAU, GILL, GOULD, HOBBSINS, HOLLOWAY, KANY, LUDWIG, MATTHEWS, PEARSON, RANDALL, THERIAULT, TITCOMB, TWITCHELL, WEBSTER, WEYMOUTH, WHITMORE, THE PRESIDENT - CHARLES P. PRAY

ABSENT: Senators ANDREWS, EMERSON, PERKINS

No Senators having voted in the affirmative and 32 Senators having voted in the negative, with 3 Senators being absent, and none being less than

two-thirds of the Membership present, it was the vote of the Senate that the Committee's recommendation be ACCEPTED and the nomination of Pamela Chute, was CONFIRMED.

The Secretary has so informed the Speaker of the House.

COMMITTEE REPORTS
Senate

Change of Reference

Senator BERUBE for the Committee on STATE AND LOCAL GOVERNMENT on Bill "An Act to Reduce Costs to County and Municipal Government by Delaying the Implementation Dates of Certain State Mandates"

S.P. 1004 L.D. 2492

Reported that the same be REFERRED to the Committee on ENERGY AND NATURAL RESOURCES.

Which Report was READ and ACCEPTED.

The Bill REFERRED to the Committee on ENERGY AND NATURAL RESOURCES.

Sent down for concurrence.

ENACTORS

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

An Act to Provide for Immediate Income Withholding and a Plan for Periodic Review and Adjustment of Child Support Awards in Support Enforcement Cases of the Department of Human Services

H.P. 1732 L.D. 2391

(H "A" H-1100 to C "A" H-1088)

On motion by Senator GAUVREAU of Androscoggin, Tabled until Later in Today's Session, pending ENACTMENT.

An Act Relating to Correctional Policy

H.P. 1814 L.D. 2486

(S "B" S-673)

On motion by Senator CLARK of Cumberland, placed on the SPECIAL APPROPRIATIONS TABLE, pending ENACTMENT.

Resolve

Resolve, to Authorize the Director of the Bureau of Public Improvements to Sell a Parcel of Land to the Warren Sanitary District

S.P. 1003 L.D. 2491

(C "A" S-680)

Which was FINALLY PASSED and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Emergency

An Act to Enhance the Ability of the State to Respond to Oil Spills

H.P. 1691 L.D. 2341

(S "A" S-679 to C "A" H-1056)

This being an Emergency Measure and having received the affirmative vote of 29 Members of the Senate, with No Senators having voted in negative, and 29 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, was presented by the Secretary to the Governor for his approval.

Emergency Resolve

Resolve, to Study the Feasibility of Establishing a Piscataqua River Basin Compact between Maine and New Hampshire

S.P. 496 L.D. 1370

(S "A" S-678 to C "B" S-552)

This being an Emergency Measure and having received the affirmative vote of 29 Members of the Senate, with No Senators having voted in negative, and 29 being more than two-thirds of the entire elected Membership of the Senate, was FINALLY PASSED and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Emergency Resolve

Resolve, for Laying of the County Taxes and Authorizing Expenditures of Aroostook County for the Year 1990

H.P. 1807 L.D. 2478

This being an Emergency Measure and having received the affirmative vote of 29 Members of the Senate, with No Senators having voted in negative, and 29 being more than two-thirds of the entire elected Membership of the Senate, was FINALLY PASSED and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Emergency Resolve

Resolve, for Laying of the County Taxes and Authorizing Expenditures of Piscataquis County for the Year 1990

H.P. 1824 L.D. 2497

This being an Emergency Measure and having received the affirmative vote of 29 Members of the Senate, with No Senators having voted in negative, and 29 being more than two-thirds of the entire elected Membership of the Senate, was FINALLY PASSED and having been signed by the President, was presented by the Secretary to the Governor for his approval.

ORDERS OF THE DAY

The Chair laid before the Senate the Tabled and Specially Assigned matter:

Bill "An Act to Establish the Department of Child and Family Services"

H.P. 1199 L.D. 1666

(H "A" H-1008; S "B" S-672 to C "C" H-820)

Tabled - April 9, 1990, by Senator CLARK of Cumberland.

Pending - PASSAGE TO BE ENGROSSED AS AMENDED in NON-CONCURRENCE (Roll Call Ordered)

(In House, April 5, 1990, PASSED TO BE ENACTED.)

(In Senate, April 6, 1990, RECONSIDERED PASSAGE TO BE ENGROSSED AS AMENDED. RECONSIDERED ADOPTION of Committee Amendment "C" (H-820) as Amended by House Amendment "A" (H-1008) thereto. Senate Amendment "B" (S-672) to Committee Amendment "C" (H-820) READ and ADOPTED. Committee Amendment "C" (H-820) as Amended by House Amendment "A" (H-1008) and Senate Amendment "B" (S-672) thereto, ADOPTED in NON-CONCURRENCE.)

Senator CAHILL of Sagadahoc requested and received Leave of the Senate to withdraw her motion for a Roll Call.

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

Senator GILL: Thank you. Mr. President, Members

of the Senate, could I just explain what's going on with this Bill? We've had it tabled here for a few days and we've been working on amending it to satisfy all parties involved. We're sending it back to the other Body so it can be amended down there.

Which was PASSED TO BE ENGROSSED, as Amended in NON-CONCURRENCE.

Sent down for concurrence.

Under suspension of the Rules, all matters thus acted upon ordered sent down forthwith for concurrence.

The Chair laid before the Senate the Tabled and Specially Assigned matter:

An Act to Provide Tax Amnesty and Necessary Administrative Support to the Bureau of Taxation
H.P. 1731 L.D. 2390
(C "A" H-1093)

Tabled - April 9, 1990, by Senator CLARK of Cumberland.

Pending - ENACTMENT

(In Senate, April 6, 1990, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1093), in concurrence.)

(In House, April 7, 1990, PASSED TO BE ENACTED.)

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

The Chair laid before the Senate the Tabled and Specially Assigned matter:

An Act to Reduce Toxics Use, Toxics Release and Hazardous Waste Generation
H.P. 1583 L.D. 2192
(C "A" H-1082)

Tabled - April 9, 1990, by Senator CLARK of Cumberland.

Pending - Motion of Senator BALDACCI of Penobscot to RECONSIDER PASSAGE TO BE ENGROSSED AS AMENDED

(In Senate, April 7, 1990, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1082), in concurrence.)

(In House, April 7, 1990, PASSED TO BE ENACTED.)

On motion by Senator BALDACCI of Penobscot, the Senate RECONSIDERED whereby the Bill was PASSED TO BE ENGROSSED AS AMENDED.

On further motion by same Senator, the Senate SUSPENDED THE RULES.

On further motion by same Senator, the Senate RECONSIDERED whereby it ADOPTED Committee Amendment "A" (H-1082).

On further motion by same Senator, Senate Amendment "A" (S-687) to Committee Amendment "A" (H-1082) READ.

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

Senator BALDACCI: Thank you. Mr. President, Members of the Senate, thank you for allowing me the opportunity to present, what I believe to be, a good middle ground on this particular issue that I was hoping to come to with a Committee of Conference last week to resolve the matter. I do think it's worthy of legislation and I will not be supporting the Ought Not to Pass of anything in regards to this particular area. But I do think, that when we are venturing into this particular area, that we must make sure that we're working together and going to be able to accomplish meaningful safety concerns for people that are working in the facilities and also the environment, meaningful.

I tried to grapple with this issue, tried to understand it, tried to be able to come up, I feel, with a good working middle ground that will afford Maine a leadership role in this particular area, as it pertains to hazardous waste, toxic releases and toxics used. I think that it will offer them tremendous inroads. The amendment that is before you retains the toxic release reduction goals but makes them non-mandatory, the same as the toxics use reduction goals. Although the goals are non-mandatory, toxic releasers will be required to plan, examine and implement means of reducing the release of toxics without impairing the production or quality of their products and services. Toxic releasers must report reduction progresses annually along with their annual toxics release inventory currently being filed with the Maine Emergency Management Agency.

There is also another amendment on this legislation which I like to call the Bath Iron Works amendment, but it's the only way I can bring the example to you. In the amendment that the Committee has drafted, there are two different sets of exemptions. One deals with hazardous waste and the other one deals with toxic releases. In both portions of the exemptions, it says "an exemption or renewal for a new or renewed legal or contractual obligation may not be granted by the Commissioner." May not be granted by the Commissioner.

Now if there's a legal or contractual obligation that the federal government has made, the Defense Department in particular, with Bath Iron Works, to use certain chemicals or certain procedures in a certain way in order to get a contract, they are exempted, because of the legal and contractual obligations exemption, only once. So if they get a contract to build five ships and they finish building those five ships, unless the federal government changes or the other forty nine states change in this particular area, Bath Iron Works would be excluded from bidding on that particular contract because it could have only got that exemption once. It eliminates them. That's one problem and that's taken care of in the amendment.

As far as this whole issue, the best way that I can analyze it, and maybe you may not appreciate it, is by using food. If I have 20 pounds of hamburgers and I am going to fry those into four ounce hamburgers and serve them, my understanding is that when I take those 20 pounds and I'm supposed to get 80 four ounce hamburgers, but I only end up with 70, something happened to the other ten. In this particular case, that other ten, we'll use as a description of toxic releases. I don't know if it went up the hood. I don't know if it went over the drip tray. I don't know if it went on the floor, but there's ten of those four ounce pieces that are missing. There is some water in the hamburger and it's possible that it evaporated. If this Bill became law, using that as an example, I would be required to reduce that level based on an average of '88-'89's production of hamburgers. I would have to reduce that by 10% in '93, 20% in '95 and 30% in '97.

Even the EPA admits that this is just an estimate. So how do I reduce releases if I don't know where they're going? How do I develop a system to recapture it so that I won't be releasing it to the environment? It's a simple question of where is it? How do I measure it? I understand that MERC, down in the southern part of the state, actually spent \$150,000 trying to determine the toxic release within that particular facility.

There is no measurement gauge. What happens now with the industry is they use a mass balancing

measurement which is that they take that hamburger example and they report to the Department that they had forty ounces of hamburgers that were toxic released. Now they don't know if it did go up the smokestack. They don't know if it went into the waste water treatment plant. They don't know what happened to those things, but that's how they report it. What this law is suggesting is they're going to make it mandatory that, even if they don't know where it's going, they're going to have to reduce it.

The exemptions, which are what I have a tremendous problem with, I understand that they've been strongly supported by many different areas of the state, but the problem that I have with it, is it's taking over a thousand companies, a thousand industrial manufacturing companies, it's taking them and it's saying to them, the burden of proof is on you to prove that it's practicably non-economic, the technology's not there, that the product quality will suffer. They're putting the burden of proof on that person and firm to develop a complex set of reviews that nobody knows anything about to submit to the Department of Environmental Protection.

I understand that this legislation calls for four people, including a clerk, so there would be three people over at the Department and I'm sure they all wouldn't be working on this exemption because they want to get out and promote and do public relations work and a lot of those things. So we're probably going to have two people over there that probably don't understand a whole heck of a lot about businesses anyway. But they're going to have to make a decision whether American Cyanamid in Sanford, Maine, whether Bath Iron Works, whether S.D. Warren, whether James River, whether any of those particular companies has exhausted the full scope and measure of their processes and procedures and technologies.

Now I know in the food industry that they now have machines that can make those breadsticks. They've got these machines so you don't have to do it by hand anymore. They have machines now, where you get dough that is frozen and all you have to do is lay it out, proof it and stick it in the oven and it's done. No more flour, no more yeast, no more salt, nothing and it's amazing what they do in this particular industry. I have a hard time keeping up with it. I can't imagine having to review over a thousand companies, 200 that already report now in the state under this section. 200 different types of industrial manufacturing companies and have someone from the DEP say, you've reviewed everything? You went through everything, you went through this and that and we're going to grant you an exemption.

Let's get at the problem. The problem is that there are people that are working around these things that are getting hurt, chemicals that are hurting people. There's nothing in this amendment that is going to address it. I've never seen a bunch of solid waste in my life. Those people are being hurt.

The reason I'm interested in this is because six years ago, eight women, that worked for a company in Bangor, had to file workers' comp claims because of the conditions and the chemicals and the way those chemicals were handled. That group of eight people grew up to be United Injured Workers Task Force, many of whom I've helped without using undue influence file for their workers' comp claim and have successfully gone through that procedure.

But toxics in the workplace is not being addressed here. That company had a defense contract that was secret from being reviewed by any state agency and if any state agency reviewed it it had to give prior notice. So what these women were doing

were using plastic gloves to work with very hazardous materials, while at the same area, with the same products, GE workers were using, it was unbelievable, space suits and long leather gloves. These women would look at those people and think, is there something I'm doing wrong? Is there something I'm supposed to be doing differently?

These people were actually hurt. Fans were not operational. Ventilation wasn't there. Those are the things that should be addressed about worker safety around toxic and hazardous waste. I shouldn't have to sit at my restaurant and determine whether the hamburger release of that forty ounces has gone through the hood system, has evaporated or is behind the grill or in the drip pan and then design a system that's going to be able to recapture it or go through a paperwork chase to file with the Department of Environmental Protection why I should be granted an exemption.

That's not right because we're going to have two people over there reviewing these for over 200, 300 different types of companies. They're going to be overwhelmed and the next thing they're going to say is, we need more people to be able to do this. The companies are going to be spending hundreds of thousands of dollars to figure out what they're supposed to measure, give a measurement gauge and then develop a system to recapture it or a lot of paperwork to be able to bring down to the Department as to why they need the exemption. That's the problem with the legislation.

The legislation as I proposed with the amendment leaves the voluntary standards and goals for toxics use. It retains toxic releases but it makes it voluntary, but it does require them to examine it, develop a plan to recapture it and try to reduce it. It also deals with the toxic waste which we have to reduce. Everybody here is concerned about health, safety and the environment. We want to try to do what makes sense. I believe that this amendment addresses the nub of the issue. It isn't what everybody wants but, I think, that, at best, it will give us a good start in the right direction. Thank you, Mr. President.

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

Senator DUTREMBLE: Thank you, Mr. President, Members of the Senate, I enjoyed the dissertation from the good Senator from Penobscot, Senator Baldacci. I guess it all depends how you look at things. I enjoyed his hamburger story. I really enjoyed his hamburger story. I guess I just want to point out to the rest of you and to the good Senator from Penobscot, Senator Baldacci, that the cow died. The cow to make those hamburgers died. It all depends how you look at it. If you're concerned about waste going up the fan at the restaurant or if you're concerned about the cow dying, then we look at it differently. I may never eat another hamburger again.

The question I ask is, how many people have to get sick or die to allow the drippings to go up the hood? I have a deep personal conviction about this. There are some things I just refuse to compromise on. One of them is worker safety. The second one is the safety of the people because of their environment. I refuse to compromise on that. What we're asked to do here, with this amendment, is to compromise worker safety and protection of our environment. I have a real, real problem with that.

You know, if you look at the Bill, the original Bill, a lot of the arguments that you've heard from people lobbying this and believe me, I understand the process and I appreciate the process, we all gather

information from listening to the lobby and then it's up to us to analyze that information and to put it in proper perspective. The Bill addresses three areas, use reduction, waste reduction and toxics release reduction.

The last one is really where there's only concern, toxic release reduction. There is concern because you have one side saying that they have a problem with that, they don't know what it's going to cost or they don't know exactly what it's going to do, and you have the other side who says, well, it's there, isn't it? The other side isn't saying it isn't there. It's there. The toxic release, whether it's in the air or in our waters, is there. I can't compromise on that. I can't find the middle ground on that. You have to reduce it, period. The Bill allows for exemptions. It applies to companies that have 10,000 pounds of release in a year. 10,000 pounds. How can you compromise on that? It just doesn't make any sense to me.

You know, over the years, we've tried to address the problems that industry has had with their workers' comp. We cut benefits and we knew it would hurt the workers but we cut it anyway, because we said it wasn't right. We made the law stricter and we knew it would hurt the people and the workers, but we said we had to do it because it was right. We cut the amount of time they received their benefits. We knew it would hurt the worker, but we said it was right and we did it. But we also said, at the time, that worker safety is also a problem and that we would have to address that sooner or later. Whenever it comes up to be addressed, we say wait till later. It's not time yet.

Well, we've compromised on workers' comp when it comes to safety. We've compromised on the environment and look where it's gotten us. We're passing color, odor and foam bills. We're passing all kinds of bills dealing with the environment because the environment is being destroyed and we're still saying wait till later. You know, we've had problems with toxic dumps. We didn't put it there. Industry put them there. We have problems in our rivers. We didn't do it, industry did it. We have problems with our air. We didn't do it, industry did it. When are we going to say, look, give us a break. I guess we can always say, let no one ever say we didn't do anything for our industries. We keep hearing "business climate" cried around here but, it seems to me we're always doing something to protect our industries.

Maybe it's time we started looking at why we're really here. Maybe it's time we started looking at our own campaign brochures and see exactly what we put down there about the environment, about worker safety, about all these things that we stand for as human beings. Maybe it's time we do that, because, believe me, I think a lot of us forget it when we get up here and speak in this Body.

The last story that I want to answer to of what the good Senator from Penobscot, Senator Baldacci, has related to us today was the one about the people with the plastic gloves working with toxics. Does any of that stuff get into the air by the way? I would like to know, as a person who breathes air, as a person who uses our rivers, as a person who fishes, I want to know if any of those toxics get into the natural resources that we have in this state that we use. If they are released, then I want to know how we can compromise on making Maine safer for the people who use these resources. Thank you. Mr. President, I call for the indefinite postponement of this amendment.

Senator DUTREMBLE of York moved the INDEFINITE POSTPONEMENT of Senate Amendment "A" (S-687) to Committee Amendment "A" (H-1082).

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

Senator BALDACCII: Thank you, Mr. President. I would request a Division on that motion and I would like to address the issues that were raised by the good Senator from York, Senator Dutremble. Maybe it's just from being on opposite sides of the aisle, in a physical sense, but I have a tremendous amount of respect for the good Senator and a good amount of respect for the issues which he raises.

But the fact of the matter is, it's not just a perception, but it's reality where we continually are whacking and whacking and whacking away at businesses in the state of Maine, whether it's more licenses, whether it's higher workers compensation premiums, whether it's higher unemployment contributions, whether it's more regulations, more paperwork, more taxes, more requirements to do more things. That's not a facade. If you ask any businessmen in the state of Maine whether things have gotten better for them as far as those concerns, you'll hear a resounding no.

The fact of the matter is, all that anybody would want is a balance. It's a two-way street. You can't clean up the rivers and you can't clean up the smokestacks, if there aren't any there to worry about. If people are laid off and out of work and not earning money, what good is it to the community to have that kind of situation? It's a two-way street. It's got to be something that we develop together to work at it. I think that the approach that has been proposed with this amendment is realistic. I would like to think that with all the good environmental legislation that we've had in this particular session that we would be able, in this particular area, to at least, have the good sense to try to work together to bring about better working conditions. Thank you, Mr. President.

Senator BALDACCII of Penobscot requested a Division.

THE PRESIDENT: The Chair recognizes the Senator from Arrostook, Senator Ludwig.

Senator LUDWIG: Thank you, Mr. President. I think the Senator from Penobscot, Senator Baldacci, has come up with a very reasonable amendment. I am not entirely satisfied with it either. You know that just yesterday, I believe it was, I voted to indefinitely postpone the whole Bill. But I could live with this amendment and I think that most of your constituents can live with this amendment knowing that the workers are going to be protected in the workplace, but that they are not going to spend an inordinate amount of time hiring additional people to keep track of matters which are already covered by OSHA and a great number of other agencies which are already in place to deal with dangers in the workplace. So, at this moment, I would ask you to vote against the pending motion for indefinite postponement of the amendment because it is a good amendment and I hope you will have a chance to support it after this present vote is taken.

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

Senator TITCOMB: Thank you. Mr. President, Men and Women of the Senate, I think my biggest concern is not that my constituents could live with this amendment but that, perhaps, some of my constituents might not live with this amendment and I think that, as we look at the piles of papers that are put on our desks, it would be good if we looked very carefully at not only the statistics that are presented to us

from the business lobby, but, also from the labor lobby.

I think there are some very valid points that need to be made here. Because we sometimes take the attitude that we're whacking away at business too much, my concern is that, perhaps, the worker is being whacked away at too much. Over 100,000 workers each year, 273 workers each day, die from exposures to hazardous chemicals. 400,000 workers each year, or 1,095 workers each day become ill or develop disease from exposure to hazardous chemicals. Of more than 59,000 chemicals used in the workplace nationwide, the Occupational Safety and Health Administration has developed safety standards for only 23. A recent government assessment estimated that 560 million tons of industrial toxic wastes are produced annually in the United States. Each one of us has a nice share of that. Approximately two tons of hazardous waste is produced for every United States citizen each year. Only seven toxic air pollutants are regulated.

There are a lot of issues here that, in the process of lobbying, we're not looking at and they're human issues and they're safety issues. This is not a hamburger issue. This is a deadly toxic issue and these are real people. The provisions made in the Bill that was passed by that Committee are very sound, reasonable measures and they provide for very sound, reasonable exemptions. In fact, some of the exemptions, that I personally don't abide by, but I could certainly live with. I think we have an attitude that the Earth and the people on it are invulnerable when, in fact, we are not. Someday we're going to wake up and discover that.

Off Record Remarks

Senator DUTREMBLE of York requested and received Leave of the Senate to withdraw his motion to INDEFINITELY POSTPONE Senate Amendment "A" (S-637) to Committee Amendment "A" (H-1082).

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

Senator DUTREMBLE: Mr. President, I would hope that you would all vote against the amendment on passage so that we can get this Bill on and pass it without the amendment. I would ask for a Roll Call on adoption of the amendment.

On motion by Senator DUTREMBLE of York, supported by a Division of one-fifth the Members present and voting, a Roll Call was ordered.

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

Senator KANY: Thank you. Mr. President, Members of the Senate, I enjoyed the hamburger story, too, but I would say that if the good Senator's restaurant has at least 10,000 pounds of toxics being emitted into the air it would be the only one in the world, I'm sure. All that is reportable, and would come under this Bill, would be at least 10,000 pounds.

The Bill, itself, will help employers save money. It will focus on employee safety and will also assist with the public health, the food chain, air and our drinking water. I urge you to vote against the pending motion.

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

Senator GAUVREAU: Thank you. Mr. President, Men and Women of the Senate, I have enjoyed, during the past few days, the extensive and, oftentimes, emotional debate on the toxics reduction issue. For me, it's been quite instructive. I have an obvious interest,

in the course of my legislative service, in health matters and have learned a great deal over the past several weeks as this issue has been debated.

I also have an interesting legislative district. I think that some of you may have have similar characteristics. I represent a large working community. I also represent a community that has a large industrial base. Many of my employers have taken the time, during the last few days, to contact me and express, to me, their concerns regarding this legislation.

As many of you, I have been quite involved trying to reach the end of our legislative session, to manage Bills of interest to mine on the Appropriations Table, to attempt to complete the mammoth task given to the Judiciary Committee members this year and also to follow legislation that I'm quite concerned about. I have a few thoughts and then I'm going to ask a question. I am troubled by the debate. I can't stand here this morning and indicate to you that I have any sort of a refined knowledge in terms of the issues that we're debating. I have a general impression, but I don't have the detailed knowledge that members of the Committee and others have, regarding SERA and other federal legislation and how those regulations impact upon our business community.

I do have a strong sense that Maine people value their environment tremendously. That commitment to a clean environment transcends all other values in our society. I think, as representatives of the people, all of us have that sense that we should do whatever we possibly can to protect our environment and to make sure that, within reason, we prohibit the emission of toxic discharges into our environment.

At the same time, members of our Body who argue that the business community concerns have to be addressed are correct. We all know, we all recognize, that we rely upon a healthy economic sector for our people to prosper and for our communities to grow. I don't believe anybody in this Chamber wants to place any of our business friends at a competitive disadvantage.

That's where I'm having some difficulty, because I, frankly, do not really understand some of the technical terms which are being thrust about. I understand and, frankly, I'm impressed and concerned about the tons of toxic discharges emitted into our environment. All of us have that concern. But, for me, the real question comes down to whether this legislation, which the Committee has offered for our consideration, absent the amendment offered by the good Senator from Penobscot, Senator Baldacci, does meaningfully secure the reduction of releases of toxic matter into our environment? Or are we going to be putting our companies at a competitive disadvantage in requiring companies to tool up, to meet these requirements without any appreciable impact on the environment? It seems to me that really is, for me, the dispositive issue. I will not leave this Chamber this week fully satisfied on how I voted, but I would appreciate someone from the Committee addressing that particular concern of mine. Thank you.

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

Senator KANY: Thank you. Mr. President, Members of the Senate, the reporting is a federal requirement, so firms, throughout the country, must report if they release large quantities of toxic matter into the air, water or land.

The other day I read to you the 1987 figures for Maine and they really are kind of shocking. In Maine, over 14 million pounds of toxic into the air.

This is just from the large quantity generators. 196 million pounds of toxics enter our surface water. 5 million pounds of toxics transferred to public sewage. 2 million pounds of toxics, on-site land releases. Off-site transfers, 2 million pounds. That's a lot.

The only requirement here is for planning, planning on reducing the use of toxics. There are many exemptions offered, even some mandatory exemptions. Mandatory to receive an exemption if practicable toxic release reduction methods do not exist, if previously implemented reductions or actions have already resulted in all practicable toxic release reduction, steps necessary to reduce toxics release would have a significant adverse impact on product quality or quantity or if legal or contractual obligations prohibits steps necessary to reduce toxics release. I believe this is a reasonable Bill, very little reporting, if ever, only a summary of the plan. I hope that you go along with it.

THE PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Webster.

Senator WEBSTER: Thank you. Mr. President, Ladies and Gentlemen of the Senate, I couldn't pass up the opportunity to respond briefly to the good Senator from Kennebec, Senator Kany's, comments about how this measure would help employers save money.

It reminds me of the story we hear here often about the guy who comes to the door and knocks on the door and says, I am from the government, I am here to help you. Typical piece of legislation that we pass here which gives more government regulation at a time when the citizens in this state are asking for less government regulation. It seems to me that this Bill will not necessarily be in the best interests of people I represent. The simple reason being that an additional way of government, when we already have OSHA and other government departments, doesn't appear to be necessary. Perhaps, the good Senator from Kennebec, Senator Kany believes this is going to save employers money. I think what it's going to do is cost employees jobs.

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

Senator BALDACCI: Thank you. Mr. President, Members of the Senate, to follow up on the question of the good Senator from Androscoggin, Senator Gauvreau, about mandatory release requirements be meaningful. I think it goes to the heart of the issue because the toxic release numbers that were being referred to were estimates and they are only required to file estimates with the EPA.

What they do, basically, using the example, as bad as people hate to admit it, of the hamburg situation, but to use that example, they just assume that's what happened to it. They don't know what happened to it but they have one product over here and they have an end product over here and the difference, which is that mass balancing accounting procedure that they use, they assume that this has been released. In fact, it may not be released. No tools are available to measure, actually quantify what's being released.

So what's being done is, with that uncertainty, in that uncharted water, we're mandating. We're mandating to companies to reduce 10%, 20%, 30% of what? That's the problem. You've hit the nub of the issue. If that were quantifiable, then we'd be debating whether it should have a little bit of dirt, a lot of dirt, or no dirt at all. That's an argument that's fine. But when you don't know, I mean it's pretty difficult.

I think that it's very unfortunate to use those figures when, in fact, those figures are estimates. The estimating that was done was this mass balancing accounting principle that was used and it's not fair to label it that these 10,000 or whatever millions of pounds were released into the environment. You don't know if they were evaporated. I mean, nobody really knows, to answer your question.

I think that the point that people should be aware of is that this applies to at least 200 firms throughout the state - Pioneer Plastics, American Cyanamid, S.D. Warren, James River. Those are the companies that are now filing already SERA and MEMA reports, the Superfund reauthorization of SERA. They're filing these reports and they are going to be under this cloud of not knowing what to do or where to go. Thank you.

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

Senator DUTREMBLE: Thank you. Mr. President, Members of the Senate, just not to lose sight of what this Bill is about. This Bill is a worker safety Bill and an environmental Bill. I just don't want to lose focus of that, because all of the objections we've heard have not mentioned the safety factor of our environment. They just have not mentioned that.

If there are 200 companies in this state that are emitting 10,000 pounds of toxics into our natural resources whether it's the air or water, then that's a severe problem. That's the only way that I think we should look at this. If that's happening, then we do have a serious, serious problem in this state. There is no way we can sweep that under the carpet. There's no way we can do that. If there's that many toxics being released then there's a real problem here. There is no arguing or reasoning that can sweep that under.

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

Senator CAHILL: Thank you, Mr. President. I wish to pose a question through the Chair to anyone on the Committee. My question would be, seeing both sides supporting clean environment, yet, hoping to keep an ample number of jobs for Maine workers, has any other state enacted this law? Has there been a similar law in any other state in this country?

THE PRESIDENT: The Senator from Sagadahoc, Senator Cahill, has posed a question through the Chair to any Senator who may care to respond. The Chair recognizes the Senator from Kennebec, Senator Kany.

Senator KANY: Mr. President, Members of the Senate, I fail to understand how a single worker could lose a job from this Bill, a single worker. All you have to do is plan for toxics use reduction. That's all and toxics release reduction. That's not too much to ask.

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

Senator BALDACCI: Thank you. Mr. President, Good Senator from Kennebec, it's very easy. If a company feels that it would be almost impossible to develop the information to present to the DEP to go through that process or just say why the harassment, they'll take a couple of lines out of a plant. Whatever it happens to be, they'll take a couple of lines that utilize some of those chemicals and they'll bring it to another plant somewhere else, so they don't have to worry about that. That's how people will lose their jobs.

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

Senator CAHILL: Thank you, Mr. President. I wish to pose a question through the Chair to anyone

on the Committee who may answer. Is there any other state that dealt with this issue and enacted legislation dealing with this amount of toxic waste reduction?

THE PRESIDENT: The Senator from Sagadahoc, Senator Cahill, has posed a question through the Chair to any Senator who may care to respond. The Chair recognizes the Senator from York, Senator Dutremble.

Senator DUTREMBLE: Mr. President, in answer to the question, I don't really know. The reason I don't know is because I usually make my own decisions. I don't have to go out of state to find out what they're doing. I like to know what we're doing here in this state.

I do want to respond to what the Senator from Penobscot, Senator Baldacci, said. There are exemptions and they're very clear which companies are exempt. For those of you who haven't read them, I'm sure they were brought up to you in all the lobbying that has been done. First of all, this only applies to companies with 10,000 pounds of toxic release. That eliminates a lot, if not most, of the companies within the state. A releaser must receive an exemption for the following reason, "if practicable toxics release reduction methods do not exist, previously implemented reductions or actions have already resulted in all practicable toxic release reductions, steps necessary to reduce toxic release would have a significant, adverse impact on product quality or quantity and if legal or contractual obligation prohibits the steps necessary to reduce toxics release." I think the Committee went out of the way to make sure that exemptions were in this Bill to protect a lot of the companies that we're talking about. As far as whether or not other states do this, I have no idea.

Senator KANY of Kennebec requested and received Leave of the Senate to speak a fourth time.

Senator KANY: Thank you, Mr. President. To answer the good lady from Sagadahoc's question, at least one state has such legislation, but I want to remind you that Maine is known, nationally, for its solid waste management legislation. The number one priority on our hierarchy for reducing solid waste was the reduction of waste generated at the source, including both amount and toxicity of waste. So, we are really following through with that mandate from last year.

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

Senator CAHILL: Thank you. Mr. President, Ladies and Gentlemen of the Senate, I appreciate the answer from the good Senator from Kennebec, Senator Kany, and would like to respond only to the good Senator from York, Senator Dutremble, who said he liked to make his own decisions. I certainly think that we in the State Senate should make decisions that affect Maine and not necessarily follow the lead of the other states. My point was that one of the previous speakers mentioned that there were 283 deaths attributed to legislation such as this. Those deaths did not occur in Maine. They occurred in other states.

Senator BALDACCII of Penobscot requested and received Leave of the Senate to speak a fifth time.

Senator BALDACCII: Mr. President, Members of the Senate, the question was asked, what other states have legislation like this? There is no other state which has legislation like this. The other two states that were mentioned deal with toxic use and toxic waste and hazardous waste. None deal with toxics release reduction.

THE PRESIDENT: The pending question before the

Senate is the motion of Senator BALDACCII of Penobscot to ADOPT Senate Amendment "A" (S-687) to Committee Amendment (H-1082).

A vote of Yes will be in favor of ADOPTION of Senate Amendment "A" (S-687) to Committee Amendment (H-1082).

A vote of No will be opposed.

Is the Senate ready for the question?

Senator CLARK of Cumberland who would have voted NAY requested and received Leave of the Senate to pair her vote with Senator ANDREWS of Cumberland who would have voted YEA.

Senator BERUBE of Androscoggin who would have voted NAY requested and received Leave of the Senate to pair her vote with Senator EMERSON of Penobscot who would have voted YEA.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

The Chair changed his vote from NAY to YEA.

ROLL CALL

YEAS: Senators BALDACCII, BRAWN, CAHILL, CARPENTER, COLLINS, DILLENBACK, DUTREMBLE, GILL, GOULD, HOLLOWAY, LUDWIG, PERKINS, RANDALL, TWITCHELL, WEBSTER, WEYMOUTH, WHITMORE, THE PRESIDENT - CHARLES P. PRAY

NAYS: Senators BOST, BRANNIGAN, BUSTIN, ERWIN, ESTES, ESTY, GAUVREAU, HOBBSINS, KANY, MATTHEWS, PEARSON, THERIAULT, TITCOMB

ABSENT: Senators None

PAIRED: Senators ANDREWS, BERUBE, CLARK, EMERSON
Senator DUTREMBLE of York requested and received Leave fo the Senate to change his vote from NAY to YEA.

THE PRESIDENT requested and received Leave of the Senate to change his vote from NAY to YEA.

18 Senators having voted in the affirmative and 13 Senators having voted in the negative, with 4 Senators having paired their votes and No Senators being absent, the motion by Senator BALDACCII of Penobscot, to ADOPT Senate Amendment "A" (S-687) to Committee Amendment "A" (H-1082), PREVAILED.

Senator DUTREMBLE of York moved that the Senate RECONSIDER whereby it ADOPTED Senate Amendment "A" (S-687) to Committee Amendment "A" (H-1082).

Senator LUDWIG of Aroostook requested a Roll Call. On motion by Senator DUTREMBLE of York, Tabled until Later in Today's Session, pending the same Senator's motion to RECONSIDER ADOPTION of Senate Amendment "A" (S-687) to Committee Amendment "A" (H-1082). (Roll Call requested.)

The Chair laid before the Senate the Tabled and Specially Assigned matter:

COMMITTEE OF CONFERENCE REPORT on Bill "An Act Concerning the State Minimum Wage"

H.P. 1646 L.D. 2279

Report - Unable to Agree.

Tabled - April 9, 1990, by Senator DUTREMBLE of York.

Pending - ACCEPTANCE, in concurrence
(In Senate, April 9, 1990, Report READ.)
(In House, April 7, 1990, Report READ and ACCEPTED.)

Which Report was ACCEPTED, in concurrence.

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 Resolve

Resolve, to Reimburse Certain Municipalities on Account of Taxes Lost Due to Lands Being Classified Under the Tree Growth Tax Law

H.P. 1823 L.D. 2496

This being an Emergency Measure and having received the affirmative vote of 28 Members of the Senate, with No Senators having voted in negative, and 28 being more than two-thirds of the entire elected Membership of the Senate, was FINALLY PASSED and having been signed by the President, was presented by the Secretary to the Governor for his approval.

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

PAPERS FROM THE HOUSE

The Following Joint Resolution: H.P. 1825

JOINT RESOLUTION CONGRATULATING

THE ST. ANDRE HOME, INC. ON THE OCCASION OF ITS FIFTIETH ANNIVERSARY

WHEREAS, St. Andre Home, Inc. is celebrating fifty years of continuous service to women, rendered in a spirit of compassion and dedication; and

WHEREAS, St. Andre Home was established through the vision and foresight of the Sisters - Servants of the Immaculate Heart of Mary, also known as the Good Shepherd Sisters of Quebec; and

WHEREAS, St. Andre Home originated out of faith and compassionate respect for life at all levels; and

WHEREAS, St. Andre Home provided care to thousands of young women experiencing unplanned pregnancies and women in crisis; and

WHEREAS, St. Andre Home first provided institutional and hospital services at 407 Pool Road in Biddeford from 1940 to 1974; and

WHEREAS, through an Act of the 106th Legislature of the State of Maine funds were appropriated for St. Andre Home to establish residential group homes in Biddeford, Lewiston and Bangor; and

WHEREAS, over the last half century St. Andre Home has facilitated the placement of more than 1,500 infants in warm, loving, adoptive families throughout the State of Maine; and

WHEREAS, St. Andre Home has profited greatly by the tireless dedication and unselfish devotion of hundreds of friends, co-workers, board members, church, government and civic agencies; now, therefore, be it

RESOLVED: That We, the Members of the 114th Legislature, now assembled in the Second Regular Session, hereby extend sincere congratulations to St. Andre Home, Inc. for outstanding humanitarian contributions since its inception on the occasion of its fiftieth anniversary and best wishes for continued success in all its endeavors over the next fifty years; and be it further

RESOLVED: That copies of this Joint Resolution, duly authenticated by the Secretary of State, be sent to Reverend Sister Theresa Couture, SCIM, Provincial Superior and Dr. Gregory C. Foltz, Executive Director of St. Andre Home, Inc.

Comes from the House READ and ADOPTED.

Which was READ and ADOPTED, in concurrence.

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

PAPERS FROM THE HOUSE

Non-concurrent Matter

Resolve, to Establish the Commission to Study the Harness Racing Industry (Emergency)

S.P. 781 L.D. 2022

In Senate, April 9, 1990, Bill and Accompanying Papers INDEFINITELY POSTPONED.

Comes from the House PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-556) in NON-CONCURRENCE.

On motion by Senator CLARK of Cumberland, the Senate ADHERED.

The Secretary has so informed the Speaker of the House.

Under suspension of the Rules, all matters thus acted upon ordered sent down forthwith for concurrence.

On motion by Senator BRANNIGAN of Cumberland, RECESSED until 4:00 in the afternoon.

After Recess

Senate called to order by the President.

ORDERS OF THE DAY

On motion by Senator DUTREMBLE of York, the Senate removed from the Tabled and Later Today Assigned Table matter:

Bill, "An Act to Reduce Toxics Use, Toxics Release and Hazardous Waste Generation"

H.P. 1583 L.D. 2192

Tabled - April 10, 1990, by Senator DUTREMBLE of York.

Pending - Motion of Senator DUTREMBLE of York, to RECONSIDER ADOPTION of Senate Amendment "A" (S-687) to Committee Amendment "A" (H-1082) in NON-CONCURRENCE (Roll Call Requested)

(In House, April 7, 1990, PASSED TO BE ENACTED.)

(In Senate, April 10, 1990, RECONSIDERED PASSAGE TO BE ENGROSSED AS AMENDED. Senate Amendment "A" (H-687) to Committee Amendment "A" (H-1082) READ and ADOPTED.)

Senator DUTREMBLE of York, requested and received Leave of the Senate to withdraw his motion to RECONSIDER ADOPTION of Senate Amendment "A" (S-687) to Committee Amendment "A" (H-1082).

Committee Amendment "A" (H-1082) as Amended by Senate Amendment "A" (S-687) thereto, ADOPTED in NON-CONCURRENCE.

Which was PASSED TO BE ENGROSSED, as Amended in NON-CONCURRENCE.

Under suspension of the Rules, ordered sent down forthwith for concurrence.

Off Record Remarks

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

COMMUNICATIONS

The Following Communication:

ONE HUNDRED AND FOURTEENTH LEGISLATURE
COMMITTEE ON JUDICIARY

April 9, 1990

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 Judiciary has had under consideration the nomination of the Honorable Alexander MacNichol of Cape

Elizabeth, for appointment as Judge, Maine District Court.

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 confirmed. The Committee Clerk called the roll with the following result:

YEAS: Senators 3
Representatives 9
NAYS: 0

ABSENT: 1 Rep. Hanley of Paris

Twelve members of the Committee having voted in the affirmative and none in the negative, it was the vote of the Committee that the nomination of the Honorable Alexander MacNichol of Cape Elizabeth, for appointment as Judge, Maine District Court be confirmed.

Sincerely,

S/Senator Barry J. Hobbins S/Rep. Patrick E. Paradis
Senate Chair House Chair

Which was READ and ORDERED PLACED ON FILE.

THE PRESIDENT: The Joint Standing Committee on Judiciary has recommended the nomination of Honorable Alexander MacNichol of Cape Elizabeth be confirmed.

The pending question before the Senate is: "Shall the recommendation of the Committee on Judiciary 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 Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators None

NAYS: Senators ANDREWS, BALDACCI, BERUBE, BOST, BRANNIGAN, BRAWN, BUSTIN, CAHILL, CARPENTER, CLARK, COLLINS, DILLENBACK, DUTREMBLE, EMERSON, ERWIN, ESTES, ESTY, GAUVREAU, GILL, GOULD, HOBBS, HOLLOWAY, KANY, LUDWIG, MATTHEWS, PEARSON, PERKINS, RANDALL, THERIAULT, TITCOMB, TWITCHELL, WEBSTER, WEYMOUTH, WHITMORE, THE PRESIDENT - CHARLES P. PRAY

ABSENT: Senators None

No Senators having voted in the affirmative and 35 Senators having voted in the negative, with No Senators being absent, and none being less than two-thirds of the Membership present, it was the vote of the Senate that the Committee's recommendation be ACCEPTED and the nomination of Honorable Alexander MacNichol, was CONFIRMED.

The Secretary has so informed the Speaker of the House.

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

COMMUNICATIONS

The Following Communication:

ONE HUNDRED AND FOURTEENTH LEGISLATURE
COMMITTEE ON JUDICIARY

April 9, 1990

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 Judiciary has had under consideration the nomination of Leigh I. Saufley of Yarmouth, for appointment as Judge-at-Large of the Maine District Court.

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 confirmed. The Committee Clerk called the roll with the following result:

YEAS: Senators 3
Representatives 9
NAYS: 0

ABSENT: 1 Rep. Richards of Hampden

Twelve members of the Committee having voted in the affirmative and none in the negative, it was the vote of the Committee that the nomination of Leigh I. Saufley of Yarmouth, for appointment as Judge-at-Large of the Maine District Court be confirmed.

Sincerely,

S/Senator Barry J. Hobbins S/Rep. Patrick E. Paradis
Senate Chair House Chair

Which was READ and ORDERED PLACED ON FILE.

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

Senator CLARK: Thank you. Mr. President, Men and Women of the Senate, yesterday a constituent of mine, whom I had promised to speak as a proponent for before the Committee on Judiciary, was unanimously recommended for confirmation. A series of commitments that are associated with the office that I hold in this Senate prevented me from appearing before the Joint Standing Committee on Judiciary even though I had prepared my remarks beforehand, which is something I don't always do.

I feel particularly negligent and bad about this because Leigh Saufley, whom I met one snowy evening in the lower parking lot here at the State House, helped me start my car, for I was using a loaner that day. My car was in the fix-it shop. Her husband, Bill Saufley, served with particular distinction as the legal analyst for the then Joint Standing Committee on Business Legislation before that Committee was split into Business Legislation and Banking and Insurance. It was a late evening. There were two cars in the parking lot, theirs and mine. Mine wouldn't go. I was not very helpful. Frankly, neither was Bill, but Leigh was. And that's how I met her.

With that in mind, and the fact that I have known them and their growing family, for now, a number of years, and because they're constituents, I'm going to share the remarks with you, with your indulgence, of course, that I would have shared before the Committee with great pride yesterday. Then maybe I'll feel better.

I think Leigh is an exceptional candidate for the bench, given her ten years of extensive practice in all levels of the Maine courts. Her remarkable ability to discern reasonable solutions to perplexing issues and her sense of humor that contributes to reducing tensions and getting the job done and last, not least, her ability to help people get their cars started. I would have been proud to appear before the Committee on Judiciary yesterday afternoon to speak in support of the nomination to the District Court bench of my constituent, Leigh Ingalls Saufley of Yarmouth. The task, as I mentioned, is made even easier by virtue of the fact that Leigh Saufley and her husband, Bill, have been friends of mine, as I mentioned, for a number of years. Now you know the genesis of that friendship.

Others before the Committee on Judiciary yesterday attested to the legal skills and achievements that have marked this remarkable young woman's career and the commitment to public service that Leigh has shown on the way to her now distinguished position in the Department of the Attorney General. For my part, I respect and applaud what Leigh has accomplished in protecting the interests of Maine's children, its elderly and others who have needed the help of a strong advocate in the public sector.

What would have brought me, a non-lawyer, as well as her State Senator, to speak yesterday before the Committee on Judiciary is my sincere and honest conviction that Leigh Saufley will, as a judge-at-large, in Maine's District Court, bring to that role an attentive, candid, hard-working and good humored temperament that I believe is sorely needed in that forum. As the arbiter of most of the state's critical disputes in family and domestic abuse matters, in its guiding role for juveniles and with its broad responsibilities for adjudication of minor wrongs, civil and criminal, the District Court demands some of our most compassionate, principled and pragmatic decision-makers. Members of the Senate. I submit to you that Leigh Saufley brings these and those qualities to this task. Obviously, I respectfully urge that we vote no on the pending motion. Thank you.

THE PRESIDENT: The Joint Standing Committee on Judiciary has recommended the nomination of Leigh I. Saufley of Yarmouth be confirmed.

The pending question before the Senate is: "Shall the recommendation of the Committee on Judiciary 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 Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators None

NAYS: Senators ANDREWS, BALDACCI, BERUBE, BOST, BRANNIGAN, BROWN, BUSTIN, CAHILL, CARPENTER, CLARK, COLLINS, DILLENBACK, DUTREMBLE, EMERSON, ERWIN, ESTES, ESTY, GAUVREAU, GILL, GOULD, HOBBS, HOLLOWAY, KANY, LUDWIG, MATTHEWS, PEARSON, PERKINS, RANDALL, THERIAULT, TITCOMB, TWITCHELL, WEBSTER, WEYMOUTH, WHITMORE, THE PRESIDENT - CHARLES P. PRAY

ABSENT: Senators None

No Senators having voted in the affirmative and 35 Senators having voted in the negative, with No Senators being absent, and none being less than two-thirds of the Membership present, it was the vote of the Senate that the Committee's recommendation be ACCEPTED and the nomination of Leigh I. Saufley, was CONFIRMED.

The Secretary has so informed the Speaker of the House.

ORDERS OF THE DAY

The Chair laid before the Senate the Tabled and Later Today Assigned matter:

An Act to Provide Tax Amnesty and Necessary Administrative Support to the Bureau of Taxation

H.P. 1731 L.D. 2390
(C "A" H-1093)

Tabled - April 10, 1990, by Senator CLARK of Cumberland.

Pending - ENACTMENT

(In Senate, April 6, 1990, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1093), in concurrence.)

(In House, April 7, 1990, PASSED TO BE ENACTED.)

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

Senate at Ease

Senate called to order by the President.

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

PAPERS FROM THE HOUSE

Non-concurrent Matter

Bill "An Act to Make Supplemental Allocations from the Highway Fund for the Fiscal Years Ending June 30, 1990, and June 30, 1991" (Emergency)

H.P. 1776 L.D. 2444

(C "A" H-1064)

In Senate, April 5, 1990, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1064), in concurrence.

Comes from the House PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1064) AS AMENDED BY HOUSE AMENDMENT "A" (H-1103) thereto, in NON-CONCURRENCE.

The Senate RECEDED and CONCURRED.

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

PAPERS FROM THE HOUSE

Non-concurrent Matter

An Act to Reduce Toxics Use, Toxics Release and Hazardous Waste Generation

H.P. 1583 L.D. 2192

(S "A" S-687 to C "A"

H-1082)

In House, April 7, 1990, PASSED TO BE ENACTED.

In Senate, April 10, 1990, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1082) AS AMENDED BY SENATE AMENDMENT "A" (S-687) thereto, in NON-CONCURRENCE.

Comes from the House, that Body ADHERED.

Senator KANY of Kennebec moved to RECEDE and CONCUR.

On motion by Senator LUDWIG of Aroostook, supported by a Division of one-fifth the Members present and voting, a Roll Call was ordered.

THE PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Webster.

Senator WEBSTER: Thank you. Mr. President, Ladies and Gentlemen of the Senate, I would urge you to oppose the current motion and I want to tell you why. I find serving here in the Legislature, particularly here in the Senate, a great experience. But I've found for the last several years, we have been put in this kind of position on a number of issues and I find it particularly offensive to continually be put in a box where you either have to vote for what the other Body wants or nothing. Once again, that's where we are.

This branch of the Legislature is distinct and different from other branches of the Legislature. It seems to me that there were some concerns addressed by the good Senator from Penobscot, Senator Baldacci, and other members of this Body about this legislation

we have before us. It would seem to me that our concerns, the concerns of a majority of the people in this Senate, ought to be addressed. For that reason, I am willing, knowing the political process, knowing that it isn't over until it's over, to send a clear message to anyone who's listening that we have concerns and those concerns ought to be addressed or we won't pass a law. For that reason, I would urge that you would vote against the pending motion.

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

Senator KANY: Thank you. Mr. President, Members of the Senate, I urge the Senate to go along with the pending motion and enact this legislation. The proposal before you is remotely related to the original Bill, only remotely.

It is simply a logical progression from our landmark, nationally acclaimed, integrated solid waste management act in which we first suggest reduction of waste generated at the source, including both amount and toxicity of the waste before reusing, recycling, etcetera. This Bill establishes a hierarchy of techniques and goals to reduce the use and release of toxic substances as well as the generation of hazardous waste. Facilities are required to develop plans to meet these goals.

The amendment applies to those facilities that use extremely hazardous substances, release more than 10,000 pounds of toxic substances to the environment annually, and are in specific manufacturing sectors or generate more than 100 kilograms of hazardous waste for three or more months during the year. If a facility does not meet the goals set for toxics release or hazardous waste reduction by 1993, the Commissioner of the Department of Environmental Protection may require a facility to submit a summary of its reduction plan within one year. Plans remain confidential and only summaries are submitted to the Commissioner.

A number of exemptions are established in the recognition that some facilities may not be able to reduce or may have already instituted the maximum reductions currently available. This Bill was drafted, not to be onerous to the businesses of this state, but to help with our solid waste management crisis and to reduce toxics.

THE PRESIDENT: The pending question before the Senate is the motion of Senator KANY of Kennebec to RECEDE and CONCUR.

A vote of Yes will be in favor of the motion to RECEDE and CONCUR.

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators ANDREWS, BALDACCI, BERUBE, BOST, BRANNIGAN, BUSTIN, CLARK, DUTREMBLE, ERWIN, ESTES, ESTY, GAUVREAU, HOBBS, KANY, MATTHEWS, PEARSON, THERIAULT, TITCOMB, THE PRESIDENT - CHARLES P. PRAY

NAYS: Senators BRAWN, CAHILL, CARPENTER, COLLINS, DILLENBACK, EMERSON, GILL, GOULD, HOLLOWAY, LUDWIG, PERKINS, RANDALL, TWITCHELL, WEBSTER, WEYMOUTH, WHITMORE

ABSENT: Senators None

19 Senators having voted in the affirmative and 16 Senators having voted in the negative, with No Senators being absent, the motion by Senator KANY of Kennebec, to RECEDE and CONCUR, PREVAILED.

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

ORDERS OF THE DAY

On motion by Senator CLARK of Cumberland, the Senate removed from the Unassigned Table, the following:

Bill "An Act to Establish a Five-year Medical Liability Demonstration Project"

S.P. 782 L.D. 2023

Tabled - April 9, 1990, by Senator CLARK of Cumberland.

Pending - FURTHER CONSIDERATION

(Reported pursuant to Joint Rule 13.)

(In Senate, April 5, 1990, Bill and Accompanying Papers RECOMMITTED to the Committee on JUDICIARY.)

(In House, April 6, 1990, Bill and Accompanying Papers INDEFINITELY POSTPONED IN NON-CONCURRENCE.)

Senator GAUVREAU of Androscoggin moved that the Senate RECEDE from RECOMMITMENT to the Committee on JUDICIARY.

Under suspension of the Rules, the Bill READ TWICE.

On motion by Senator GAUVREAU of Androscoggin, Senate Amendment "B" (S-685) READ.

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

Senator GAUVREAU: Thank you. Mr. President, Men and Women of the Senate, the amendment I'm offering this evening relates to the issue of medical malpractice, which has received extensive discussion and consideration in these halls over the last year or two and certainly in the Committee on Judiciary over the last few years. As you may recall, there were a raft of legislative proposals advanced for our consideration last year dealing, generically, with the area of professional liability insurance for physicians.

As a result of the complexity of those Bills, there was extensive study last summer dealing with this whole general topic area. We, as a legislative Body, commissioned the Public Resources Group, out of Portland, to conduct an extensive analysis to determine the efficacy of the various proposals that were advanced such as caps on professional liability, awards, elimination or modification of the rule on joint and several liability as well as collateral source and all other types of legal remedies and rules regarding professional liability.

What I offer for your consideration this evening is an approach which differs markedly from medical malpractice proposals from the past. The basic approach of other vehicles is to arrest or remedy the problem of professional liability by reducing awards or adopting rules of court which ultimately will reduce the financial burden on insurers who insure physicians against professional liability. I have taken a markedly different approach.

My concern is not so much with the so-called severity of medical malpractice awards, as I will describe later on in my presentation this evening, but, rather, upon the elusive notion of what behavior by a physician actually constitutes malpractice or negligent behavior. In fact, I think, that the proposals which have been generated elsewhere in this session for caps and permutations of that type of approach are basically misguided. As you may know, when I'm not in these halls, I tend to be somewhat of an aficionada of baseball and I thought that I would give you a vignette tonight to demonstrate my point.

About 75 years ago, there was a ball player for the old New York Giants known as Germany Schaeffer.

Well, Germany Schaeffer is sort of a cult hero to many baseball fans because Germany has the somewhat unusual distinction of being the only person in the history of the game who stole first base. You may be interested in why he did that. He was sitting on second base and his team was one run behind. There was also a runner on third base. Germany thought, you know, what I should do, is just try to distract the pitcher and steal first. If I steal first then the pitcher will get all flustered and maybe even balk and the runner on third will score the run. It was an innovative concept. Germany did succeed in his mission. He did steal first base and he didn't draw a throw. In fact, the pitcher was nonplussed. Well, Germany wasn't nonplussed. He was upset. He proceeded to steal second base again. His team lost the game by one run. The moral in all this is that Germany was going the wrong way to pursue a goal we all aspire to which was to score the winning run.

I think that vignette, more or less, characterizes my thoughts on the standard issue of tort reform proposals which we have received, not just this session, but in many sessions past. It is my belief that the insurance market for professional liability is very volatile, unstable and the premiums fluctuate rapidly. The reason for that is because there is, as I said before, this elusive concept on what is negligent or professional malpractice. You can point to recent premium structure in Maine for reference.

As you know, in the early part of the 80's, we saw steadily rising professional liability insurance premiums, a concern of all of us, and many of us have expressed a concern that high malpractice costs inhibit practitioners in certain areas, obstetrics, gynecology, urology, to point out only a few examples, that the high malpractice rates really do discourage people from entering into these practices or practicing in rural areas or areas with a high, high volume of government insured patients. The reason being that people simply can't sustain enough volume to pay their high professional liability rates. If that were so, the events of last year and this year would be difficult to explain because last year, as you know, there was around a 20% reduction in professional liability insurance.

This year, I am informed, we will probably see another significant reduction in medical malpractice rates. Does that mean, as some would advocate, that we have seen an end to the problem of professional liability? Not at all. It is simply a demonstration of the uncertainty and volatility in the insurance market. It may well be that in future years we may see a significant rise in malpractice. The reason for that is there may be a significant rise in the levels of claims for malpractice made in our state.

With that as a premise, I have worked over the past two years with a number of individuals and groups representing the medical profession, health care professionals, the insurance industry, and advocates for health care and tried to fashion a proposal which would somehow arrest this volatility in the medical malpractice market. Simply stated, this demonstration project which we're calling for would be of five years duration. It would provide for the development of practice parameters, otherwise known as standards or protocols, by which physicians could gauge their practices. If a physician complied with the relevant standards or protocols, that physician, if later on sued for professional liability, could claim these, adherence to his protocols, as what we refer to in the law as an affirmative defense. Basically, the doctor could say, I'm not negligent, I'm not liable for

professional liability for malpractice, I complied with the standards and therefore, I should not be held accountable for negligence.

The premise here is that if physicians have clear direction in terms of what is expected of them, what particular diagnoses, what particular tests or procedures they should apply in a given situation, they will be able to rely upon those procedures and not be held accountable later on in the event there is an adverse result and someone calls in a question of their professional judgment.

This is a five year demonstration project. We are calling for the development of these practice protocols in two colleges in medicine, in anesthesiology and in obstetrics and gynecology. We, as a Legislature, will have an opportunity to review these protocols next year before they're actually fully implemented in the year 1992. I think this proposal has great merit. I can't stand before you this evening, obviously, and state to any degree of certainty that this will arrest the problem we have in professional liability. However, I think it's a project that does deserve serious consideration. It has received extensive critiques by the interested parties. The language which I have this evening represents my best effort to find language which addresses the gravity of the concerns presented to me and to the members of the Judiciary Committee by all the interested parties.

Now I fully recognize that others in this Chamber have very sincere concerns about the area of medical liability and would also ask that we consider other initiatives. Frankly, I don't have any problem with that debate occurring. But, I have always stated that L.D. 2023 is a five year demonstration project. It should be reviewed on its own merits and then we may have an opportunity later on in the session to consider other types of professional liability initiatives. So, I apologize for the somewhat lengthy presentation, but I do commend for your approval and consideration this evening, this Senate Amendment and I would move its adoption. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Lincoln, Senator Holloway.

Senator HOLLOWAY: Thank you. Mr. President, Members of the Senate, I would agree with the good Senator from Androscoggin, Senator Gauvreau, that the Act to establish a five year medical liability demonstration project is indeed a good project.

But I would much rather fund it with premium savings from tort reform instead of by simply increasing the malpractice premiums of doctors and hospitals by the \$1 million that is specified in his amendment. I hope that you will agree with me that the solution to the problem of high medical liability premiums is not to raise premiums an additional \$1 million. Such an increase would cost each physician in the high risk specialties an additional \$1500.

I think you know I'm from Lincoln County and, down there, it's called the fastest growing county in the state of Maine. Right now we do not have an OB practicing in Lincoln County. She left the county in January. We have one family practitioner that's there that will deliver babies, but he has to leave the county because he has no back-up at Saint Andrew's Hospital in Boothbay and there's no back-up at Miles Hospital in Damariscotta. Now that's not a good situation to be in. Also, the birthing center in Wiscasset just recently closed its doors as of two months ago.

I do have an amendment that will fund it in a different manner and I do hope that you would defeat this amendment so that I might present another amendment. I would agree that a pool of money should

be used to subsidize the malpractice premiums of physicians who accept Medicaid patients. There's a big problem out there with physicians that will not accept them because of the high risk and those that deliver babies in underserved areas of Maine. Certainly, I consider Lincoln County an underserved area, at this point in time.

However, we have not made a legitimate response to the problems of the civil and justice system and the problems of the high malpractice premiums. This amendment poses an additional cost to those premiums, but we should decrease the premium costs and shares, the savings of those physicians that are more at risk in leaving practice. I do hope you will consider defeating this amendment so I may offer Senate Amendment "A" and I would ask for a Division. Thank you.

Senator HOLLOWAY of Lincoln requested a Division.

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

Senator GAUVREAU: Thank you. Mr. President, Men and Women of the Senate, as frequently happens in the last few days of the session, we find ourselves in a very curious place because of all the work we are being asked to do in a very short time period and I think that sometimes makes our task a little more difficult.

Also, this Bill has had what can be charitably described as an unusual procedural history, but I would point out to the members of the Body that Senate Amendment "B" I'm offering this evening only contains the demonstration project language which I have worked on over the last three years. It does not contain any language at all dealing with the rural health care grant.

The good Senator from Lincoln, Senator Holloway, has worked very hard in the Committee over the last few years. Looking at other alternatives to deal with the medical liability problem. In fact, that is an initiative which we had discussed at some length in the Committee but that proposal for a rural health care grant mechanism is not contained in this amendment. This deals solely with the five year demonstration project, dealing with practice, protocol. There is no language in this Bill which would require any type of an assessment or increase in professional liability insurance premiums. In fact, quite to the contrary, we hope that this demonstration project will result in a reduction in liability insurance for our physicians. Thank you.

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

Senator COLLINS: Thank you. Mr. President, Members of the Senate, I'm indeed pleased that Senator Gauvreau from Androscoggin put forward this proposal. I think that the demonstration project is one that we, in fact, should be concerned with. It has some merit, but I also am concerned that it has no tort reform whatsoever.

It seems to me that the Judiciary Committee has had before it, for some time, several proposals with respect to tort reform. One being a \$250,000 cap, another one dealing with collateral source reform and none of these are incorporated in the Bill that is currently before us. Like the good Senator from Lincoln, Senator Holloway, I come from a fairly rural area. We, too, have difficulty finding physicians to serve us, particularly in the field of obstetrics. My hospital happens to serve about 17,000 in the area. We have one obstetrician. We used to have two. The second one gave up his practice three years ago because of the high costs of the liability insurance. He put forward a proposal to the hospital and said, I will only continue my practice if the

hospital agrees to pay all of my liability insurance. Our hospital was not in a position to do this, so we find ourselves in the present dilemma.

Some years ago, when I had my first child, I paid the whole sum of \$50 for the doctor's fee which included two pre-natal visits, the delivery and one post. I'm not 100 years old. Today, the cost average for that procedure, for the same type of care, is \$1492, the physician's cost. This does not include any of the hospital costs, just the physician's cost.

It seems to me we ought to work out some proposal that has a little more to it than the present. The typical obstetrician/gynecologist insurance bill for liability, right now, is \$50,240 a year. Do you realize what that means in small communities in term so the number of deliveries that a physician must be involved with in order to make a profit? The urban areas can sometimes cope with this because of the frequency and the amount of business that they are able to develop. But not so for the smaller hospitals throughout the state of Maine.

I understand that the present demonstration project that is proposed is not really supported by physicians unless it is accompanied by some degree of tort reform. If the physicians don't support it, the demonstration project will not go forward. The demonstration project has some merit. It will produce some data. It will help some people. It is a small and modest proposal compared to adding increments of tort reform to that measure. I hope today that we can hear what the other amendment is, in some detail, because I think it will do more for medical liability and for physician coverage in this state than the present proposal. Thank you, Mr. President.

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

Senator HOBBS: Thank you. Mr. President, Men and Women of the Senate, first of all, let me congratulate the Senator from Androscoggin, Senator Gauvreau, for his dedicated and diligent efforts in regards to the whole issue of accessibility to health care in the state of Maine and the relationship of that accessibility to the unfortunate situation we have in our state with rural health care.

Unfortunately, we are faced at the end of the session with a situation where we are going to be debating on the eve of this legislative session, under adverse circumstances, this whole issue of health care delivery, tort reform and our unfortunate situation. If you remember the Errors and Inconsistencies Bill that was before this Body for consideration yesterday, as I said, tongue in cheek, that as a matter of civil disobedience, the minority members of the Judiciary Committee voted against that particular Errors Bill. One of the reasons they voted against them for symbolism was the unfortunate incident of how the bills were taken away from the Judiciary Committee regarding tort reform.

This is a very complicated area. Our Committee has been working for two years, along with the Banking and Insurance Committee, regarding the whole issue of insurance regulations, tort reform, accessibility of health care. We have seen, during the past many sessions, this issue in the forefront. I wasn't here during the 112th and 113th sessions, but I understand that numerous bills have been debated and discussed and enacted by this legislative Body and the other Body since 1986. In fact, there have been 14 legislative documents that have been signed by the Governor, have become law, regarding tort reform.

The Bill before you, in the present form, under the amendment that has been filed by Senator Gauvreau, is a milestone piece of legislation. It is the way to go in regards to the issue of providing some type of standards. This demonstration project is a step in the right direction. It's a beginning step to eliminating and reducing the unnecessary health care costs attributable to what is known as defensive medicine. As you know, in this state, there are conscientious physicians and the great majority of the physicians that I know, many of whom I represent, many with whom I serve as colleagues as a trustee at a medical school in the state, are concerned about accessibility to health care, are concerned about the high costs of premiums that they have to pay in order to cover themselves for liability purposes.

But putting so-called reforms that have been discussed in our Committee, which I will not go through now because it's not before this Body for consideration, will not reduce the cost of that premium any measurable way to that health care physician. It will not provide for more individuals in the rural areas providing health care. This particular Bill before you in this amended version that is presented by the Senator from Androscoggin, Senator Gauvreau, will eliminate, if you read the Bill, from the standards of the care, the moving target that the physicians are concerned about. It includes, in the model demonstration project, two different disciplines, anesthesiologists and obstetrics and gynecology practices.

Let me talk about the second, that I just mentioned, obstetrics and gynecology, OB/GYN to many. That is the group that is paying the highest premium in the state of Maine. It is the most critical group. It's the group that's impacted the most by defensive medicine. It's the reason and one of the reasons for the lack of health care providers in such areas as Lincoln County.

But that's not the only reason. The high cost of premium is not the only reason. This particular proposal should be the beginning point. We have enacted, in this legislative body, other tort reform measures so far this session. The Committee on Banking and Insurance, as a result of one of the many studies that have been done in the past five or six years by the state of Maine, has taken many recommendations from what has been known as the Despres Commission and have enacted, I believe, a good Bill which will provide and require insurance companies to report claims information to the Bureau of Insurance so that the Bureau of Insurance may analyze and report to the next legislative session the findings of that particular body.

One of the issues that we've looked at in the Committee was the direct relationship between the past reforms and the present situation involving premiums of our health care providers. You know something? Unfortunately, the Superintendent of Insurance was unable, because he was not asked the task to monitor and review what those fourteen proposals that were enacted into law have had upon the premiums of our health care providers.

Last year, 1989, our physicians in the state of Maine, realized a 20% reduction in their premiums, 21%, I believe, is the more accurate percentage. It appears from all the evidence that has been presented and centrally, the testimony of, without having any actual knowledge, but only hearsay, from the Superintendent of Insurance, that another reduction in the premiums will take place this year in all likelihood. But that trend is not just in the state of Maine. That trend is nationally.

Before we enact what is known as tort reform, which we don't know whether or not will have an effect upon the next premium that the physician will pay next year, we should enact this demonstration project. We should allow the Superintendent of Insurance the ability to analyze the data which he will be allowed to analyze because of the good work of the Banking and Insurance Committee. Let's not put the cart before the horse. Let's enact this demonstration project as is, review the data that will be provided to the Superintendent of Insurance and have the debate and the forum of the other issues to come about next year. I believe that's the appropriate approach and I would urge you to support my dedicated colleague from Androscoggin, Senator Gauvreau, and his pending motion.

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

Senator MATTHEWS: Thank you. Mr. President, Men and Women of the Senate, you know, it's amazing to me to listen to the debate today and the last few years in this State House, hearing about the cry for access to health care, that our citizens need the ability, insurance, and the ability to access good quality health care services.

Throughout that whole debate, ladies and gentlemen, many of us, not enough of us, but many of us, in this Legislature, have raised a concern about the need for tort reform. You know, it's interesting, we may come out with a program, the Maine Health Program, for those citizens that have no health insurance, but we won't have any doctors out there providing those services, because we refuse to look at the crux of the issue which is the desperate need for tort reform, medical malpractice and liability reform.

Physicians that offer these services in our communities, in our areas, not politically motivated, but providing good quality health care, medicine to the citizens of this state, are thrust into the political arena again. I know one Democrat who happens to be a physician. It happens to be my father. He's treating two kids with chicken pox, as I speak. I'm proud of those physicians who are out there, but they are screaming for help and assistance and redress by this Legislature.

I don't know, I guess until the cows come in, we're going to hear that that is not an issue. There is no need for tort reform. There is no malpractice problem out there with insurance and premiums and the people back home know the truth. The people back home know what's going on and why this Legislature refuses to deal with that issue I will never, never understand. Hardly a week goes by, ladies and gentlemen of this Senate, when you don't pick up a newspaper article, a magazine article, a news program when the issue isn't tort reform.

I don't know if I live in another world when I go home to my district in Winslow, but, ladies and gentlemen, everybody is talking about this issue. In fact, thirty states have passed legislation dealing with tort reform and caps on non-economic damages and collateral reform because they want health care practitioners there, providing the first line, quality health care services to the people of this state and country. I will just never understand when the time is going to come when this Legislature will deal with reality. I'm very frustrated today with the legislation that we have before us.

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

Senator COLLINS: Thank you. Mr. President, Members of the Senate, the good Senator from York, Senator Hobbins, made some worthy points and he

suggests that the Banking and Insurance Committee's data collection on claims will be helpful and I agree that information will be helpful. I guess the point that I find difficult to accept is in two parts.

First of all, the demonstration program that is proposed, that is before us in this amendment, is a voluntary program and it will not work unless doctors agree to make it work. They have to be participants. They have to agree that it's a good idea. It is my understanding that those doctors would like to do that provided that there was some tort reform in the same law. There isn't.

The good Senator also pointed out the mechanisms and forces that work in the insurance market and the volatility of it. I agree that there are forces there that are perhaps not entirely related to this matter of liability. Nevertheless, the history seems to prove that, during the 80's, there has, in fact, been a substantial increase in liability insurance costs. In 1982, an obstetrician paid about \$10,800 for coverage. By 1987, it had increased 238%. Now it is true that there was a reduction last year. In terms of true dollars, it still leaves the remaining premium at an extremely high level.

I'm disappointed that we have to talk about this in a forum that is not entirely well suited to the discussion. I'm sorry that this didn't get before us somewhat earlier in the year. It seems to me that the public generally supports the proposition that there ought to be some tort reform. Over 25 national surveys on the subject show strong support for tort reform. Interestingly enough, there's a little notation here that 68% of the people believe people bring more to law suits than they should. That may be true but if it's true, it's something we have to deal with.

There are those that suggest that tort reform would not reduce premiums. I reject that. I think it takes time for those things to act out in the marketplace, but, they can result in reductions and premiums because the insurance carriers are regulated and they have to go to the Bureau of Insurance in this state and they have to have rates approved. Now that we have a mechanism that's going to give us more information about claims paid and other data that is important for the insurance superintendent to have, the superintendent can evaluate that, can make a determination. If there are fewer claims, if there's less litigation, if there are caps, that can make a difference. I have not been persuaded that this is not the case.

I hope today that you will reject this amendment so that we may proceed to another amendment which I think many of you would find more palatable. Mr. President, when the vote is taken, I would ask for the Yeas and Nays.

On motion by Senator COLLINS of Aroostook, supported by a Division of one-fifth the Members present and voting, a Roll Call was ordered.

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

Senator HOBBS: Thank you. Mr. President, Men and Women of the Senate, the good Senator from Aroostook, Senator Collins, mentioned that when he had his first child, I believe that he said the delivery fee was \$50. Well, when old Doc O'Sullivan, with a cigar in his mouth, delivered me, I think he had a cigar in his mouth when he delivered me, he didn't charge my parents. I don't know why but he didn't charge my parents for my delivery.

Times have changed. Back in 1951, I believe that old Doc O'Sullivan, God rest his soul, he wasn't concerned about my folks suing, or anyone else suing him, for diverting from a standard of care. But you

know, if Doctor O'Sullivan was practicing OB/GYN in 1982 through 1986, he would have paid a substantial premium, just as the wonderful father of the Senator from Kennebec, Senator Matthews, pays.

Let me share with you some information about premiums that our dedicated OB/GYNs in the state of Maine pay. Then let me share with you how much was paid out in claims because of this crisis we have with people suing all the time in the state of Maine, as they tell you. Attorney Robert Hirschorn, representing the American College of Obstetrics and Gynecologists, testified before the Banking and Insurance Committee that, between 1982 and 1986, in the state of Maine, our dedicated and hard-working physicians paid \$4.75 million in premiums to the insurance companies. During that period of time, the insurance companies paid an additional half million dollars of interest on that \$4.75 million in premiums.

Why don't we guess now how much was paid out by insurers of this state for claims to those greedy people who sue and those greedy attorneys that do. You know how much money was paid out in claims during that period of time from 1982-1986, money paid out in claims? What do you think? \$1 or \$2 million, \$8 million, \$10 million? \$27,500, that's all that was paid out in claims for four years when the doctors of this state of Maine paid \$4.75 million in premiums. Their money was also invested by insurance companies which made it another half million dollars.

It doesn't take a rocket scientist to figure out whose making the money in this business. It isn't the indigent individuals who bring malpractice claims. It isn't the greedy attorneys. It isn't the doctors for sure. I'll let you figure out who's making the money.

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

Senator GAUVREAU: Thank you. Mr. President, Men and Women of the Senate, I would urge you to vote for the pending motion and reject the arguments advanced by my good colleague from Aroostook, Senator Collins, and others in the Chamber this evening.

I'm feeling a little bit abused, I think, in this process, like many of us, perhaps, feel at the end of a session. I'm aware of the general political environment in which we function but I'm much more concerned about doing something concrete which will have a material relationship with the problem before us. I am persuaded by the arguments of my colleague from York, Senator Hobbins, that those who would argue we should impose caps probably are not correct. Certainly I don't question their sincerity.

We share a common goal. The common goal is to provide access to health care for all our people, regardless of where they live. But whenever I hear this term, which has been coined by the business community and the insurance industry, tort reform, I'm a little bit suspect. I was in the market last week shopping at midnight as we usually get home from one of our sessions and I ran across the pastry area which I can't frequent these days because I'm on a diet. To my temptation, I saw low-fat Twinkies. This is wonderful, but, although I was tired, I realized that it was more beguiling than rational and that, in fact, if you're going to make progress in this life you have to work at it.

I think, as a society, we have been too willing to take the shortcut. We have been too willing to take the easy way out. We have been attracted by proposals, certainly in health care, it's very apt for this analogy, very simplistic proposals. If we just cap benefits, somehow that will provide some modicum of relief so doctors will be able to practice.

Well, the Judiciary Committee, in reviewing the proposals this year, learned, to our incredulity, from one of the major companies which writes medical malpractice in our state, Maine Mutual, that there have been a total of 28 cases in the last 12 or 13 years. These are claims made where either the insurance industry paid out an amount of money equal to \$250,000 or more, or reserved that amount. In other words, there are claims pending where they haven't paid out yet, but the insurance company has reserved in the event they might sustain a significant verdict against the defendant physician.

So, we're roughly averaging 2 cases a year that, apparently, if we adopted the approach that some would urge in this Chamber tonight, caps, would address. I agree that if you had a cap, there would have to be some incremental saving on malpractice premiums. It stands to reason. But, it would be, apparently, an incremental remedy in the area of 3%-4%. It wouldn't be a significant reduction in physician malpractice.

That is why I have offered for your consideration the proposal dealing with practice parameters. This is new. No other state in the country has adopted this. So, we're not really sure how it works or whether it will be as effective as we hope it will be. But it clearly deals with what I firmly believe to be a major problem in professional liability which is the moving target.

As you know, because of a position of uncertainty, in terms of what conduct will be deemed negligent three or four or five years hence, physicians, on some occasions, have, in fact, ordered up a battery of tests to insure that, later on, an attorney or a claimant viewing the medical file cannot hold that doctor accountable if he or she didn't order all the tests and all the procedures. That phenomena is known as defensive medicine. We've heard from our friends in the Chamber of Commerce and other concerned parties dealing with health insurance, that defensive medicine might, in fact, constitute about 20% of the costs annually for increased health care insurance premiums.

I will not extend this debate tonight to deal with what I believe are the cogent factors driving health care insurance. Suffice it to say that, based upon the years I have spent in this Legislature dealing in health care initiatives, I am satisfied that the weight of the evidence suggests that there are many other factors which are far more salient, far more relevant, which really deter physicians from practicing in underserved areas in the area of medical liability. It is a factor. It should be addressed.

Hopefully, the initiative I'm advancing tonight will be a meaningful step toward addressing that problem. For those in the Chamber who would wish to offer other approaches, I commend them and urge them to do that. This is not the vehicle for that approach. This is a straight Bill, dealing with a five year demonstration project. I would urge the Body this evening to adopt this project and let it get on its way. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion of Senator GAUVREAU of Androscoggin to ADOPT Senate Amendment "B" (S-685).

A vote of Yes will be in favor of ADOPTION of Senate Amendment "B" (S-685).

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators ANDREWS, BRANNIGAN, BUSTIN,

CLARK, DUTREMBLE, ERWIN, ESTY, GAUVREAU, HOBBSINS, THERIAULT, TITCOMB
 MAYS: Senators BALDACCI, BERUBE, BOST, BRAWN, CAHILL, CARPENTER, COLLINS, DILLENBACK, EMERSON, ESTES, GILL, GOULD, HOLLOWAY, KANY, LUDWIG, MATTHEWS, PEARSON, PERKINS, RANDALL, TWITCHELL, WEBSTER, WEYMOUTH, WHITMORE, THE PRESIDENT - CHARLES P. PRAY

ABSENT: Senators None

11 Senators having voted in the affirmative and 24 Senators having voted in the negative, with No Senators being absent, the motion of Senator GAUVREAU of Androscoggin, to ADOPT Senate Amendment "B" (S-685), FAILED.

On motion by Senator HOLLOWAY of Lincoln, Senate Amendment "A" (S-683) READ.

THE PRESIDENT: The Chair recognizes the Senator from Lincoln, Senator Holloway.

Senator HOLLOWAY: Thank you. Mr. President, Members of the Senate, I'm sure we've all had our fill of discussion here tonight, but I do think you might look at the statement of fact that is here in Senate Amendment "A" because it does revise the use of discovery and medical malpractice pre-litigation screening panel for savings. It does set a limit of \$250,000 on non-economic damages in medical malpractice liability actions. In 1992, the cap will be adjusted annually based on rises in the consumer price index. Under Maine law, if a plaintiff is compensated in whole or in part for damages by some source, independent of the dependant, the plaintiff is still permitted to recover the same damages against the defendant. The amendment does establish a rural medical access program to increase access to physicians who deliver babies in the underserved areas of the state. That is our prime objective of this amendment. The monies that will be collected from using the collateral source and the caps will be put in a pool that will assist other physicians in other areas of the state to pay for their malpractice insurance. I now move that we accept the amendment.

Senator GAUVREAU of Androscoggin requested a Division.

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

Senator HOBBSINS: Thank you, Mr. President. Before the Titanic goes down, I'd like to, at least, read into the record an example of an actual case. This case was a case in Maine, fairly close to here. But it's one I want to read for you and then tell you what the results would be if we enacted a non-economic cap of \$250,000.

P. was a 32 year old, married female, mother of a 2 year old girl. She was being treated by a psychiatrist who began giving her lithium in early December of 1983. After several days on the drug, her husband took her to the emergency room where she was found to have had a toxic reaction to the drug. Her psychiatrist kept her hospitalized under an acute suicidal risk diagnosis. On the fourth day of her admission, the psychiatrist began to sexually assault her.

In January of 1984, he added multiple personality disorder to her diagnosis and he laid the groundwork for keeping her in the hospital indefinitely. The hospital did not have a psychiatric department or ward. She was kept on the medical/surgical floor. The psychiatrist visited her every evening after 8:00 and stayed most nights until well after midnight and many nights until 5:30 or 6:00 in the morning. During these visits he would conduct therapy in the dark with a nurse posted outside, guarding the door against intrusion. Under these conditions, he

sexually assaulted P. every evening until he went away on vacation in early April with his lovely wife.

On his return in late April, he attempted to pick up where he had left off. P.'s resistance and the resistance of the psychiatrist's wife led to P.'s discharge from the hospital to a cottage on the psychiatrist's property in mid-May of 1984. Three weeks later, P. broke away and returned home to her family.

Through two and a half years of discovery, P.'s life and the life of her family were examined under a microscope during the litigation. After seven days of a trial, the doctor and the hospital threw in the towel. The insurance company, while paying P. a substantial sum to settle, paid more of it to its own attorneys to defend the case.

The reason I bring you this scenario is because it's a true case. The lawyers were paid more to defend the case than P. and her family received from the insurance company. If a \$250,000 non-economic cap were passed by this Legislature and became the law of the state of Maine, this particular woman would have been limited and her family would have been limited to a \$250,000 figure. You know why, because this woman, like so many other individuals, was from a traditional household. She did not work outside the home. The insurance costs for her hospitalization were paid for through the insurance that she had and her husband's group policy.

The irony of this is that with the collateral source aspect of this Bill, that amount that was paid as a collateral source for hospitalization or whatever, would be reduced from that person's settlement. That's right, reduced, meaning that this psychiatrist, having ruined this woman's life, would have had her judgment reduced because she was responsible and her husband were responsible to have medical insurance. That's what collateral source is about. That's what caps are about.

The issue for this Legislature is a matter of public policy, are we going to go on record to limit a person's right to recovery for non-economic loss to \$250,000? Are we, as a matter of public policy, the Legislature, going to allow a collateral source that a person has through insurance, or whatever mechanism, reduce from the settlement or judgment, judgment, usually, because that's what we're talking about, that amount of money which was paid by an insurance company or other provider.

This is one example. There are numerous others. The trade-off might be that P. and her family might be limited for their recovery if our physicians, those hard working physicians in our state, could have a drastic reduction, or a reduction at all, in their premium. But the facts that have been brought before the Judiciary Committee do not indicate there will be a change reflected in the premiums that would be of any impact at all to insure accessibility to health care in rural areas of this state.

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

Senator COLLINS: Thank you. Mr. President, Members of the Senate, I am sure that there are many stories that can be told that would cause us to think very cautiously about this proposal. It seems to me, however, that we ought to keep in mind that the amendment that has been proposed would not, in the present case that has just been outlined, limit damages because it would not affect punitive damages. There's no question but this doctor's conduct would result in that type of a punitive measure. I am not in a position to debate all the nuances of litigation in this type of case. I think I have to approach it from a layman's point of view

who is very concerned that doctors need some protection in order to practice in the state. It seems to me that this is a method where this can be accomplished and the costs of premiums for liability coverage can be, in fact, reduced. I would urge you tonight to vote for this amendment and Mr. President, I would request a Roll Call.

On motion by Senator COLLINS of Aroostook, supported by a Division of one-fifth the Members present and voting, a Roll Call was ordered.

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

Senator HOBBS: Thank you. Mr. President, Men and Women of the Senate, in response to my good friend from Aroostook, Senator Collins, and knowing that he's a layperson, I show no disrespect in saying that punitive damages could not be collected in the case study which I presented to you.

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

Senator MATTHEWS: Thank you. Mr. President, Men and Women of the Senate, the illustration presented to this Body by the good Senator from York, Senator Hobbins, reminds me, I guess, of the story of "The sky is falling." We've seen that method used before, on this legislation, in fact.

The last time we discussed tort reform, real tort reform legislation, in the State House, I received four phone calls, in order to change my vote. Not from a citizen back in my Senate District, not from a citizen from Maine. A gentleman that is known all over by the name of Ralph Nader wanted to call me and speak to me and have me change my vote. As I think I mentioned on the floor, I was so impressed that he would call me. I said, with all due respect, Mr. Nader, I disagree with you.

You know, we're going to hear all the illustrations. It's interesting that we always get into the issue of being able to sue for damages. In my estimation, that particular physician, psychiatrist, should be in jail. That's the appropriate place for that person.

But, you know, those that practice medicine, physicians that render health care services to our citizens, are human beings. They study hard. They work hard. I have obviously seen one, firsthand, work from sunrise to sunrise, helping your children and mine, relying on God's help and the best that technology can assist the medical practitioner with in life or death situations. With all due respect to those that study law and practice law, and I have the utmost respect for those people, especially in this country, but I don't see those people in positions of life or death situations that many, many physicians are in, day in and day out, stopping, with even the best of training, to say a prayer for a little bit of help. I can think back to a situation of losing a child only a year and a half ago because of a condition called anencephaly and seeing the sweat and the tears on that doctor's face when he couldn't do anything about that situation. Sitting next to my wife and praying to God for that baby.

We live in an imperfect world, ladies and gentlemen of the Senate, and physicians know that too. We have caps in this state and we all know that. I'm not going to go down through the list of where the state has believed, and this Senate, and the House, in this Legislature, have believed that we need to keep people providing services and we need to deal with tort reform. It's been done many times. Physicians have been asking for that help for years, since I've been here. We're losing that battle with access to health care services. In rural areas and in not so rural areas. I think we have a good Bill

here today. Doctors are not perfect and they will tell you that. We can be proud of the fact that they know that and we know that. We have a good Bill and I urge your support.

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

Senator GAUVREAU: Thank you. Mr. President, Men and Women of the Senate, I understand that the vote will be taken shortly and clearly, my side of the argument tonight has lost. I respect that and I certainly respect the integrity of my friends and colleagues who have taken a different approach. I know we share a common goal. I just rise to put on the record some concerns I do have and it transcends this particular issue.

There is a tendency in politics to reach a certain catharsis where tension has developed over a period of time for some sort of systemic reaffirmation of policy. In this situation, we have what has been styled, tort reform, which presents to us that chance to restructure civil justice in an effort to enhance access to health care in our society. That's certainly a goal we all share.

My concern is that the Legislature, if, in fact, we do adopt this particular variant of tort reform would then go on to tackle some other issues, having satisfied itself that we have somehow dealt with the gravamen of physicians' medical malpractice and therefore, the issue of health care has been resolved. I'm just compelled to tell you that my intellect and my experience persuades me that that, in fact, is not the case at all.

The Senator from Kennebec, Senator Matthews, told the Body, early this evening that some thirty jurisdictions had adopted caps, had adopted collateral source and joint and several liability. What he didn't tell you was that there has still been a meteoric rise of health care costs and medical liability insurances in those jurisdictions. In fact, California is the paradigm of tort reform. One cannot peruse any document put forth by the lobby on tort reform without seeing California as the model. To the southwest of California is Arizona, the state that doesn't have caps. It doesn't have collateral source. The funny thing is, malpractice rates, comparing Arizona to California since the advent of tort reform in 1975, have doubled in California vis-a-vis its counterpart in Arizona.

Let me put this in very basic terms. Your idea will not work, but I respect democracy. I respect the sincerely held views of my adversaries, but I am gravely concerned that legislators in this Body and policymakers will move onto other areas.

There are a variety of other factors which militate against an orderly diffusion of health care professionals throughout our society. The most salient ones are coverage. My gosh, there's no coverage in rural Maine. You can't get one neurologist. You have to have two, because a person's not going to work 24 hours a day, 7 days a week. It's common sense. There is a peer review. In many cases, the hospitals don't have the type of technology and services that are amenable to today's practitioner and they will go in more urban areas because they can practice there with the technology and the services they want. Those are factors which clearly militate against physicians going into rural areas. You know what? Those factors will remain tomorrow, next month and next year.

More to the point, if we're talking about making hard choices, this Legislature and this Governor can't even fund the Maine Health Plan, which, if the truth be known, was a modest start to try to subsidize health care. We can't even get the program

on line as originally planned in L.D. 1322 last year. If we were serious about trying to help our physicians in rural areas, I think a good step would be to fund the Maine Health Plan because there, if you recall, a component of that plan was to increase Medicaid reimbursements for physicians. That's an essential component of any rational plan to encourage physicians to stay in rural areas or hopefully, to move into those rural areas.

There are many other factors that I am very concerned about. Demographics, we are an aging society. I said it last year, I'll say it again this year. By the year 2010, 1 in 5 of us will be of retirement age. People aged 65 and above consume over half of our health care. If we don't seriously consider some realistic and innovative alternative financing options, we will not be able in our retirement years to have any type of health care.

I go back to the point I raised at the outset of my comments this evening. I don't want to have any low-fat Twinkies. I want to make a serious and hard decision. This is a political body, making a political decision. In my view, it's not a rational or principled decision. As I close my remarks tonight, I respect and applaud those of my adversaries who have won this battle, but I would hope that we would work together to tackle the real issues which are inhibiting access to health care in our society and not delude ourselves and not delude the public that this approach is going to meaningfully advance the cause of access to health care. Thank you.

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

Senator CARPENTER: Thank you. Mr. President, Men and Women of the Senate, I would like to pose a question, being a layperson, through the Chair, to my friend from York, Senator Hobbins. I think I understand that he said insurance paid out in claims a total of \$27,000 since 1982. I would like to know if P.'s settlement, very large settlement, came out of that \$27,000. He probably could answer in a sentence or so. Thank you.

THE PRESIDENT: The Senator from York, Senator Carpenter has posed a question through the Chair to any Senator who may care to respond. The Chair recognizes Senator Hobbins.

Senator HOBBSINS: I mentioned 1982 to 1986. I believe there was a 1988 case that might have been significant, but I wasn't dealing with those figures. I was dealing with the 1982 to 1986 cases.

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

Senator BRANNIGAN: Thank you. Mr. President, Men and Women of the Senate, those who are proponents of the measure that has lost in the Amendment presented by the Senator from Androscoggin, Senator Gauvreau, are saying that this is over, at least here in this Body, let it go, hope it would be defeated somewhere else.

I'm just so disappointed that we have, for so long, been able to ward off these measures in order to protect the victims of malpractice, intentional or otherwise. We've been able to ward it off. We've been able, by very carefully changing the laws, to protect the victims and insurance premiums are coming down. Those mild, carefully considered reforms that we have put in over the last few years are working. If the doctors are the victims, then the insurance companies are the ones to be looked at.

But there are victims, the Senator from York, Senator Hobbins, just mentioned one. The Senator from Aroostook, Senator Collins, said there are many stories and there are, Senator. People that would

tear our hearts out, who are hurt, intentionally or otherwise, and we are capping off their ability to collect damages from the insurance that doctors must carry and should carry.

I am just very disappointed that this time when it looks like we have made progress, we're now going to take the hammer approach and slam caps into place and unfair collateral source rulings into place. I hope that we can change our minds tonight and this can be defeated. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion of Senator HOLLOWAY of Lincoln to ADOPT Senate Amendment "A" (S-683).

A vote of Yes will be in favor of ADOPTION of Senate Amendment "A" (S-683).

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators BALDACCI, BERUBE, BOST, BRAWN, CAHILL, CARPENTER, CLARK, COLLINS, DILLENBACK, EMERSON, ERWIN, ESTES, GILL, GOULD, HOLLOWAY, KANY, LUDWIG, MATTHEWS, PEARSON, PERKINS, RANDALL, TWITCHELL, WEBSTER, WEYMOUTH, WHITMORE, THE PRESIDENT - CHARLES P. PRAY

NAYS: Senators ANDREWS, BRANNIGAN, BUSTIN, DUTREMBLE, ESTY, GAUVREAU, HOBBS, THERIAULT, TITCOMB

ABSENT: Senators None

26 Senators having voted in the affirmative and 9 Senators having voted in the negative, with No Senators being absent, the motion by Senator HOLLOWAY of Lincoln, to ADOPT Senate Amendment "A" (S-683), PREVAILED.

Which was PASSED TO BE ENGROSSED, as Amended in NON-CONCURRENCE.

Sent down for concurrence.

Under suspension of the Rules, all matters thus acted upon ordered sent down forthwith for concurrence.

On motion by Senator TWITCHELL of Oxford, RECESSED until 8:30 in the evening.

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

House

Ought to Pass

The Committee on STATE AND LOCAL GOVERNMENT on Resolve, for Laying of the County Taxes and Authorizing Expenditures of Androscoggin County for the Year 1990 (Emergency)

H.P. 1826 L.D. 2499

Reported that the same Ought to Pass, pursuant to Joint Order H.P. 1484.

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.

Under suspension of the Rules, the Resolve READ TWICE.

Which was PASSED TO BE ENGROSSED, in concurrence.

Under suspension of the Rules, ordered sent forthwith to the Engrossing Department.

Pursuant to Joint Rule 13

The Committee on JUDICIARY on Bill "An Act to Authorize the Atlantic Sea Run Salmon Commission to Take the Edwards Dam by Right of Eminent Domain" (Emergency)

H.P. 1700 L.D. 2349

Reported pursuant to Joint Rule 13.

Comes from the House with the Bill and Accompanying Papers ORDERED PLACED IN THE LEGISLATIVE FILES.

On motion by Senator CAHILL of Sagadahoc, Tabled until Later in Today's Session, pending CONSIDERATION.

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

PAPERS FROM THE HOUSE

Non-concurrent Matter

SENATE REPORTS - from the Committee on LABOR on Bill "An Act to Promote Economic Development"

S.P. 907 L.D. 2306

(S "C" S-655 to C "A"

S-628)

Majority - Ought to Pass as Amended by Committee Amendment "A" (S-628).

Minority - Ought Not to Pass.

In Senate, April 9, 1990, the Majority OUGHT TO PASS AS AMENDED Report READ and ACCEPTED and the Bill PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-628) AS AMENDED BY SENATE AMENDMENT "C" (S-655) thereto.

Comes from the House Bill and Accompanying Papers INDEFINITELY POSTPONED in NON-CONCURRENCE.

Senator WEBSTER of Franklin moved the Senate RECEDE and CONCUR.

At the request of Senator ESTY of Cumberland, a Division was had. 15 Senator having voted in the affirmative and 10 Senators having voted in the affirmative, the motion by Senator WEBSTER of Franklin, to RECEDE and CONCUR, PREVAILED.

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

COMMITTEE REPORTS

House

Ought to Pass

The Committee on APPROPRIATIONS AND FINANCIAL AFFAIRS on Bill "An Act to Fund and Implement a Collective Bargaining Agreement with the Maine State Troopers Association" (Emergency)

H.P. 1804 L.D. 2475

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.

Under suspension of the Rules, READ TWICE and PASSED TO BE ENGROSSED, in concurrence.

Under suspension of the Rules, ordered sent forthwith to the Engrossing Department.

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

COMMITTEE REPORTS

House

Ought to Pass As Amended

The Committee on TAXATION on Bill "An Act to Establish Municipal Cost Components for Services to be Rendered in Fiscal Year 1990-91" (Emergency)

H.P. 1771 L.D. 2441

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-1028).

Comes from the House, with the Report READ and ACCEPTED and the Bill PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1028) AS AMENDED BY HOUSE AMENDMENT "A" (H-1110) thereto.

Which Report was READ.

THE PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Webster.

Senator WEBSTER: Would it be appropriate for us to make a motion to adhere or is that not in order?

THE PRESIDENT: The Chair would advise the Senator the item is not a non-concurrent matter.

Which Report was ACCEPTED.

The Bill READ ONCE.

Committee Amendment "A" (H-1028) READ.

House Amendment "A" (H-1110) to Committee Amendment "A" (H-1028) READ.

Senator WEBSTER of Franklin moved the INDEFINITE POSTPONEMENT of House Amendment "A" (H-1110) to Committee Amendment "A" (H-1028).

On further motion by same Senator, supported by a Division of one-fifth the Members present and voting, a Roll Call was ordered.

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

Senator PEARSON: Thank you. Mr. President, Men and Women of the Senate, for quite some time we have been debating issues that would raise revenue in order to fund the problems that we find ourselves in. Last week it was Lotto America and the point was made, if you don't want Lotto American, then what is it that you want? How will you fund the Bill? I thought that was a fair question and I voted for Lotto American even though I didn't like it. This is part of the same package agreed to, in my presence, with the Governor, to raise \$1 million for problems we find here. I would throw the question right back. If you don't want this, what's your solution?

THE PRESIDENT: The Senator from Penobscot, Senator Pearson has posed a question through the Chair to any Senator who may care to respond. The Chair recognizes the Senator from Franklin, Senator Webster.

Senator WEBSTER: Thank you. Mr. President, Ladies and Gentlemen of the Senate, this amendment, the first I heard about it was about an hour ago when it came across my desk. I think there may be a misunderstanding as to whether the Governor supports this or whether he doesn't. I've talked to his staff and I'm not convinced, yet, that they agree with this.

Let me tell you what this does. What this does, basically, simply, is put an increased property tax burden that we spent hours here debating, this puts a \$1 million property tax burden on people who live in unorganized territory. Now, if that's a fair way to tax, you're going to have convince someone else than me of that.

I happen to represent a large part of this state, along with other members of this Body who represent large parts of this state, that's unorganized. If you need to come up with a million dollars somewhere, I don't believe this is a fair and appropriate way of doing it. I would suggest that the Appropriations Committee ought to be looking at other areas in the budget to find a million dollars than taxing, increasing property taxes on people who live in the unorganized territory and for that reason, I'm opposed to this.

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

Senator COLLINS: Thank you. Mr. President, Members of the Senate, I appreciate the remarks of the good Senator from Penobscot, the Chair of the Appropriations Committee, and I understand his concern.

I arise to admit that I was one of those who suggested that we vote, the other day, for the Bill on the lottery because I didn't see any other alternatives. I guess, however, I either haven't been doing my homework or I didn't realize that, all of a sudden, we had raised an additional tax which would fall upon the unorganized territories. I happen to represent a large piece of the unorganized territories in this state. I guess I would have felt a little better if I had known that it was being considered. I don't really understand why I didn't. I admit that maybe I should have, but I did not until this evening, so it does come as a bit of a shock to me.

In my district I have a number of unorganized territory units that are subdivided as plantations or just unorganized territories or Sinclair or Gerette or Madawaska Lake. There's a fair number of people that live in these places on a year round basis. It's not just the unorganized territories that I also represent where there are more trees than people.

So when this was brought to my attention this evening I was a little nonplussed. I find myself in a bit of a dilemma, not wishing to support tax increases, but yet, recognizing the problems that the Appropriations Committee has. I guess I can't shed much light on this. I am interested in knowing when this occurred and how it occurred and if, in fact, it had the support of the Administration and whether there was a public hearing, for one thing.

Generally, if there was a Bill that affected my particular constituency, I would know about it. I may have been asleep at the switch and I would be happy to be corrected if that were the case. I am concerned about it. It is a tax increase that's substantive. It will affect a lot of people in my constituency. Thank you, Mr. President.

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

Senator DILLENBACK: Thank you. Mr. President, Ladies and Gentlemen of the Senate, I've read the amendment but I don't understand it. I wish somebody would explain to me what this does. Does it put a fee on all the properties within these districts or is it a real estate charge or what is it? I'd like to know what it is if somebody would be kind enough to answer.

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

Senator PEARSON: Mr. President, Men and Women of the Senate, I am sorry I cannot locate my amendment. I think I put it downstairs.

It affects the mill rate, as it says, in the state allocation charge which would be on the property tax of the unorganized territory which, as I read it, is the same thing that we're doing with regards to, not the same thing, but we are affecting property tax through the various cuts we have in our budget in regular towns. At least, that's what's happening in Old Town and Lincoln, with the dropping off of General Purpose Aid for Education, you're affecting the property tax there and you would be affecting the taxes that are collected in the unorganized also. I don't see that that's all that unfair.

It's very easy to say to members of the Appropriations Committee, at least to me, well, you can find it somewhere else. Why don't you go down there and find another million dollars somewhere else? I want you to know that isn't that easy. But that's what's been said to me for the last two

months. You got a better plan, Pearson? Come up with it. When I didn't, I said so. If you don't, you say so.

I've had to swallow pretty hard on some of the things that I've had to swallow on down there. Lotto America's one of them. I don't like that. I come from a constituency, too, that doesn't have all that great a love for gambling and all that. I come from rural Maine. They don't like that. A lot of them don't. I had to swallow it. I've swallowed property tax increases at home. I don't see why it's so different for unorganized territory to have to swallow a property tax increase, also, to fund state government. When you spread it over all the acres that are involved in unorganized territory of Maine, I don't think it will make very much of a difference, to tell you the truth.

The other day, I was accused of being parochial. Well, I don't even have to finish that sentence. People sat around a table and said, how are we going to deal with this? This was one of the things that was agreed on. That doesn't mean you have to buy it. I understand that. Everybody has a free vote, but I am of the kind of individual that when honest people make honest agreements, honest people keep those agreements, whether they're good for me or they're bad for me.

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

Senator PERKINS: Thank you. Mr. President, Ladies and Gentlemen of the Senate, the good Senator from Penobscot is exactly correct. This was indeed part of the negotiations and part of the agreement of Sunday night last.

I am not particularly enthused with this amendment, as is the Senator from Penobscot. We feel, indeed, that it falls well down on the list of some of the things we would have chosen had we had a booming economy and several options open to us, neither of which did we have at hand on Sunday evening. In an effort to draw our budget and this session to a close, this was indeed one of the agreements we settle on.

Though I do not like it, there are many things in this Legislature that don't fall within my, and perhaps, sometimes narrow, focus. I do say to you, it was part of the agreement. I plan to stick by it. I have checked with some others in my party and because I made the agreement and because I think it's part of a broader section, I will urge you to do the same.

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

Senator COLLINS: Thank you. Mr. President, Members of the Senate, I have great empathy for the Committee on Appropriations and Financial Affairs and I understand precisely how desperately they have worked to accommodate all the demands upon them. I don't quarrel with the fact that they made a judgment call.

I guess what upsets me a little was that, apparently, this was done on Sunday and those of us who live and represent the unorganized territories did not discover it until this evening when we have had little chance to consider it. It may be that it is a viable alternative. I recall on other occasions when it's been necessary for this Body to add taxes at the last minute. I have to confess that I've been a participant in some of those deliberations.

But it surely was a shock this evening to discover these two or three papers on my desk, not many, but two or three. I did discover this one, after awhile, when the good Senator from Franklin, Senator Webster, pointed it out to me. I feel rather

helpless about it because I don't know the alternatives. There may have been none, other than to cut another million dollars. That is always an alternative the Appropriations Committee has.

But I'm surely concerned about the fact that none of the many people that do live in my unorganized territories have any knowledge of this. At least in the towns and cities in our state, when you raise the property taxes, they know about it. They participate in that decision making. At your local level, your city councils, your town councils, your town meetings, are all a party to the budget process and they, in turn, are aware of what the taxes are going to be. The unorganized territories, who receive very little in the way of services from the state, and they do receive very little, have this thrust upon them. It may be a necessary thing but I don't feel very satisfied in the way it appeared and I'm not very comfortable about it. I say this knowing that the Committee on Appropriations and Financial Affairs had a difficult task to perform and did need to find some money. Thank you.

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

Senator BRANNIGAN: Thank you. Mr. President, Men and Women of the Senate, the Senator from Aroostook, Senator Collins, keeps saying this is a decision of the Appropriations Committee. I would like to clarify this. As best I know, this was not a decision of the Appropriations Committee alone. That, as he probably well knows, there is a process at the end of these legislative sessions in which budgets are put together and they're not put together by one committee. They are put together, in this case, by a combination of the members of the Appropriations Committee, by members of leadership and by members of the Administration, of which his party is in charge. All of those were part of this decision and I hope that the record would show that and not just the Appropriations Committee. I hope that those who are party to the part will make decisions together about this. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Webster.

Senator WEBSTER: Thank you. Mr. President, Ladies and Gentlemen of the Senate, I've sat here through this debate. I have no delusions about what's going to happen, but I'm not going to be on the record participating in this kind of backroom politics. You know, there's no public hearing, no public input. Somebody, somewhere, decides they don't want to make tough cuts. We've got a \$14 million legislative budget. You're telling me we can't cut \$1 million out of that? Instead we're going to tax people who work for a living, who drive a truck, who own an old house out in the woods someplace because they don't happen to live in a municipality. That's not fair. It's very offensive to me. I cannot believe this kind of stuff happens. I'm offended and I'm not going to be a part of it.

The President requested the Sergeant-at-Arms escort the Senator from York, Senator DUTREMBLE, to the rostrum where he assumed the duties of President Pro Tem.

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

The Senate called to order by the President Pro Tem.

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

Senator CLARK: Thank you. Mr. President, Men and Women of the Senate, I would like, insofar as possible, to respond to the rather abbreviated, aggravated remarks of my colleague, the good Senator from Franklin, Senator Webster.

I reject his allegation of backroom politics. The Committee on Appropriations and the people here on Sunday night were visible, communicating. They represented not only members of the House, but members of the Senate and members of the lobby. The good Senator from Franklin, Senator Webster, might have been here, had he chose to be here. As an aside to the good Senator from Aroostook, Senator Collins, there has seldom been a lack of Collins present in any forum in which major decisions have been made.

I sympathize with the sentiments expressed by those who have within their Senate districts, unorganized territories, for it's painful that unorganized territories would share that which other municipalities across the state are sharing, sometimes, in a disproportionate way. That is the shift that this state government is passing to local municipalities.

It isn't even, we didn't take the shift and divide it by the number of municipalities. We've taken it at a number of ways, perhaps, as an example, to be a little more precise, with reference to the school funding formula in the way in which it was received, it is, in the same way, withdrawn and those who receive more tend to take a bigger hit in the cuts that have been shifted to them. I think it's appropriate that the citizens who are, from my perspective, envious residents of the unorganized territories assume their proportionate share.

If the process, by which that is placed before them and on their tax bills, is repulsive to some of you because you, in fact, have unorganized territories within your districts, I hope, as you vote, perhaps against this measure, and in some cases, vociferously disagree with this measure, that you have, at least, some understanding, some sensitivity, some compassion and responsiveness to the rest of us who represent districts that don't have unorganized territories, who are taking even larger hits on the back of local property taxpayers, most of whom, my friends, work for a living and can ill afford it, in the same degree as those experienced residents in unorganized territories.

This is not a pleasurable experience as we address the financial shortfall this year. It is an experience that we would, insofar as possible, avoid. But we can no longer avoid it, as so beautifully articulated by the Senator from Penobscot, Senator Pearson. It isn't an easy task. When at least two committees make solid recommendations to address potential cuts in state bureaucracy which are unalterably and at hand rejected by the Administration, it's difficult to address state cuts in a meaningful way. The charge of politics is levied at those who would suggest that there's fat in state bureaucracy when, in fact, we know it exists.

So, the share of the shortfall must be assumed by all citizens. That, my friends, includes those in unorganized territories as those within townships and plantations and municipalities and cities. It's a burden shared by all Maine citizens and it's a burden that should be assumed by all members of the Senate equally. It's a luxury for those of you who can afford to reject this measure.

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

Senator EMERSON: Thank you. Mr. President, Ladies and Gentlemen of the Senate, I'd just like to

remind the members of the Senate that the unorganized territories share in the revenue sharing formula and they share in the educational funding so any cuts that are made they'll take that cut just the same as everybody else

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

Senator PRAY: Thank you. Mr. President, Ladies and Gentlemen of the Senate, I guess I'm here at this time speaking to you in two parts. First of all, as the presiding officer who participated in the negotiations this weekend, I think, as the Senator from Cumberland, Senator Clark, pointed out, that those in leadership who hung around for the weekend, knowing that the Appropriations Committee was at that stage of trying to put together the budget, as always, and the attempts to come up with a package as we usually assign various committees.

To set the record exactly straight as to who were involved in those negotiations for some future student of Maine government who wants to read the horseblanket, the individuals involved were the good Senator from Penobscot, Senator Pearson, as the Chair of Appropriations, his counterpart in the other Body and a new terminology that we've come to know as lead persons from the minority party, both from the House and the good Senator from Hancock, Senator Perkins, as the Republican member on the Appropriations Committee, along with my counterpart in the other Body, myself, the Governor and several of his staff people. We met on numerous occasions, probably about four or five times, going back and forth between members of the Appropriations Committee and, respectively, by their caucuses, in attempting to put together the package to meet the needs of the state.

I'm a little sorry that the Senator from Aroostook, Senator Collins, isn't in his seat, but I hope that he can hear me, because he made some references or comments about not knowing about this, not wanting to necessarily vote on something he's unaware of. I'm sure that if I asked him to start explaining L.D. 2282, he would have some difficulties in doing that. I think that it would be extremely difficult for him to tell me what is in that document without an opportunity to review and still probably couldn't tell you everything that was in it. I couldn't do it. That happens, by chance, to be the "An Act to Make Supplemental Appropriations and Allocations for the Expenditures of State Government and to Change Certain Provisions of the Law Necessary to the Proper Operation of State Government for the Fiscal Years ending June 30, 1990 through June 30, 1991."

Now I stand before you also as a Senator from Senate District 5, which includes more unorganized territories than any of the previous speakers, by maybe a minimal marginal at best, but nevertheless, by a bit more. As the good Senator from Penobscot, Senator Emerson, pointed out, there are some factors that are already considered in this. As we discussed how we were doing it, the concept came up and the reference of the amendment that's before you, at this time, that we debate, deals with an assessment which the bureaucracy that says there's an estimation of how much, what percentages of their services go to the unorganized territories. A calculation, as to what that would mean, if they pay for the services that they receive from state government. That calculation, my understanding, by those that did the drafting, is based upon that information that was given by the administration, the bureaucracy, to the financial people, who were trying to put together the entire package.

Obviously, it's easy, every once in awhile, to get up and say, well, here's how it impacts my people, without looking at the other side of it, as to how does our not providing those services impact on those same people? Since I personally run my own business in the unorganized territory, this is going to affect me in a detrimental way. It means that I'm going to pay a little bit more. But since I also happen to reside in the organized territories in a community, let me tell you, I would change my property taxes in the Town of Millinocket for the taxes that I pay in the unorganized, any day. As a matter of fact, I live in my home about four months out of the year and I would gladly spend the other eight months in the unorganized territory by choice. As a matter of fact, that's where I used to spend about twelve months out of the year except for going into town when I really had to. Again, that's by choice, because of the quality of life, just the entire aesthetic value of living in the unorganized territories and the advantages to it. The tax rate is a lot better in the unorganized territories.

Now we can talk about the delivery of services and rather or not we have paved roads and school systems close by and whether we have the fire protection and what not. My understanding is that this amendment before us, based upon the calculations that were given by the Administration, is to formulate somewhat of a disbursement of expenses that are incurred to go back to be paid by those people. That's what is equitable about taxation to some degree, kind of a mixture between ability to pay and services received. Even with this \$1 million increase, and if we look at the Governor's budget and, why, we can count a number of ways the common figure seems to be that the budget as proposed is a \$70 million tax shift to municipalities. Some say 60, some say 70, we won't argue over which \$10 million which way that that is.

If what we're going to do is say that the unorganized territories of this state, dispersed among the millions of acres in the unorganized territory, bulkly owned by the large out of state corporations, are going to pay for a proportion of the services they receive, I don't think it's unfair. Will I be impacted? Absolutely, absolutely.

I think that this proposal is a reasonable proposal to put together a package with some things that I don't like. There were some things that I would have liked to have seen in the package that weren't put in it. I know that the good Senator from Hancock, Senator Perkins, had to swallow hard on buying the package because there were some things that he would like to see that didn't get included, but that's part of the process. We're now down, and obviously, part of the process is that each member in this Chamber has the right to vote how they think their constituency would want them to. But I'll bet you, if you asked your constituents, do they want a \$70 million tax shift onto their property taxes, the answer's going to be no. No, they don't want that to happen. As a matter of fact, they've been telling us, school boards, school superintendents, teacher organizations. They've been telling us not to shift the burden back to them.

There's an old adage that the only fair tax is a tax I don't pay. Well, in part, we're taking that type of attitude today. Let's not shift it back onto me. I stand up here today recognizing that it will adversely affect some of my constituents and say that, if I sit down with them and explain the situation we're in, how the formula comes up, while they may not like it, a fair proportion of them will

accept the responsibilities, not happily, but they'll accept it.

We attempt here, with this proposal that's before us, the overall budget situation of dealing with a better than a \$3.2 billion budget, \$1 million is a very minor part of that. The good Senator from Franklin, Senator Webster, says, cut, cut. The good Senator from Penobscot, Senator Pearson, says, where? There's no response. There's a whole list of programs that some members would like to cut, but collectively, do we cut it together? The answer usually is no because what's in the budget, a majority of people have come to an agreement on and we accept those responsibilities as we do throughout. To those who find this not necessarily as appealing, I guess the alternative is, as the Governor has been saying all along, give us another alternative. Present us with another proposal. Don't be general in your statement of cut or find another way to fund it. Let's start being specific because that's what we've asked of the Appropriations Committee and the various sub-committees that have been working around here, trying to tuck this budget all together. We've told them to go out and work out the specific languages, put the specific programs together, so that we can put this budget together and we can address the needs of this state.

I would hope, that as we sit here and make these types of determinations, that we'll look at the general good, the general good of the state as a whole, not necessarily what's most advantageous just to me. We're all elected from districts but we're elected to serve the state as a whole. Sometimes, we have to swallow hard and make those types of decisions. I understand how some people can sometimes get a little excited because they feel it cuts a little bit too close to home. That's understandable, but we have to become reasoned individuals in the late hours of the legislative process.

I wish there were a better way. I wish that we could have committees of the whole and all 186 people would sit there in one room and try to put together the budget. You talk about a full-time Legislature. We would never complete one. It's a process and I hope that you take that into consideration when you vote on this. Thank you very much, Mr. President.

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

Senator LUDWIG: Thank you. Mr. President, Men and Women of the Senate, I don't want to be critical of the Appropriations Committee because I know how difficult their job has been. I guess I would just echo as someone who has unorganized territory in Aroostook County, Washington County and Penobscot, that it is rather disturbing to find that you're going to have to go home and explain to the people that live in these areas why their taxes were suddenly raised. One question was asked which has not been answered to my knowledge. As I understand it, most of the bills which come before us go through the public hearing process, was a public hearing, as such, part of the process in which this decision was made. If not, I would ask that someone might table for one legislative day, this matter, until those of us who are directly affected could consult with our people and decide how we should vote on it.

THE PRESIDENT PRO TEM: The Senator from Aroostook, Senator Ludwig, has posed a question through the Chair, to any Senator who may care to respond. The Chair recognizes the Senator from Penobscot, Senator Pearson.

Senator PEARSON: Thank you. Mr. President, Men and Women of the Senate, the answer is, obviously,

no. A public hearing was not held on this issue. A public hearing was not held on a lot of issues.

A lot of the things that we were asked to do in our Committee, in dealing with the Administration, did not have a public hearing simply because, as we are coming to the very end, the contingencies are arising all the time that do not allow time for a public hearing. I've handled probably four or five of them today that will never have a public hearing that I didn't anticipate that I was going to have to have to handle yesterday or the day before.

I had the good Senator from Cumberland, Senator Gill, talk to me about a Bill that she's interested in. I probably could go around the Chamber and name four or five people that will change the method of funding of one thing or another of bills. The Senator from York, Senator Estes, the Senator from Kennebec, Senator Kany, and on and on it goes. Everybody in here knows that happens at the very end of a session.

I'd like to say also, in response to the good Senator from Penobscot, Senator Emerson, the one thing that the unorganized territories were not affected by was the drop of \$16 million in General Purpose Aid for Education. That was handled by the organized communities of the state. We bore the brunt of that. They did not. I would hasten to tell you that there are a number of, not too many, unorganized schools in the state. I can't remember them all. I think there's six or seven, but Connor is one of them. Edmunds is another, in Washington County. Brookton in Washington County. I just wrote them down off the top of my head, and, of course, Rockwood, and I think there's a couple of them I can't remember. They were not affected by the drop-off in General Purpose Aid for Education.

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

Senator DILLENBACK: Thank you. Mr. President, Ladies and Gentlemen of the Senate, I can understand the people's attitude here in regard to this, but in many of my communities, taxes are going up 18%. I know many people who live in these unorganized areas and their taxes aren't that great. You people supported us on the Lotto America. We didn't like it. You supported us. I'm going to support you on this Bill. Thank you.

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

Senator CAHILL: Thank you. Mr. President, Ladies and Gentlemen of the Senate, I wish to pose a question through the Chair to any one in the Senate Chamber who may answer. I guess I'll start out with a statement to begin with.

When we left here after 2:00 on Monday morning, it was my understanding that we had reached an agreement and that various groups were to go off and find language so that we could bring this agreement together, so that we could, indeed, enact a budget, send it down to the Appropriations Committee, enact a budget and hopefully sometime, go home this week. That's my hope, too. I would like to go home just as soon as possible. I'm ready to go home. I know everyone here is.

My question is where are we in this budget process right now? This is one item that we're discussing. We have, as my understanding, Lotto America. Where are we? Can someone tell the rest of the Senate Chamber where we are in the budget process? because I was hoping that we would be completed that by now.

THE PRESIDENT PRO TEM: The Senator from Sagadahoc, Senator Cahill, has posed a question through the Chair, to any Senator who may care to

respond. The Chair recognizes the Senator from Penobscot, Senator Pearson.

Senator PEARSON: Thank you. Mr. President, Men and Women of the Senate, we had, I don't know, four or five different items that were hanging out there, that had to be resolved.

For the most part, it was language. We were trying to resolve language. One was DECD, the Department of Economic and Community Development, which seemed to take forever, forever, just forever, to get done, but, alas, finally, it got done. We just put that in, a matter of an hour ago. Another item was the Homestead. That has not yet been resolved. Another item is the so-called 3% language dealing with the layoff of personnel in the Executive and Legislative branches. We had some discussion about the cuts in education. That's been resolved. Almost everything has been resolved except for two items and those two items, I hope, will come together if we can get back together and have some rational time to think about them. It's down to that close.

We also, of course, found ourselves with some money problems. This is the main component of solving that particular problem, this particular Bill that we're talking about right now. If that doesn't happen, I would suggest that we would be here well after Easter.

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

Senator CAHILL: Thank you. Mr. President, Ladies and Gentlemen of the Senate, it seems to me, if we're down to two items, present item and the item regarding Homestead, and if that's the only language we're really waiting on to get this budget together, it seems to me that the parties responsible for those various things, perhaps the good Senator from Franklin, Senator Webster, could work with the various people to get this item cleared up.

You know, everyone here is saying that they're willing to work together. Let's work together. I would think it would be appropriate and I know that a lot of people have worked together. I know there's been a lot of working together. It seems to me that it would be appropriate if we could table this item until later in tonight's session while we clean up the papers, let the various people go about their way and settle their differences and then come back as a unified Senate tonight.

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

Senator PERKINS: Thank you. Mr. President, Ladies and Gentlemen of the Senate, now that we have your supper well upset and we've got things well in gear, it's kind of fun. We've been fighting for weeks down in Appropriations. It seems weeks, it's probably only two or three days, but I think it's kind of a pleasure for us to be able to vent some of our wrath and you've probably done us a favor this evening by pulling some of us a little closer together.

Talking of the unorganized territories, I have some of those. In fact, at one point in the past, I thought I had a few more and I tried to move some of mine into Penobscot County until the wrong chairman was elected and I had to back off and apologize. So we now have a different chairman and I went back into Hancock County. I still have my unorganized territory even though it comes up back of Old Town, but it's still there and I do represent it.

I think back to the times when the President, and his Assistant at that time, and I worked, with Senator Collins' predecessor, the gentleman from Aroostook, Senator McBriarty, who earned the good

name of Bulldog and he earned it because he was defending the unorganized territories. I think that's why many of us are oversensitive and overdefensive of these areas. We fought one whole evening here because we felt there were some benefits for the unorganized territories that weren't being freely given at the other end of the hall and we felt that we had to defend them and defend his position on these matters. We finally won, as did he, and I think we were pleased that we gained that accomplishment for the unorganized territories.

This particular tax this evening is, indeed, a tax. It is, indeed, an infringement on the unorganized territories. But, I think, it is a movement to ask them to pay for some services that they receive from your and my and their state government. I don't know that the axe or cutting positions or eliminating agencies or trying to find mechanisms with which to lower our property tax or to raise our school funding is pleasant. Yet, I do believe, that through the process, we are coming closer to the mark.

I am reminded that the municipal cost component, each year, is set, on the next floor down, in the Taxation Committee, without hearing and without the benefit of town meeting. Unfortunate, but, usual and accepted, year after year after year. Now as for this process we're going through, and have been going through for the last few days, there are various stages of it that are never pleasant. They are referred to by various names from the mating dance, Heaven knows I would approve of that, to the strutting or the posturing by each of the parties.

One way or another, we do reach a conclusion. This is the stage we are addressing this evening. I haven't yet spotted the mating dance. I hope I live long enough, or survive this enough, so I will recognize it when it appears. But, if I have to sit here and put my time in this much longer, I'm not sure any of us will. I say to you, I hope I don't go through another one. I'm not planning on it. I love the parties to it, but I dislike the mechanism of it. Knowing the disease we have, knowing the symptoms, I am unable to provide you the cure. The only thing I can say to you is again what my mother said to me, is time, patience and perseverance. Lord, give us all of these. We may all survive. Thank you.

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

Senator PRAY: Thank you. Mr. President, Ladies and Gentlemen of the Senate, the good Senator from Sagadahoc, Senator Cahill, asks the rhetorical question, who's on first? Well, many years ago, my mother told me there were three types of people, those who make things happen, those who watch things happen and those who wonder what happened.

Those who wanted to participate this past weekend were here. There were members of the Appropriations Committee, members outside of the Appropriations Committee, members who had their little items that they were carrying through the political process. A lot of them didn't win either. But, it's important to understand and, obviously, why we get down to this particular situation, the issue that we're debating at this moment is an amendment in the House that deals with reflecting what has been determined by the Administration as a cost factor of services delivered.

The budget document that we ultimately pass, and I've been reading letters after letters to the Editor from Republican members of this Legislature, saying let's hurry up and pass the Governor's budget. The Governor's budget is a tax shift. This proposal is a tax shift. There's no difference. You can't be for

one and not for the other. If you're willing to swallow the \$70 million tax shift, then it ought to be a little bit easier to swallow a \$1 million tax shift if it's related to services received, because on the other side of the coin, the \$70 million tax shift, wasn't based on services received, it was, where can we shift the cost? No calculation, no formula, saying how do we derive this \$70 million shift. The \$70 million shift was determined based upon what monies did we need and based upon the monies we need to fulfill the state budget, we'll shift the rest of it off to somewhere else. At least, the proposal, that's before us at this time, is tied to an evaluation of services received. If we had done this to municipalities, we might not have hit them as severely as the budget that's before us, that we'll be acting upon later.

If we don't deal with this, then we can't tell the Appropriations Committee what to do because they don't know how to close up that budget. That budget document depends upon Lotto America. That budget document depends upon tax amnesty. That budget document depends upon this piece of legislation, as well. I voted against Lotto America when it went through here because I don't think it's the right way to fund it, but when it comes down to the final analysis, when the proposal's before us in enactment, and I've had the opportunity to express myself, then it comes to a question of funding the budget. Well, this is an earlier version that everybody can vote their conscience on. They can vote against it if they want to, but when it comes down to the enactment of this proposal, you're going to need it so that the good Senator from Sagadahoc, Senator Cahill, can go home.

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

Senator ANDREWS: Thank you. Mr. President, Men and Women of the Senate, because this original piece of legislation went through the Joint Standing Committee on Taxation, I thought I might just add a comment or two to the amendment and also just present a question as to the debate that's going on here about this issue with regard to the Taxation Committee.

This particular piece of legislation, while it did not go through a public hearing process, and was not discussed, this particular amendment was not discussed in the Taxation Committee, I do agree with the Senator from Penobscot, Senator Pray, in that there is logic to this particular amendment outside of the fact that we need to raise an additional \$1 million in revenue. In other words, it's not only because the additional revenue is important to balance our budget but because, in fact, allocating these resources, the administrative expenses and allocating resources to the unorganized territory and the services that they provide is, in fact, a real cost.

What this amendment calls for is that that real cost will be borne by those people receiving the services, just as in an unorganized territory, the cost of processing funds for local services, are borne by those taxpayers. There is a piece of logic connected to this Bill beyond simply the need to negotiate out a final budget. I agree that it would have been good to have a full discussion of this and it's unfortunate that we have not, but there is logic behind it and it's that logic that would sway me to support it.

I am mystified, however, quite frankly, ladies and gentlemen of the Senate, by a piece of the debate on this particular amendment that also relates directly to the Joint Standing Committee on Taxation

and that regards the Homestead Exemption. As you know, we had some considerable debate on Homestead, here, some weeks ago. There were two schools of thought. One school of thought argued that we should continue Homestead but delay it until the next biennium. The other school of thought debated that we should eliminate Homestead Exemption completely. There was unanimous agreement among all those debating in the Taxation Committee and on the floor of this Chamber that we should not spend a dime for Homestead Exemption during this biennium. There was no dissent on that point, from anyone. So, I'm curious as to how Homestead finds its way into this particular debate about the budget, related or not to this particular item.

But, aside from that question and query, there is logic to this particular amendment, that, while the process is not quite what we'd like it to be, there is some logic and, I think, some sense to justify this particular amendment, beyond the fact that the million dollars is necessary to balance this budget.

Senator PEARSON of Penobscot requested and received Leave of the Senate to address the Senate a fifth time.

Senator PEARSON: Thank you. Mr. President, Men and Women of the Senate, there is not going to be an attempt to put any money into Homestead during this biennium. That continues to be the situation.

THE PRESIDENT PRO TEM: The pending question before the Senate is the motion of Senator WEBSTER of Franklin to INDEFINITELY POSTPONE House Amendment "A" (H-1110) to Committee Amendment "A" (H-1028).

A vote of Yes will be in favor of the INDEFINITE POSTPONEMENT of House Amendment "A" (H-1110) to Committee Amendment "A" (H-1028).

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators BRAUN, WEBSTER
 NAYS: Senators ANDREWS, BALDACCI, BERUBE, BOST, BRANNIGAN, BUSTIN, CAHILL, CARPENTER, CLARK, COLLINS, DILLENBACK, EMERSON, ERWIN, ESTES, ESTY, GAUVREAU, GILL, GOULD, HOBBS, HOLLOWAY, KANY, LUDWIG, MATTHEWS, PEARSON, PERKINS, PRAY, RANDALL, THERIAULT, TITCOMB, TWITCHELL, WEYMOUTH, WHITMORE, THE PRESIDENT PRO TEM - DENNIS L. DUTREMBLE

ABSENT: Senators None

2 Senators having voted in the affirmative and 33 Senators having voted in the negative, with No Senators being absent, the motion of Senator WEBSTER of Franklin, to INDEFINITELY POSTPONE House Amendment "A" (H-1110) to Committee Amendment "A" (H-1028), FAILED.

House Amendment "A" (H-1110) to Committee Amendment "A" (H-1028) ADOPTED, in concurrence.

Committee Amendment "A" (H-1028) as Amended by House Amendment "A" (H-1110) thereto, ADOPTED, in concurrence.

Under suspension of the Rules, READ A SECOND TIME.

Which was PASSED TO BE ENGROSSED, as Amended, in concurrence.

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:

An Act to Establish the Office of Substance Abuse
 S.P. 909 L.D. 2312

(H "B" H-1102 to C
 "A" S-639)

On motion by Senator PEARSON of Penobscot, placed on the SPECIAL APPROPRIATION TABLE, pending ENACTMENT.

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

PAPERS FROM THE HOUSE

Non-concurrent Matter

Bill "An Act to Correct Errors and Inconsistencies in the Laws of Maine" (Emergency)
 S.P. 927 L.D. 2345
 (C "A" S-682)

In Senate, April 9, 1990, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-682).

Comes from the House PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-682) AS AMENDED BY HOUSE AMENDMENTS "A" (H-1104), "B" (H-1106) AND "D" (H-1108) thereto, in NON-CONCURRENCE.

On motion by Senator HOBBS of York, the Senate RECEDED from PASSAGE TO BE ENGROSSED AS AMENDED.

On further motion by same Senator, the Senate RECEDED from ADOPTION of Committee Amendment "A" (S-682).

House Amendment "A" (H-1104) to Committee Amendment "A" (S-682) READ and ADOPTED.

House Amendment "B" (H-1106) to Committee Amendment "A" (S-682) READ and ADOPTED.

House Amendment "D" (H-1108) to Committee Amendment "A" (S-682) READ and ADOPTED.

On further motion by same Senator, under suspension of the Rules, Senate Amendment "B" (S-688) to Committee Amendment "A" (S-682) READ.

The President Pro Tem requested that the Sergeant-at-Arms escort the Senator from Penobscot, Senator PRAY, to the Rostrum where he resumed his duties as President.

The Sergeant-at-Arms escorted the Senator from York, Senator DUTREMBLE, to his seat on the floor.

Senate called to order by the President.

Senate at Ease

Senate called to order by the President.

Senator HOBBS of York requested and received Leave of the Senate to withdraw his motion to ADOPT Senate Amendment "B" (S-688) to Committee Amendment "A" (S-682).

The Senate CONCURRED. Under suspension of the Rules, ordered sent forthwith to the Engrossing Department.

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

COMMITTEE REPORTS

Senate

Committee of Conference

The Committee of Conference on the disagreeing action between the two branches of the Legislature, on Bill "An Act to Exempt Medical Malpractice Captive Insurance Companies from the Requirement to Obtain Certificates of Authority to Transact Insurance in the State of Maine"

S.P. 705 L.D. 1843

Have had the same under consideration and ask leave to report that the Senate Recede from its action whereby the Bill was Passed to be Engrossed as

Amended by Senate Amendment "A" (S-625) in non-concurrence.

Recede from Adoption of Senate Amendment "A" (S-625) and Indefinitely Postpone the same.

Conference Committee Amendment "A" (S-689) be Read and Adopted.

The Bill be Passed to be Engrossed as Amended by Conference Committee Amendment "A" (S-689) in non-concurrence.

The House Recede and Concur with the Senate.

Signed on the part of the Senate:

Senator THERIAULT of Aroostook

Senator BUSTIN of Kennebec

Senator COLLINS of Aroostook

Signed on the part of the House:

Representative RYDELL of Brunswick

Representative ERWIN of Rumford

Representative GARLAND of Bangor

Which Report was READ and ACCEPTED.

The Senate RECEDED from PASSAGE TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENT "A" (S-625) in NON-CONCURRENCE.

The Senate RECEDED from ADOPTION of Senate Amendment "A" (S-625) in NON-CONCURRENCE.

Senate Amendment "A" (S-625) INDEFINITELY POSTPONED.

Conference Committee Amendment "A" (S-689) READ and ADOPTED.

The Bill PASSED TO BE ENGROSSED, as Amended in NON-CONCURRENCE.

Sent down for concurrence.

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

COMMUNICATIONS

The Following Communication:

STATE OF MAINE

HOUSE OF REPRESENTATIVES

AUGUSTA 04333

April 10, 1990

Honorable Joy J. O'Brien

Secretary of the Senate

114th Legislature

Augusta, Maine 04333

Dear Madam Secretary:

The House voted today to adhere to its former action whereby it indefinitely postponed Bill "An Act to Establish the Maine Medical Malpractice Act" (S.P. 289) (L.D. 762).

Sincerely,
S/Edwin H. Pert
Clerk of the House

Which was READ and ORDERED PLACED ON FILE.

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 Resolve

Resolve, Creating a Commission on Adult Sentencing

H.P. 1801 L.D. 2471
(H "A" H-1099; S "A"
S-654)

On motion by Senator PEARSON of Penobscot, placed on the SPECIAL APPROPRIATIONS TABLE, pending FINAL PASSAGE.

Senate at Ease

Senate called to order by the President.

On motion by Senator WHITMORE of Androscoggin, RECESSED until the sound of the bell.

After Recess
Senate called to order by the President.

On motion by Senator BOST of Penobscot, ADJOURNED until Wednesday, April 11, 1990, at 10:00 in the morning.