

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

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

In Senate Chamber
Wednesday
April 11, 1990

Senate called to Order by the President.

Prayer by the Honorable Beverly Miner Bustin of Kennebec.

The HONORABLE BEVERLY MINER BUSTIN: I would like to share with you a few words from Gandhi in these last days of this 114th Legislature. I think they are appropriate.

"Man often becomes what he believes himself to be. If I keep on saying to myself, that I cannot do a certain thing, it is possible that I may end by really becoming capable of doing it. On the contrary if I have the believe that I can do it, I shall surely acquire the capacity to do it, even if I may not have it at the beginning. And again, to see the universal and all pervading spirit of truth face to face, one must be able to love the meanest of creation as oneself. A man who aspires after that, cannot afford to keep out of any field of life. That is why my devotion to truth has drawn me into the field of politics. And I can say without the slightest hesitation, and yet in all humility, that those who say that religion has nothing to do with politics, do not know what religion means. Do not worry in the least about yourself, leave all worry to God. This appears to be the commandment in all religions. This need not frighten anyone. He who devotes himself to service with a clear conscience, will day by day grasp the necessity for it in greater measure, and will continually grow richer in faith. The path of service can hardly be trodden by one who is not prepared to renounce self-interest, and to recognize the conditions of his birth. Consciously, or unconsciously, everyone of us does render some service or other. If we cultivate the habit of doing this service deliberately, our desire for service will steadily grow stronger, and will make not only for our own happiness, but that of the world at large."

Would all who care to, join me in the serenity prayer:

"God grant me the serenity to accept the things I cannot change. The courage to change the things I can, and the wisdom to know the difference."
Amen.

Reading of the Journal of Tuesday, April 10, 1990.

Off Record Remarks

PAPERS FROM THE HOUSE
House Papers

Bill "An Act to Allow the Harness Racing Commission More Flexibility"

H.P. 1828 L.D. 2500

Committee on AGRICULTURE suggested and ORDERED PRINTED.

Comes from the House, under suspension of the Rules, READ TWICE and PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-1113), without reference to a Committee.

Which was, under suspension of the Rules, READ ONCE, without reference to a Committee.

House Amendment "A" (H-1113) READ and ADOPTED, in concurrence.

Which was, under suspension of the Rules, READ A SECOND TIME, PASSED TO BE ENGROSSED, as Amended and ORDERED PRINTED, without reference to a Committee, in concurrence.

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

SENATE PAPERS

An Act to Reduce Health Care Cost and Enhance Medical Care through Tort Reform

S.P. 1006 L.D. 2498

Presented by Senator HOLLOWAY of Lincoln
Cosponsored by Representative MacBRIDE of Presque Isle and Representative HASTINGS of Fryeburg
Senator HOLLOWAY of Lincoln moved to SUSPEND the Rules for the purpose of giving the Bill First Reading.

Senator HOBBS of York objected.

At the request of Senator CAHILL of Sagadahoc, a Division was had. 17 Senators having voted in the affirmative and 13 Senators having voted in the negative, the motion of Senator HOLLOWAY of Lincoln, to SUSPEND THE RULES, FAILED.

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

Sent down for concurrence.

Senate at Ease

Senate called to order by the President.

Off Record Remarks

Senator DUTREMBLE of York was granted unanimous consent to address the Senate off the Record.

Off Record Remarks

Senator PEARSON of Penobscot was granted unanimous consent to address the Senate off the Record.

Off Record Remarks

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

On motion by Senator CAHILL of Sagadahoc, RECESSED until the sound of the bell.

After Recess

Senate called to order by the President.

ORDERS OF THE DAY
Unfinished Business

The following matters in the consideration of which the Senate was engaged at the time of Adjournment, have preference in the Orders of the Day and continue with such preference until disposed of as provided by Senate Rule 29.

The Chair laid before the Senate, the Tabled and Later (4/10/90) Assigned matter:

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)

Tabled - April 10, 1990, by Senator GAUVREAU of Androscoggin.

Pending - ENACTMENT

(In Senate, April 7, 1990, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1088) AS AMENDED BY HOUSE AMENDMENT "A" (H-1100), thereto in concurrence.)

(In House, April 9, 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 Later (4/10/90) 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.

The Chair laid before the Senate, the Tabled and Later (4/10/90) Assigned matter:

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

Tabled - April 10, 1990, by Senator CAHILL of Sagadahoc.

Pending - CONSIDERATION

(Reported pursuant to Joint Rule 13.)

(In House, April 10, 1990, Bill and Accompanying Papers ORDERED PLACED IN THE LEGISLATIVE FILES.)

On motion by Senator CLARK of Cumberland, Tabled Unassigned, pending CONSIDERATION.

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

ENACTORS

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

Emergency

An Act to Establish Municipal Cost Components for Services to be Rendered in Fiscal Year 1990-91

H.P. 1771 L.D. 2441

(H "A" H-1110 to C "A" H-1028)

This being an Emergency Measure and having received the affirmative vote of 30 Members of the Senate, with No Senators having voted in the negative, and 30 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

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

H.P. 1776 L.D. 2444
 (H "A" H-1103 to C "A" H-1064)

On motion by Senator TWITCHELL of Oxford, placed on the SPECIAL HIGHWAY APPROPRIATIONS TABLE, pending ENACTMENT.

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

ENACTORS

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

Emergency

An Act to Correct Errors and Inconsistencies in the Laws of Maine

S.P. 927 L.D. 2345
 (H "D" H-1108 ; H "B" H-1106 ; H "A" H-1104 to C "A" S-682)

This being an Emergency Measure and having received the affirmative vote of 30 Members of the Senate, with No Senators having voted in the negative, and 30 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.

Off Record Remarks

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

ENACTORS

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

Emergency

An Act to Fund and Implement a Collective Bargaining Agreement with the Maine State Troopers Association

H.P. 1804 L.D. 2475

This being an Emergency Measure and having received the affirmative vote of 29 Members of the Senate, with No Senators having voted in the 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.

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

H.P. 1826 L.D. 2499

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.

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

COMMITTEE REPORTS

House

Divided Report

The Majority of the Committee on HOUSING AND ECONOMIC DEVELOPMENT on Bill "An Act to Encourage International Awareness in Maine and Improve International Trade Services to Maine Companies"

H.P. 1578 L.D. 2185

Reported that the same Ought to Pass.

Signed:

Senators:

- DUTREMBLE of York
- ANDREWS of Cumberland

Representatives:

- NADEAU of Lewiston
- MELENDY of Rockland
- KILKELLY of Wiscasset
- BELL of Caribou
- GRAHAM of Houlton
- MILLS of Bethel
- HEESCHEN of Wilton

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

Signed:

Senator:

- WEYMOUTH of Kennebec

Representatives:

- LEBOWITZ of Bangor
- BAILEY of Farmington
- DONALD of Buxton

Comes from the House, Bill and Accompanying Papers INDEFINITELY POSTPONED.

Which Reports were READ.

On motion by Senator DUTREMBLE of York, Bill and Accompanying Papers, INDEFINITELY POSTPONED, in concurrence.

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

COMMUNICATIONS

The Following Communication: H.P. 1829

STATE OF MAINE
OFFICE OF THE GOVERNOR
AUGUSTA, MAINE 04333

April 10, 1990

To the Honorable Members of the 114th Legislature:

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

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

The amendment added to L.D. 2281 in the Senate, however, makes the bill as a whole unacceptable. Under present law, licensed whitewater outfitters may

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

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

Barring a compelling public interest to the contrary, any business has a right to sell its assets. An attempt by the State to directly prohibit a business from selling its assets would have obvious constitutional implications. The State should not be allowed to do indirectly something which it would be prohibited from doing directly. Yet, by requiring a whitewater outfitter to surrender its license whenever it makes an effort to sell any portion of its business effectively requires that outfitter to stay in business forever, or to go out of business entirely. For the State to force this kind of choice is improper and intolerable.

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

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

Comes from the House READ and ORDERED PLACED ON FILE.

Which was READ and ORDERED PLACED ON FILE, in concurrence.

The Accompanying Bill:

Bill "An Act to Amend the Laws Relating to Whitewater Rafting" (Emergency)

H.P. 1648 L.D. 2281
(S "B" S-610 to C "A"
H-935)

Comes from the House PASSED TO BE ENACTED notwithstanding the objections of the Governor.

THE PRESIDENT: The Chair recognizes the Senator from Oxford, Senator Erwin.

Senator ERWIN: Thank you Mr. President. Ladies and Gentlemen of the Senate. Having learned how to count to twenty-four at an early stage in my life, I don't think we'll go through a lengthy debate at this point in time, because rumor has it that you will soon have another Bill, and I am sure we will have

some hot and heavy discussions when we acquire that one.

There is only one point I might make to you so that you can be thinking about it, is at as you read the message that we have received on this Veto, the person that wrote it evidently is not familiar with the Whitewater Rafting Industry, because there are some mistakes in the message. And I suggest you look and listen closely when we have debate in the next day or two on a similar measure.

THE PRESIDENT: The Chair recognizes the Senator from Waldo, Senator Gould.

Senator GOULD: Thank you Mr. President. Ladies and Gentlemen of the Senate. I think it is important that we take a minute to focus on what the Governor has objections to here, and what he does not have objections to.

First, it is clear that the Governor has no problem with L.D. 2281 as it was reported out by the Committee. In fact, he supports that Bill, and he has asked me to again introduce the language that is identical to it today, and I have done this. The Governor's concern and my concern is with the Amendment that was added to the Bill here in the Senate, after the Committee had already put in it's hard work, and after we had reached an unanimous agreement on what the Bill ought to do. The Amendment should be of grave concern to anyone in this Body who is concerned about the message we send to the state's business people, because even though it only pertains to whitewater rafters, it sets a bad precedent for the way the state will treat business here.

Basically, as I read the Amendment, it suggests that if a whitewater rafter wants to sell any part of his business, he has to be prepared to give up his license to business anywhere in the state in whitewater rafting. Could you imagine if we impose that kind of penalty on other businesses in the state. We regulate quite a few businesses for many reasons, but to my knowledge, we don't have this kind of onerous provision in the law anywhere else. I think it is important to think long and hard about putting it into the law regarding whitewater rafters, too.

I know there is a lot of disagreement about what the Amendment says and what it means. Let me read the Amendment to you, it is quite short, and focuses on the most important points. "Allocations may be transferred pursuant to this Chapter from a selling outfitter to one or more buying outfitters, only if the license and allocations of the selling outfitter are returned to the Department." That means if you have a license to operate, not only on the Kennebec, but as well as the Penobscot, you have one license, and you must return it back to the state. As I see it, this Amendment prohibits an outfitter from selling any portion of his business, unless he surrenders his entire business and all his allocations to the Department.

I have talked to a lot of people about what is meant by the language of the Amendment, and I know that some people, including some people from the Attorney General's Office, feel that the Amendment doesn't do anything more than the present law already does. Well if that is the case, why do we need this Amendment at all? I mean, if we are sincere that this Amendment doesn't hurt the whitewater rafters ability to sell because the present law already does that, than nobody should have any problem with taking the Amendment off the Bill and passing the Bill as it was reported out of the Committee.

I know that some other people feel that the Amendment is needed, because it clarifies the fact

than an outfitter cannot sell his license or allocations to another outfitter. The present law already says or prohibits this kind of sale, so once again, there is no reason for the Amendment. As I read it's language, I don't feel that it would be interpreted to apply to the sale of license and allocations. The very sentence of the Amendment says business, and further more, we all know that license and allocations cannot be considered assets. If we didn't know that already, we could look to the Amendment to see it reinstated. So what does the word business mean? If you sell your business, do you have to turn in your license and allocation? Does business mean your entire business, most of your business, or just part of your business? Does it mean one raft, or two rafts, or all of your rafts? What if you did business on two rivers, or more than two rivers? Does that sale of your business on one river trigger the provision of this law so that you have to surrender your entire license, or do you keep part of your license on the part of the rivers you want to stay on? I can't say by looking at this Amendment, but I think it means we are putting the entire white watterrafting industry at risk because of unclear language. This Amendment ought to come off the Bill, and we ought to go forward from here. I urge you to support the Governor's Veto. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Oxford, Senator Erwin.

Senator ERWIN: Thank you Mr. President. Ladies and Gentlemen of the Senate. I didn't want to get into the details, but since some of them have been brought out, I would like to point out to you that anyone who wishes to dispose of his allocations on one particular river, there is a way set up, not by statute, but by regulations that can be handled. The problem that seems to be arising, is when one particular person wishes to sell his complete businesses allocation to some person who may not be quite capable of handling the business. How do we know whether they are capable or not until we go through a certain procedure in finding out. But we will go into this debate more at a later date.

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

Senator CLARK: Thank you Mr. President. I would pose a question through the Chair to the good Senator from Waldo, Senator Gould, and ask him specifically if he could explain to me, what happens under the present law with reference to the partial sale of any part of a whitewater rafting business?

THE PRESIDENT: The Senator from Cumberland, Senator Clark has posed a question through the Chair to the Senator from Waldo, Senator Gould. The Chair recognizes the Senator from Waldo, Senator Gould.

Senator GOULD: Thank you Mr. President. Ladies and Gentlemen of the Senate. I believe that the allocations are returned to the state, which then they can reallocate those allocations.

Under this new Amendment to the Bill, it would be my interpretation that the one license I have would be able to operate on both rivers of the state. The difficult part of it to me is, that if I am going to sell my business, which I think as a business man I should be able to do, on one river, which is the Penobscot or the Kennebec, including my real estate, my business, and the whole thing dealing with whitewater rafting, than I shouldn't have to turn in my license to do that. That is my gut feeling that should be the law. This is not what the Amendment does.

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

Senator CLARK: Thank you Mr. President. Ladies and Gentlemen of the Senate. I respectfully submit to the Members of this Body that I didn't receive a response to my question, but I respect the feelings of the good Senator from Waldo, Senator Gould.

My question to all the Members of this Maine Senate this afternoon, and as we address this Veto message from our Governor, referencing the remarks of the Senator from Waldo, Senator Gould, that if it is the case, indeed, that the Amendment which I submitted in this Chamber was attached to the measure, doesn't do anything that is not already present law, than what is the objection to the Amendment?

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

Senator WEBSTER: Thank you Mr. President. Ladies and Gentlemen of the Senate. When the Legislature passes laws like this, it makes me wish that I was a lawyer, because this appears to me as a layman to be typical legislation that lawyers would love to use if they wanted to represent a client that had a problem. It seems to me if I had a disgruntle person who lived up in northern Somerset County somewhere, and one of my competitors received an allocation and I didn't like it, I could go hire some lawyer who knew a little bit about law, and potentially sue my competitor, and use this Amendment as fodder to challenge the fact the my competitor might not be doing something right.

My feeling is, and I have talked to a lot of people who I represent, a Bill was submitted to the Legislature, it had unanimous Committee support, and came out of Committee. I would have liked to see this Amendment that the good Senator from Cumberland, Senator Clark, submitted, and I would have liked to have seen that Amendment come from the Committee. I commend her for putting the Amendment to the Senate. I would have preferred the Committee had time to deal with this. I would have preferred that other people who have concerns would have had a chance to look at this and see whether it was appropriate.

Seems to me that as some people have said, this doesn't do any good or any bad, than why do we need it? I think that my objection to this Amendment, and the reason why I think the Governor, if you read his message, had concern about it, is very unclear. In the last two hours, I have spoken to three different lawyers who are Legislators here in this Body, in this 114th Legislature. All three of them have a different interpretation of what this particular Amendment does. That is the problem with this Amendment. And for that reason I would ask you to sustain the Governor's Veto.

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

Senator CLARK: Thank you Mr. President. Ladies and Gentlemen of the Senate. Suffice it to say, that an Amendment has been the focus of a Gubernatorial Veto and that the sum and substance embraced in one. The carefully crafted script provided to one Senator and reflected in the feelings, the gut feelings, of two other Senators, is that the Amendment:

- One - clarifies the current law.
- Two - confuses the current law.
- Three - is a lawyers dream

Which used to be in the old days of the Maine Legislature, and my friends that was about a decade ago, when the sum and substance of legislative debates surrounded the following:

It's a good Bill, it's a bad Bill, it's a Portland Bill, it's a lawyer's dream.

That, in fact, the arguments advanced here this afternoon, relative to this Veto are inaccurate and

specious. But I accept reality, and I understand that the minority parties position and it's feeling of loyalty and/or obligation to uphold our Governor's Veto.

I do submit that the remarks of the Senator from Franklin, Senator Webster, are a bit surprising, in that he upholds the Committee process and would always hold in "violet" a unanimous Committee Report, despite years of legislative experience to the contrary, not only on behalf of that good Senator, but perhaps even this good Senator. For a unanimous Committee Report is not in "violet". We are elected to question the unanimous Committee Report, as well as, Divided Committee Reports.

Suffice it to say that the partial sale of a business is not included in the law, but the Department has developed Administrative rules and regulations on how to handle partial sales. And that, my friends, is really the sum and substance of the questions that I have asked. The Amendment that was attached in this Chamber to this unanimous Committee Report, was not only adopted here, but adopted in the other Body, and indeed, clarified the existing language on our books, per the Department of Inland Fisheries and Wildlife, and the Attorney General, who's integrity has never been questioned in my eighteen years in this Legislature, or previous Legislatures, and who is associated closely with more years than I can attest, to the Department of Inland Fisheries and Wildlife.

The outcome of the pending question will not surprise me, but we look to another day when as our good friend, the Senator from Waldo, Senator Gould says, there will be an identical Bill introduced. In fact, it already has been, and I submit to you that there will be Amendments that will be introduced in this Body. One of them is very similar, giving you advance notice. Two, is the one that is the focus of our Veto message this afternoon.

But I have for your information, incorporated the peripheral concerns relative to the word, license. Remember my friends, that allocations on Maine's rivers belong to the state, and they are allocated to whitewater rafters, and should they wish to terminate those whitewater rafting endeavors, that these entrepreneurs must return them to the state. For the state rivers belong to us, all of the people, not just the whitewater rafters. Thank you Mr. President.

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

Senator BALDACCII: Thank you Mr. President. Ladies and Gentlemen of the Senate. This issue was voted on by this Body, and a few days ago, having voted against the Enactment of this Bill, and having this before me in the fashion to be Vetoed, I would like to pose a question through the Chair to anyone who would care to respond. What were the legal implications that were referred to as constitutional implications in the fifth paragraph in the Governor's Veto message?

THE PRESIDENT The Senator from Penobscot, Senator Baldacci, has posed a question through the Chair to anyone who cares to respond. The Chair recognizes the Senator from Franklin, Senator Webster.

Senator WEBSTER: Thank you Mr. President. Ladies and Gentlemen of the Senate. I am not sure if I can respond to the question, but I think that the answer to the good Senator's question is that there is some concern that we are passing through this controversial Amendment, we are taking away someone's ability to sell their business without just compensation. I might put it this way, I would agree with the good Senator from Cumberland, Senator Clark, that the State of Maine owns the allocations and

should. The rivers of the state belong to the people, not to anyone else. The allocations are one issue, the business section is another thing. I believe the problem is that we have taken away the right of business people to sell their businesses. That is how I would interpret the constitution problem, without just compensation. Thank you.

Off Record Remarks

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

Senator CLARK: Thank you Mr. President. Ladies and Gentlemen of the Senate. While the last Member of the Committee on Judiciary is making his way to the Senate, I will attempt in lay fashion to react, if I may, to the remarks of the Senator from Franklin, Senator Webster, who suggested that it violates due process when a person is unable to sell their business.

Nothing under this law, or state law invades due process. Businesses may be sold and assets of that business may continue to be sold, whether this Bill passes, ultimately, in this form or any other form. Allocations, however, are not among assets of a business. Allocations are property of the state, which are given to licensees, when licenses are secured. When businesses are sold, allocations should be returned to the state.

The President laid before the Senate the following:

"Shall this Bill become Law notwithstanding the objections of the Governor?"

In accordance with Article 4, Part 3, Section 2, of the Constitution, the vote will be taken by the Yeas and Nays.

A vote of yes will be in favor of the Bill.

A vote of no will be in favor of sustaining the veto of the Governor

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

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

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

ABSENT: Senators None

18 Senators having voted in the affirmative and 17 Senators having voted in the negative, with No Senators being absent, the Governor's Veto was SUSTAINED.

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 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)

Tabled - April 11, 1990, by Senator CLARK of Cumberland.

Pending - ENACTMENT

(In Senate, April 7, 1990, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1088) AS AMENDED BY HOUSE AMENDMENT "A" (H-1100), thereto, in concurrence.)

(In House, April 9, 1990, PASSED TO BE ENACTED.)

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

Senator GAUVREAU: Thank you Mr. President. Ladies and Gentlemen of the Senate. I rise today to express some concerns of the members of the Joint Standing Committee on Judiciary regarding this legislation that we have before us this afternoon.

First of all, I will point out that I will be voting for Enactment this afternoon, because I do believe this legislation is required. But I would be remiss in my duties as a Legislator were I not to bring to your attention, concerns which members of the Judiciary Committee have regarding this legislation.

As you know, in the past several years there has been significant concerns in state capitals and in the Congress in the area of child support. We have worked diligently to increase the amount of child support being paid by absent parents to custodial parents, or in the cases when people receive AFDC benefits, payments from absent parents to the Department of Human Services.

The Congress, last session, in the Family Support Act, adopted legislation which clearly is designed to enhance our child support collection effort. But members of the Committee on Judiciary have concerns, and I find that I share those concerns, that the Congress would intrude too far in personal matters in securing child support. I am referring here to provisions of the federal legislation, which will require every state to adopt legislation at the state level by the first of November of this year, to require mandatory and automatic wage withholding as a garnishment of wages in all cases involving Title 40 recipients, otherwise known as the AFDC recipients.

Simply stated, after Halloween of this year, all parents who have a child residing with a parent who receives AFDC assistance, and who are obligated to pay child support, will automatically be subject to garnishment of their wages, or wage withholding. Now mind you, it is entirely possible, in fact it quite frequently happens, that parties will be separated, sometimes for weeks or months before they go to court or to the Department of Human Services to secure a temporary support order. Now during that entire time of separation, it is quite often the absent parent pays support every week, right on time, and is totally current in his or her support obligations. Not withstanding that, the Congress is mandating every state after Halloween of this year, to require that the absent parents wages be garnished. And as if that were not enough, as of 1994, every absent parent in this country, who will subject to an administrative order of the Department of Human Services or a court order regarding child support, will be required to have his or her wages garnished.

Now the reason why I bring this matter to your attention is, I believe that if you are fortunate, or ill fortunated to serve in the 115th or 116th Maine Legislature, I would predict you will receive a bevy of variable plethora of phone calls and complaints from, among other things, absent parents whose wages are being garnished. And also, you will receive a number of complaints from the business community, and the small business communities in particular. It is

remarkably evasive for small business to have to go through the paper work involved in wage garnishment. The states have no discretion whatsoever in this matter. The Congress and the Family Support Act has decreed that the states have to act or be subject to sanctions, including loss of federal financial participation in AFDC funds.

We are hoping that the Congress, when DHS promulgates regulations, that the states will have some leeway as far as good cause, and toward that end, the Chairs of the Joint Standing Committee on Judiciary will be writing to our federal legislators and our President, seeking to have the Congress and President intervene to assure that good cause language is adopted.

The concerns that the Committee has are legitimate, they are sincere. We have taken the action we believe is appropriate, we do think we need this legislation at this time, but we do object to this federal mandate. We believe it will be a source of significant irritation, both to absent parents who are routinely paying the child support, as well as to our business community. Thank you.

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

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 11, 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.)

Senator CLARK of Cumberland moved the RULES BE SUSPENDED for the purpose of RECONSIDERATION.

Senator WEBSTER of Franklin Objected.

On motion by Senator CLARK of Cumberland, Tabled Unassigned, pending ENACTMENT.

On motion by Senator ANDREWS of Cumberland, RECESSED until the sound of the bell.

After Recess

Senate called to order by the President.

ORDERS OF THE DAY

The Chair removed from the Unassigned Table the following:

An Act to Provide Tax Amnesty and Necessary Administrative Support to the Bureau of Taxation
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(C "A" H-1093)

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

On motion by Senator ANDREWS of Cumberland, the Senate SUSPENDED THE RULES.

On further motion by same Senator, the Senate RECONSIDERED whereby the Bill PASSED TO BE ENGROSSED AS AMENDED.

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

On further motion by same Senate, the Senate RECONSIDERED whereby it ADOPTED Committee Amendment "A" (H-1093).

On further motion by same Senator, Senate Amendment "B" (S-692) to Committee Amendment "A" (H-1098) READ.

THE PRESIDENT: The Chair recognizes that same Senator.

Senator ANDREWS: Thank you Mr. President. Ladies and Gentlemen of the Senate. I just wanted to call to your attention to this particular Amendment to the Amnesty Program. This, I think, will finally put this piece of legislation into the order that it needs to be in order for final passage. It takes care of the problem I referred to a few days ago in terms of the funding question. It also establishes the select Committee on Comprehensive Tax Reform, that was a proposal before the Taxation Committee during the final days of the session. It was an idea that was generated by the Senator from York, Senator Estes, and one that we felt as a Committee, as I am sure that many people in this Chamber felt, had been an issue who's time had finally come.

Over the past few years, and certainly more intensively over the past few weeks, we have seen a patchwork quilt of tax policy that often does not relate well, one to the other. The net effect of the changes that we have made, and the reactions that we have made to certain fiscal problems as to create an overall tax system that is less progressive, less based on the ability to pay, and less fair than the tax system that we set started out with. There are many suggestions, and proposals, and means to change that. But we felt very strongly that the time had come for us to invest the resources that we needed, and the time that we needed, to take a comprehensive and thorough look at our overall tax structure, including the property tax, the sales tax, and the income tax, and decide once and for all what a fair, straight forward tax mix it's going to be that can meet the fiscal needs of the state, and meet our responsibilities as a government. That is what that piece does.

The final piece of this Amendment would close a tax loophole that currently exists in our tax laws, and require that income generated from the interest and dividends earned from out-of-state bonds for corporations be handled in exactly the same way as are handled for individuals and Sub-Chapter "S" Corporations, which would generate additional income, but more importantly, close a loophole that is unnecessary, and make that portion of our tax law a bit fairer. That is what this Amendment does, and I urge you to support it, so that we can not only deal with the tax amnesty question and generate the revenue that we need apparently to balance our books, but more importantly, we can actually take some firm steps in the direction of tax reform while we close an unnecessary tax loophole. Thank you.

On further motion by same Senator, Senate Amendment "B" (S-692) to Committee Amendment "A" (H-1098) ADOPTED.

Committee Amendment "A" (H-1098), as Amended by Senate Amendment "B" (S-692) thereto, ADOPTED in NON-CONCURRENCE.

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

Sent down for concurrence.

On motion by Senator ANDREWS of Cumberland,
ADJOURNED until Thursday, April 12, 1990, at 9:00 in
the morning.

ONE HUNDRED AND FOURTEENTH MAINE LEGISLATURE
SECOND REGULAR SESSION
49th Legislative Day
Thursday, April 12, 1990

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

Prayer by Honorable Michael Carpenter of Houlton.
The Journal of Wednesday, April 11, 1990, was
read and approved.

Quorum call was held.

PAPER FROM THE SENATE

The following Communication:
Maine State Senate
Augusta, Maine 04333

April 11, 1990
Honorable Edwin H. Pert
Clerk of the House
State House Station 2
Augusta, Maine 04333

Dear Clerk Pert:

House Paper 1648 Legislative Document 2281, An Act to
Amend the Laws Relating to Whitewater Rafting, having
been returned by the Governor together with his
objections of the same pursuant to the provisions of
the Constitution of the State of Maine, after
reconsideration the Senate proceeded to vote on the
question: "Shall this Bill become a law
notwithstanding the objections of the Governor?"

18 Senators having voted in the affirmative and 17
Senators having voted in the negative, with no
Senators being absent, accordingly, it was the vote
of the Senate that the Bill not become law and the
veto was sustained.

Sincerely,

S/Joy J. O'Brien

Secretary of the Senate

Was read and ordered placed on file.

COMMUNICATIONS
STATE OF MAINE

ONE HUNDRED AND FOURTEENTH LEGISLATURE
COMMITTEE ON TAXATION

The following Communication:

April 11, 1990

Hon. John L. Martin
Speaker of the House
114th State Legislature
State House
Augusta, Maine 04333

Dear Speaker Martin:

Enclosed is a draft copy of the final report of
the Commission to Study Problems with the Municipal
Assessment, Valuation and Collection of Property
Taxes. The Commission was required to report to this
session of the Legislature. For numerous reasons,
issuance was unavoidably delayed until now and the
final version has not yet returned from the
printers. There, we have sent this copy, which
differs from the final version only in minor
technical ways, in an effort to meet the statutory
deadline. As soon as the final version is completed,
we will make copies available to the full Legislature.

Thank you for the opportunity to serve on this
Commission. We have provided additional points of
discussion for future studies and look forward to the
work of the Select Committee on Comprehensive Tax
Reform being established in separate legislation
currently before the Legislature.

Sincerely,

S/Sen. Thomas H. Andrews
Commission Chair