

MAINE STATE LEGISLATURE

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

VOLUME V

FIRST SPECIAL SESSION
July 11, 1991 to July 18, 1991
Index

FIRST CONFIRMATION SESSION
October 2, 1991
Index

SECOND SPECIAL SESSION
December 18, 1991 to January 7, 1992
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SECOND REGULAR SESSION
House of Representatives
January 8, 1992 to March 9, 1992

ONE HUNDRED AND FIFTEENTH MAINE LEGISLATURE
SECOND REGULAR SESSION
13th Legislative Day
Thursday, February 13, 1992

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

Prayer by Mr. Carl Pabst, Portland Spiritual Assembly of Baha'i'.

The Journal of Tuesday, February 11, 1992, was read and approved.

SENATE PAPERS

Bill "An Act to Govern Residential Propane Gas Suppliers" (S.P. 898) (L.D. 2317)

Came from the Senate, referred to the Committee on **Business Legislation** and Ordered Printed.

Was referred to the Committee on **Business Legislation** in concurrence.

Bill "An Act to Amend Various Provisions of the Laws Governing Solid Waste Disposal Facilities" (EMERGENCY) (S.P. 897) (L.D. 2311)

Came from the Senate, referred to the Committee on **Energy and Natural Resources** and Ordered Printed.

Was referred to the Committee on **Energy and Natural Resources** in concurrence.

Bill "An Act to Amend the Maine Civil Rights Law Regarding Violations of Constitutional Rights" (S.P. 899) (L.D. 2318)

Came from the Senate, referred to the Committee on **Judiciary** and Ordered Printed.

Was referred to the Committee on **Judiciary** in concurrence.

Bill "An Act to Establish the Fraud Investigation Division within the Department of Audit" (S.P. 901) (L.D. 2320)

Came from the Senate, referred to the Committee on **State and Local Government** and Ordered Printed.

Was referred to the Committee on **State and Local Government** in concurrence.

Unanimous Ought Not To Pass

Report of the Committee on **Education** reporting "**Ought Not to Pass**" on Bill "An Act to Protect Students Appointed to Special Select Committees" (S.P. 862) (L.D. 2206)

Report of the Committee on **Taxation** reporting "**Ought Not to Pass**" on Bill "An Act Concerning Transfer of Real Estate between Family Members" (S.P. 861) (L.D. 2205)

Were placed in the Legislative Files without further action pursuant to Joint Rule 15 in concurrence.

Unanimous Leave to Withdraw

Report of the Committee on **Aging, Retirement and Veterans** reporting "**Leave to Withdraw**" on Bill "An Act to Clarify Earnable Compensation for Retirement Purposes" (S.P. 872) (L.D. 2227)

Was placed in the Legislative Files without further action pursuant to Joint Rule 15 in concurrence.

Non-Concurrent Matter

JOINT ORDER (S.P. 841) Relative to Establishing a Joint Select Committee on Governmental Restructuring which was indefinitely postponed in the House on February 6, 1992.

Came from the Senate with that Body having adhered to its former action whereby the Joint Order was passed in non-concurrence.

On motion of Representative Joseph of Waterville, the House voted to adhere.

COMMUNICATIONS

The following Communication:

STATE OF MAINE
EXECUTIVE DEPARTMENT
OFFICE OF SUBSTANCE ABUSE
STATE HOUSE STATION #159
AUGUSTA, MAINE 04333

February 10, 1992

The Honorable John L. Martin
Speaker of the House of Representatives
State House Station #2
Augusta, ME 04333

Dear Speaker Martin:

We are pleased to send you a copy of the 1992 Progress Report of the Office of Substance Abuse. This report is a yearly report mandated in PL 1990 c. 934.

Should you have any questions concerning the report, please contact me at your convenience.

Sincerely,

S/Ronald G. Speckmann

Director

Was read and with accompanying report ordered placed on file.

**PETITIONS, BILLS AND RESOLVES
REQUIRING REFERENCE**

The following Bills, Resolves and Resolutions were received and, upon the recommendation of the Committee on Reference of Bills, were referred to the following Committees, Ordered Printed and Sent up for Concurrence:

State and Local Government

Bill "An Act Concerning Reasonable Standards and Procedures for Contracting Services by the State" (H.P. 1669) (L.D. 2345) (Presented by Representative DAGGETT of Augusta) (Cosponsored by Representative ALIBERTI of Lewiston, Representative LARRIVEE of Gorham and Senator CONLEY of Cumberland) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.)

(The Committee on Reference of Bills had suggested reference to the Committee on Appropriations and Financial Affairs.)

On motion of Representative Chonko of Topsham, was referred to the Committee on State and Local Government, ordered printed and sent up for concurrence.

Tabled Unassigned

Bill "An Act to Provide Necessary Funding for the Maine Emergency Management Agency" (EMERGENCY) (H.P. 1657) (L.D. 2334) (Presented by Representative LARRIVEE of Gorham) (Cosponsored by Senator ESTY of Cumberland and Representative McKEEN of Windham) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.)

(The Committee on Reference of Bills had suggested reference to the Committee on Appropriations and Financial Affairs.)

On motion of Representative Gwadosky of Fairfield, tabled unassigned pending reference.

Banking and Insurance

Bill "An Act Authorizing an Advisory Referendum on Whether the Congress of the United States Should Establish a National Health Insurance Program" (H.P. 1656) (L.D. 2333) (Presented by Representative PARADIS of Augusta) (Cosponsored by Speaker MARTIN of Eagle Lake, Senator McCORMICK of Kennebec and Representative RYDELL of Brunswick) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.)

(The Committee on Reference of Bills had

suggested reference to the Committee on Human Resources.)

On motion of Representative Manning of Portland, was referred to the Committee on Banking and Insurance, ordered printed and sent up for concurrence.

Human Resources

Bill "An Act to Ensure the Long-term Stability of Sheltered Group Homes in Maine" (EMERGENCY) (H.P. 1666) (L.D. 2342) (Presented by Speaker MARTIN of Eagle Lake) (Cosponsored by Senator DUTREMBLE of York, Representative DUTREMBLE of Biddeford and Representative POULIOT of Lewiston) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.)

Ordered Printed.
Sent up for Concurrence.

State and Local Government

Bill "An Act to Restructure the Department of Administrative and Financial Services" (EMERGENCY) (H.P. 1663) (L.D. 2340) (Submitted by the Special Commission on Governmental Restructuring pursuant to Public Law 1991, chapter 139.)

Bill "An Act Regarding Advisory Boards and Occupational and Professional Licensing Boards" (EMERGENCY) (H.P. 1664) (L.D. 2341) (Submitted by the Special Commission on Governmental Restructuring pursuant to Public Law 1991, chapter 139.)

Resolve, to Reorganize Health, Social and Developmental Services (EMERGENCY) (H.P. 1662) (L.D. 2339) (Submitted by the Special Commission on Governmental Restructuring pursuant to Public Law 1991, chapter 139.)

Resolve, to Study Technical Education in Maine Public Secondary Schools (H.P. 1658) (L.D. 2335) (Submitted by the Special Commission on Governmental Restructuring pursuant to Public Law 1991, chapter 139.)

Ordered Printed.
Sent up for Concurrence.

Appropriations and Financial Affairs

RESOLUTION, Proposing an Amendment to the Constitution of Maine to Provide for a Limit on State Spending and the Creation of Reserves (H.P. 1661) (L.D. 2338) (Submitted by the Special Commission on Governmental Restructuring pursuant to Public Law 1991, chapter 139.)

(The Committee on Reference of Bills had suggested reference to the Committee on State and Local Government.)

On motion of Representative Joseph of Waterville, was referred to the Committee on Appropriations and Financial Affairs, ordered printed and sent up for concurrence.

State and Local Government

RESOLUTION, Proposing an Amendment to the Constitution of Maine to Reduce the Size of the House of Representatives (H.P. 1660) (L.D. 2337) (Submitted by the Special Commission on Governmental Restructuring pursuant to Public Law 1991, chapter 139.)

RESOLUTION, Proposing an Amendment to the Constitution of Maine to Change the Term of and Method of Choosing the Treasurer of the State of Maine (H.P. 1659) (L.D. 2336) (Submitted by the Special Commission on Governmental Restructuring pursuant to Public Law 1991, chapter 139.)

Ordered Printed.
Sent up for Concurrence.

Utilities

Bill "An Act to Amend the Charter of the Portland Water District" (EMERGENCY) (H.P. 1668) (L.D. 2344) (Presented by Representative KONTOS of Windham) (Cosponsored by Representative PENDLETON of Scarborough, Representative ADAMS of Portland and Senator BRANNIGAN of Cumberland) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.)

Bill "An Act to Amend the Charter of the Dexter Utility District" (H.P. 1667) (L.D. 2343) (Presented by Representative REED of Dexter) (Cosponsored by Senator EMERSON of Penobscot) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.)

Ordered Printed.
Sent up for Concurrence.

ORDERS

On motion of Representative MACOMBER of South Portland, the following Joint Order: (H.P. 1665)

Ordered, the Senate concurring, that the Joint Standing Committee on Transportation report out a bill regarding the Maine Turnpike Authority budget for fiscal year 1992-93 in accordance with I.B. 1991, c. 1.

Was read and passed and sent up for concurrence.

SPECIAL SENTIMENT CALENDAR

In accordance with House Rule 56 and Joint Rule 34, the following item:

In Memory of:

Stanton Yeaton, of Farmington, a prominent and respected member of his community, whose warmth, insight and outstanding service to this community endeared him to all of those whose lives he touched. In addition to civic duties, Mr. Yeaton was a member of several fraternal organizations and an active member of Henderson Memorial Baptist Church; (HLS 841) by Representative TRACY of Rome. (Cosponsors: Representative BARTH of Bethel, Representative HEESCHEN of Wilton, Representative POWERS of Coplin Plantation, Representative BAILEY of Farmington, Representative PINEAU of Jay, Senator WEBSTER of Franklin, Senator MILLS of Oxford)

On motion of Representative Tracy of Rome, was removed from the Special Sentiment Calendar:

Subsequently, was read and adopted and sent up for concurrence.

REPORTS OF COMMITTEES

Unanimous Ought Not to Pass

Representative TARDY from the Committee on Agriculture on Bill "An Act to Establish a Controlled Medication Program in the Harness Racing Industry" (H.P. 1548) (L.D. 2186) reporting "Ought Not to Pass"

Representative STROUT from the Committee on Transportation on Bill "An Act Making Revisions to the Laws Concerning Special Veterans' Registration Plates and Emblems" (H.P. 1487) (L.D. 2099) reporting "Ought Not to Pass"

Representative LAWRENCE from the Committee on Legal Affairs on Resolve, Authorizing Elizabeth Penney to Sue the State (H.P. 1442) (L.D. 2054) reporting "Ought Not to Pass"

Representative PARADIS from the Committee on Judiciary on Bill "An Act Authorizing Court Clerks to Sign Abstracts of Certain Proceedings Involving Real Estate" (H.P. 1425) (L.D. 2037) reporting "Ought Not to Pass"

Were placed in the Legislative Files without further action pursuant to Joint Rule 15 and sent up for concurrence.

Divided Report

Majority Report of the Committee on Agriculture reporting "Ought to Pass" as amended by Committee Amendment "A" (H-897) on Bill "An Act to Prohibit the Sale and Distribution of Certain Milk Products" (H.P. 1163) (L.D. 1704)

Signed:

Senators: TWITCHELL of Oxford
THERIAULT of Aroostook

TITCOMB of Cumberland

assigned for Tuesday, February 18, 1992.

Representatives: ALIBERTI of Lewiston
NUTTING of Leeds
MAHANY of Easton
BELL of Caribou
SPEAR of Nobleboro

Minority Report of the same Committee reporting "Ought Not to Pass" on same Bill.

Signed:

Representatives: TARDY of Palmyra
HUSSEY of Milo
STROUT of Corinth
PINES of Limestone
PARENT of Benton

Reports were read.

On motion of Representative Tardy of Palmyra, the Majority "Ought to Pass" Report was accepted, the bill read once.

Committee Amendment "A" (H-897) was read by the Clerk and adopted and the Bill assigned for second reading Tuesday, February 18, 1992.

Divided Report

Tabled and Assigned

Majority Report of the Committee on Labor reporting "Ought to Pass" as amended by Committee Amendment "A" (H-898) on Bill "An Act Concerning Prevailing Wages Established by the Department of Labor" (H.P. 471) (L.D. 665)

Signed:

Senators: ESTY of Cumberland
CONLEY of Cumberland

Representatives: McKEEN of Windham
McHENRY of Madawaska
RAND of Portland
PINEAU of Jay
RUHLIN of Brewer

Minority Report of the same Committee reporting "Ought Not to Pass" on same Bill.

Signed:

Senator: CARPENTER of York
Representatives: HASTINGS of Fryeburg
ST. ONGE of Greene
BENNETT of Norway
AIKMAN of Poland

Reports were read.

Representative McHenry of Madawaska moved that the House accept the Majority "Ought to Pass" Report.

On further motion of the same Representative, tabled pending his motion that the House accept the Majority "Ought to Pass" Report and specially

Divided Report

Tabled and Assigned

Majority Report of the Committee on Utilities reporting "Ought Not to Pass" on Bill "An Act to Authorize the Public Utilities Commission to Regulate Rates for Cable Television" (H.P. 1018) (L.D. 1491)

Signed:

Senators: CARPENTER of York
VOSE of Washington
CLEVELAND of Androscoggin

Representatives: DONNELLY of Presque Isle
AIKMAN of Poland
MERRILL of Dover-Foxcroft
LIPMAN of Augusta
MORRISON of Bangor

Minority Report of the same Committee reporting "Ought to Pass" as amended by Committee Amendment "A" (H-902) on same Bill.

Signed:

Representatives: CLARK of Millinocket
LUTHER of Mexico
ADAMS of Portland
HOLT of Bath

Reports were read.

Representative Clark of Millinocket moved that the House accept the Minority "Ought to Pass" Report.

On motion of the same Representative, tabled pending his motion that the House accept the Minority "Ought to Pass" Report and specially assigned for Tuesday, February 18, 1992.

Divided Report

Majority Report of the Committee on Legal Affairs reporting "Ought to Pass" as amended by Committee Amendment "A" (H-903) on Bill "An Act to Encourage Lawful Rental Practices" (H.P. 1423) (L.D. 2035)

Signed:

Senators: MILLS of Oxford
KANY of Kennebec

Representatives: LAWRENCE of Kittery
POULIN of Oakland
JALBERT of Lisbon
DAGGETT of Augusta
BOWERS of Sherman
STEVENS of Sabattus
TUPPER of Orrington
RICHARDSON of Portland
HICHENS of Eliot
PLOURDE of Biddeford

Minority Report of the same Committee reporting "Ought Not to Pass" on same Bill.

Signed:

Senator: SUMMERS of Cumberland

Reports were read.

On motion of Representative Lawrence of Kittery, the Majority "Ought to Pass" Report was accepted, the bill read once.

Committee Amendment "A" (H-903) was read by the Clerk and adopted and the Bill assigned for second reading Tuesday, February 18, 1992.

Divided Report

Majority Report of the Committee on Banking and Insurance reporting "Ought Not to Pass" on Bill "An Act Relating to Returned Check Charges" (H.P. 1505) (L.D. 2119)

Signed:

Senators: BRAUN of Knox
KANY of Kennebec

Representatives: GARLAND of Bangor
CARLETON of Wells
TRACY of Rome
ERWIN of Rumford
KETOVER of Portland
JOSEPH of Waterville
HASTINGS of Fryeburg
PINEAU of Jay

Minority Report of the same Committee reporting "Ought to Pass" as amended by Committee Amendment "A" (H-904) on same Bill.

Signed:

Senator: MCCORMICK of Kennebec

Representatives: RAND of Portland
MITCHELL of Vassalboro

Reports were read.

The SPEAKER: The Chair recognizes the Representative from Vassalboro, Representative Mitchell.

Representative MITCHELL: Mr. Speaker, Men and Women of the House: I move that the House accept the Minority "Ought to Pass" Report.

Obviously, this was a very difficult bill for my committee to deal with and I wanted to share with you a brief history so that you could make your own judgments as to whether or not this bill deserves your support and I came down, obviously, on the Minority side which believed that it did.

This bill deals with charges that a bank may assess upon a business for depositing a check that a client or a customer has written that has bounced because of insufficient funds. As you know, the institution can charge both the writer of the check

and the businesses. Up until July of 1991, the state had basically an experimental law on the books which prohibited a bank from charging in excess of \$2.00. In July of 1991, none of us really noticed that the sunset was coming up and I find that happening more and more often. Perhaps your committees do as well. We had not had a chance to review that policy question so the good gentlewoman from Greene, Representative St. Onge, brought this bill to our committee's attention saying that she had had many contacts from local businesses in her area who felt that banks were charging excessive fees when they happen to deposit a check, even though they had taken every precaution against accepting a bad check in the first place, so this bill simply reinstates a law that was on the books.

It is one of those difficult issues because we had two business groups opposing each other. The banks' position is, and I am sure you will hear it, free enterprise, free market, we simply must charge whatever the costs are for processing bad checks and we should let the market set the price, not the legislature. The other interesting side of that debate was the Maine Merchants Association, the Maine Grocers Association, another group of businesses in this state who obviously felt that, in this case, the free market did not work without a statute being in place.

Prior to the enactment of this statute, returned check charges ranged anywhere from \$3.00 to \$8.00. Of course, they are hovering around the \$2.00 mark but one wonders what will happen if there is no legislation or if there is no pending legislation so I would encourage your strong consideration and your support of the Minority "Ought to Pass" Report.

The SPEAKER: The Chair recognizes the Representative from Bangor, Representative Garland.

Representative GARLAND: Mr. Speaker, Men and Women of the House: I think the good Representative from Vassalboro explained both sides of this bill very eloquently. I came down on the side that said the free enterprise system is working. The bank charges range from none whatsoever up to \$5.00 and, if you are willing to look in the marketplace, you can find a bank that is charging something which you can afford. If we do artificially hold this down to the \$2.00 limit, I believe there will be other charges the bank will force in other aspects of their banking so that you will pay higher charges somewhere else other than for the returned check charges.

For that reason, I hope that the House will go along with the Majority Report and vote against the pending motion.

Representative St. Onge of Greene requested a roll call.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The Chair recognizes the Representative from Greene, Representative St. Onge.

Representative ST. ONGE: Mr. Speaker, Ladies and Gentlemen of the House: When I introduced this bill, the comments that have been made tonight about it being a free enterprise and also the bank being able

to regulate its own costs, I found that interesting. When this bill expired in July, the cost was \$2.00. It was brought to my attention in August and when I researched the information the majority of the banks that I notified were already charging \$5.00 for the returned checks. Since then, as of January 1st according to the banking industry, the charges have dropped again.

There is some double dipping — when a merchant deposits a check and it bounces, they are charged a \$2.00 fee. Also the person writing the check is charged a fee at the same time. Some of the arguments have been that a merchant can in fact post a sign on his wall indicating that they charge \$10.00 or \$20.00 for a returned check fee. Well, some of you who own small businesses know that when you receive a bounced check, you are just pleased to obtain the funds to cover the product that you could have lost.

I think this is a fair compromise. Businesses — yes, they should be held responsible but I also think the banking industry should as well. I hope that you will support the Minority "Ought to Pass" Report.

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

Representative JOSEPH: Mr. Speaker, Men and Women of the House: I apologize for the mixup here. It had been my intention as I went back to the Banking and Insurance Committee after signing seven different jackets to be on what was called the Minority Report. I believe this is good consumer legislation and I would urge you to support the "Ought to Pass" Report.

The SPEAKER: The pending question before the House is the motion of the Representative from Vassalboro, Representative Mitchell, that the House accept the Minority "Ought to Pass" Report.

The SPEAKER: The Chair recognizes the Representative from Thomaston, Representative Mayo.

Representative MAYO: Mr. Speaker, pursuant to House Rule 7, I request permission to pair my vote with the Representative from Gardiner, Representative Treat. If she were present and voting, she would be voting yea; I would be voting nay.

The SPEAKER: A roll call has been ordered. The pending question before the House is the motion of the Representative from Vassalboro, Representative Mitchell, that the House accept the Minority "Ought to Pass" Report. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 302

YEA - Adams, Aliberti, Anthony, Bell, Boutilier, Cahill, M.; Cashman, Cathcart, Chonko, Clark, H.; Clark, M.; Coles, Cote, Crowley, DiPietro, Duffy, Dutremble, L.; Farnsworth, Farnum, Gean, Goodridge, Gould, R. A.; Graham, Gray, Gurney, Hale, Handy, Heeschen, Hichborn, Hogle, Holt, Jalbert, Joseph, Kerr, Ketover, Ketterer, Kontos, Lawrence, Lemke, Luther, Macomber, Mahany, Manning, Martin, H.; McHenry, McKeen, Melendy, Michael, Michaud, Mitchell, E.; Mitchell, J.; Morrison, Murphy, Nash, Nutting, O'Dea, Oliver, Paradis, J.; Paul, Pfeiffer, Plourde, Poulin, Pouliot, Powers, Rand, Richardson, Ricker, Rotondi, Ruhlin, Saint Onge, Simonds, Simpson, Strout, Swazey, Tardy, Vigue, Waterman, Wentworth, The Speaker.

NAY - Aikman, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Bowers, Butland, Carleton,

Carroll, D.; Carroll, J.; Constantine, Daggett, Donnelly, Duplessis, Erwin, Farren, Foss, Garland, Greenlaw, Gwadosky, Hanley, Hastings, Heino, Hepburn, Hichens, Hussey, Jacques, Kilkelly, Kutasi, Larrivee, Lebowitz, Libby, Look, Lord, MacBride, Marsano, Merrill, Norton, O'Gara, Ott, Paradis, P.; Parent, Pendexter, Pendleton, Pineau, Pines, Reed, G.; Reed, W.; Richards, Rydell, Salisbury, Savage, Small, Spear, Stevens, A.; Stevens, P.; Stevenson, Tamarro, Tracy, Tupper, Whitcomb.

ABSENT - Dore, Lipman, Marsh, Nadeau, Sheltra, Skoglund, Townsend.

PAIRED - Mayo, Treat.

Yes, 79; No, 63; Absent, 7; Paired, 2; Excused, 0.

79 having voted in the affirmative and 63 in the negative with 7 being absent and 2 having paired, the Minority "Ought to Pass" Report was accepted, the Bill read once.

Committee Amendment "A" (H-904) was read by the Clerk and adopted and the Bill assigned for second reading Tuesday, February 18, 1992.

Divided Report

Majority Report of the Committee on Banking and Insurance reporting "Ought to Pass" as amended by Committee Amendment "A" (H-905) on Bill "An Act to Authorize the Establishment of Nondepository Trust Companies" (H.P. 1489) (L.D. 2101)

Signed:

Senators: BRAUN of Knox
McCORMICK of Kennebec

Representatives: GARLAND of Bangor
HASTINGS of Fryeburg
CARLETON of Wells
MITCHELL of Vassalboro
RAND of Portland
KETOVER of Portland
PINEAU of Jay
JOSEPH of Waterville
ERWIN of Rumford
TRACY of Rome

Minority Report of the same Committee reporting "Ought Not to Pass" on same Bill.

Signed:

Senator: KANY of Kennebec

Reports were read.

Representative Mitchell of Vassalboro moved that the House accept the Majority "Ought to Pass" Report. Representative Garland of Bangor requested a roll call.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was

ordered.

The SPEAKER: The pending question before the House is the motion of the Representative from Vassalboro, Representative Mitchell, that the House accept the Majority "Ought to Pass" Report. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 303

YEA - Adams, Aikman, Aliberti, Anderson, Anthony, Ault, Bailey, H.; Bailey, R.; Barth, Bell, Bennett, Boutilier, Bowers, Butland, Cahill, M.; Carleton, Carroll, D.; Carroll, J.; Cathcart, Chonko, Clark, H.; Clark, M.; Coles, Constantine, Cote, Crowley, Daggett, DiPietro, Donnelly, Duffy, Duplessis, Dutremble, L.; Erwin, Farnsworth, Farnum, Farren, Foss, Garland, Gean, Goodridge, Gould, R. A.; Graham, Greenlaw, Gurney, Gwadosky, Hale, Handy, Hanley, Hastings, Heeschen, Heino, Hepburn, Hichborn, Hichens, Hogleund, Holt, Hussey, Jacques, Jalbert, Joseph, Kerr, Ketover, Ketterer, Kilkelly, Kontos, Kutasi, Larrivee, Lawrence, Lebowitz, Lemke, Libby, Look, Lord, MacBride, Macomber, Mahany, Manning, Marsano, Marsh, Martin, H.; Mayo, McHenry, McKeen, Melendy, Merrill, Michael, Michaud, Mitchell, E.; Mitchell, J.; Morrison, Murphy, Nadeau, Nash, Norton, Nutting, O'Dea, O'Gara, Oliver, Ott, Paradis, J.; Paradis, P.; Parent, Paul, Pendexter, Pendleton, Pfeiffer, Pineau, Pines, Plourde, Poulin, Pouliot, Powers, Rand, Reed, G.; Reed, W.; Richards, Richardson, Ricker, Rotondi, Ruhlin, Rydell, Salisbury, Savage, Simonds, Simpson, Small, Spear, Stevens, A.; Stevens, P.; Stevenson, Strout, Swazey, Tamaro, Tardy, Tracy, Tupper, Vigue, Waterman, Wentworth, Whitcomb.

NAY - Luther, The Speaker.

ABSENT - Cashman, Dore, Gray, Lipman, Saint Onge, Sheltra, Skoglund, Townsend, Treat.

Yes, 140; No, 2; Absent, 9; Paired, 0; Excused, 0.

140 having voted in the affirmative and 2 in the negative with 9 being absent, the Majority "Ought to Pass" Report was accepted, the Bill read once.

Committee Amendment "A" (H-905) was read by the Clerk and adopted and the Bill assigned for second reading Tuesday, February 18, 1992.

Divided Report

Majority Report of the Committee on Banking and Insurance reporting "Ought to Pass" as amended by Committee Amendment "A" (H-906) on Bill "An Act to Ensure Complete Recovery for Injuries to Children" (H.P. 1551) (L.D. 2189)

Signed:

Senator: McCORMICK of Kennebec

Representatives: RAND of Portland
CARLETON of Wells
MITCHELL of Vassalboro
KETOVER of Portland
HASTINGS of Fryeburg
PINEAU of Jay

Minority Report of the same Committee reporting "Ought Not to Pass" on same Bill.

Signed:

Senators: BRAUN of Knox
KANY of Kennebec

Representatives: GARLAND of Bangor
TRACY of Rome
ERWIN of Rumford
JOSEPH of Waterville

Reports were read.

The SPEAKER: The Chair recognizes the Representative from Vassalboro, Representative Mitchell.

Representative MITCHELL: Mr. Speaker, I move that the House accept the Majority "Ought to Pass" Report.

Mr. Speaker, Men and Women of the House: I hope that I will enjoy the same success on the acceptance of this report.

Let me speak to you very briefly about this bill. It seems small but I think its title speaks volume. It is called, "An Act To Ensure Complete Recovery for Injuries to Children." What the bill would allow is, if a jury found that a parent had been negligent and a child of that parent was injured by that parent's negligence, then that child would have the right to be made whole under his parents insurance policy.

I hope that you will accept the Majority "Ought to Pass" Report.

Subsequently, the Majority "Ought to Pass" Report was accepted, the Bill read once.

Committee Amendment "A" (H-906) was read by the Clerk and adopted and the Bill assigned for second reading Tuesday, February 18, 1992.

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

CONSENT CALENDAR

First Day

In accordance with House Rule 49, the following items appeared on the Consent Calendar for the First Day:

(S.P. 851) (L.D. 2164) Bill "An Act to Continue Modified Rate Regulation for Small Consumer-owned Electric Utilities" Committee on Utilities reporting "Ought to Pass"

(S.P. 870) (L.D. 2217) Bill "An Act to Amend the Mars Hill Utility District" Committee on Utilities reporting "Ought to Pass"

(S.P. 852) (L.D. 2165) Bill "An Act to Authorize Forest Rangers to Enforce the Rules and Laws Pertaining to the Bureau of Public Lands" Committee on Energy and Natural Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (S-538)

(H.P. 1480) (L.D. 2092) Bill "An Act to Increase the Debt Limit of the South Berwick Sewer District" (EMERGENCY) Committee on Utilities reporting "Ought to Pass" as amended by Committee Amendment "A" (H-914)

There being no objections, the above items were ordered to appear on the Consent Calendar of Tuesday, February 18, 1992, under the listing of Second Day.

(H.P. 1291) (L.D. 1866) Bill "An Act to Prevent Certain Restraint of Trade Practices" Committee on Business Legislation reporting "Ought to Pass" as amended by Committee Amendment "A" (H-919)

On motion of Representative Graham of Houlton, was removed from the Consent Calendar, First Day.

The SPEAKER: The Chair recognizes the Representative from Houlton, Representative Graham.

Representative GRAHAM: Mr. Speaker, I move that we table this item one legislative day

Subsequently, Representative Graham of Houlton withdrew his motion to table one legislative day pending adoption of Committee Amendment "B."

The Committee Report was read and accepted, the Bill read once.

Committee Amendment "A" (H-919) was read by the Clerk.

On motion of Representative Graham of Houlton, tabled pending adoption of Committee Amendment "A" (H-919) and specially assigned for Tuesday, February 18, 1992.

(H.P. 1011) (L.D. 1479) Bill "An Act to Protect the Copyright and Ownership Rights of Maine Artists" Committee on Legal Affairs reporting "Ought to Pass" as amended by Committee Amendment "A" (H-921)

(H.P. 1415) (L.D. 2027) Bill "An Act to Expand the Definition of 'Tenant' in the Laws Pertaining to Mobile Home Parks" Committee on Legal Affairs reporting "Ought to Pass" as amended by Committee Amendment "A" (H-920)

(H.P. 1473) (L.D. 2085) Bill "An Act to Amend the Laws Governing Placement of Insurance in the Surplus Lines Market" (EMERGENCY) Committee on Banking and Insurance reporting "Ought to Pass" as amended by Committee Amendment "A" (H-922)

(H.P. 1534) (L.D. 2167) Bill "An Act Concerning the Operation of the Maine Automobile Insurance Plan" Committee on Banking and Insurance reporting "Ought to Pass" as amended by Committee Amendment "A" (H-923)

(H.P. 711) (L.D. 1016) Bill "An Act Relating to Distribution of Retirement Benefits in Divorce" Committee on Judiciary reporting "Ought to Pass" as amended by Committee Amendment "A" (H-924)

(H.P. 1025) (L.D. 1498) Bill "An Act to Promote Gun Safety" Committee on Judiciary reporting "Ought to Pass" as amended by Committee Amendment

"A" (H-925)

(H.P. 1484) (L.D. 2096) Bill "An Act to Amend the Group Health Insurance Conversion Laws" Committee on Banking and Insurance reporting "Ought to Pass" as amended by Committee Amendment "A" (H-926)

(H.P. 1557) (L.D. 2195) Bill "An Act to Revise the Basis for Semiannual Assessment on Financial Institutions" Committee on Banking and Insurance reporting "Ought to Pass" as amended by Committee Amendment "A" (H-927)

There being no objections, the above items were ordered to appear on the Consent Calendar of Tuesday, February 18, 1992, under the listing of Second Day.

(H.P. 1438) (L.D. 2050) Bill "An Act to Allow the Towns of Castle Hill, Chapman and Mapleton to Enter into an Interlocal Agreement" Committee on State and Local Government reporting "Ought to Pass" as amended by Committee Amendment "A" (H-930)

On motion of Representative Joseph of Waterville, was removed from the Consent Calendar, First Day.

Subsequently, the Committee Report was read and accepted, the Bill read once.

Committee Amendment "A" (H-930) was read by the Clerk and adopted.

Under suspension of the rules, the Bill was read a second time, passed to be engrossed as amended by Committee Amendment "A" (H-930) and sent up for concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

CONSENT CALENDAR

Second Day

In accordance with House Rule 49, the following items appeared on the Consent Calendar for the Second Day:

(S.P. 519) (L.D. 1397) Bill "An Act to Establish a Seasonal Permit for the Sale of Deer Hides" (C. "B" S-533)

(H.P. 892) (L.D. 1289) Bill "An Act to Promote Comprehensive and Consistent Statewide Environmental Policy and Regulation" (C. "A" H-900)

(H.P. 1040) (L.D. 1513) Bill "An Act Relating to Best Practicable Treatment Determinations in Air Emission Licensing" (C. "A" H-907)

(H.P. 1414) (L.D. 2026) Bill "An Act to Amend the Charter of the Casco Bay Island Transit District" (C. "A" H-908)

No objections having been noted at the end of the Second Legislative Day, the Senate Paper was Passed to be Engrossed as Amended in concurrence and the House Papers were Passed to be Engrossed as Amended and sent up for concurrence.

PASSED TO BE ENGROSSED

As Amended

Bill "An Act to Clarify the Subdivision Definition under Maine Land Use Regulation Commission Laws" (H.P. 1588) (L.D. 2242)

Was reported by the Committee on Bills in the Second Reading and read the second time.

Representative Jacques of Waterville offered House Amendment "A" (H-913) and moved its adoption.

House Amendment "A" (H-913) was read by the Clerk and adopted.

The bill was passed to be engrossed as amended by House Amendment "A" (H-913) and sent up for concurrence.

PASSED TO BE ENGROSSED

As Amended

Bill "An Act to Provide More Effective Recovery of Child Support" (H.P. 1222) (L.D. 1780) (C. "A" H-899)

Bill "An Act Allowing Zoning Boards of Appeal to Grant Dimensional Variances Based On Practical Difficulty" (H.P. 1263) (L.D. 1832) (H. "A" H-909 to C. "A" H-901)

Bill "An Act to Modify Weight Limits for Farm Trucks" (S.P. 189) (L.D. 498) (C. "A" S-525)

Were reported by the Committee on Bills in the Second Reading, read the second time, the Senate Paper was Passed to be Engrossed as Amended in non-concurrence and sent up for concurrence and the House Papers were Passed to be Engrossed as Amended and sent up for concurrence.

FINALLY PASSED

Emergency Measure

Resolve, That the Reporting Deadline for the Commission on Comprehensive Energy Planning Be Extended (S.P. 794) (L.D. 1993) (C. "A" S-530)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 117 voted in favor of the same and none against and accordingly the Resolve was finally passed, signed by the Speaker and sent to the Senate.

PASSED TO BE ENACTED

An Act to Amend the Disability Laws Applicable to

Members of the Maine Judicial Retirement System (S.P. 742) (L.D. 1937) (C. "A" S-529)

An Act Regarding the Relocation of Utility Facilities as a Result of State Highway Construction (H.P. 508) (L.D. 702) (C. "A" H-871)

Were reported by the Committee on Engrossed Bills as truly and strictly engrossed, passed to be enacted, signed by the Speaker and sent to the Senate.

ENACTOR

Tabled and Assigned

An Act to Prescribe the Duties and Liabilities of Ice-skating Rink Operators and Persons Who Use Ice-skating Rinks (H.P. 1217) (L.D. 1775) (C. "A" H-874)

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

The SPEAKER: The Chair recognizes the Representative from Hampden, Representative Richards.

Representative RICHARDS: Mr. Speaker, Ladies and Gentlemen of the House: If you will recall, last year we had this bill near the end of the session and I believe the motion was to indefinitely postpone at the time. It was later withdrawn and I believe it was referred or transferred to this year to rectify the problems it had because it essentially gives immunity.

It does come back before us essentially the same with some minor changes which really doesn't deal with or address the problem and concerns that I had last year. I guess the best way to explain what my objection is to this bill is that it prescribes certain responsibilities to the ice-skating rink owner, the operator and the skater. It prescribes a certain way in which a skater is to act on the ice, given the constraints or the experience that that person has. It also recognizes it as an inherently dangerous sport.

As you know, we passed a law dealing with ski slopes and that it is an inherently dangerous sport. We gave certain limited immunity in that particular activity. We also passed a bill like this dealing with roller skating rinks, which I wish I had had the chance to debate but I just missed it last session.

If my 12 year old daughter is at the skating rink and she is skating with two or three of her friends and there are, let's say, a 16, 17 or a 21 year old (2 or 3 people) either chain skating or racing down the track and runs into my daughter or your daughter and (in the worst case scenario) breaks her neck, she becomes a quadriplegic or a paraplegic, what that says is that the person responsible for that rink, if he had known that activity was going on and creating a danger to the people on the track and that person did not intervene, then that really doesn't matter. What matters is that my daughter should have been skating and known that it was an inherently dangerous sport, that perhaps people were speed skating on there and watch out on the left and right sides so the person that I look for for damages is not the ice-skating rink because we have given them immunity under this bill, I look toward the person who caused

that particular injury. As we know, that person is responsible for the injury but it is also the responsibility of the person who has control of that ice-skating rink to have perhaps intervened and stopped that activity. I have a problem with this bill because of that.

As you know, over the last year, we have had a number of bills claiming all types of things, inherently dangerous sports and wanting immunity. We have had a number before our committee in Judiciary — horseback riding, etc. I guess you have to say, where does it stop? Football, ice hockey, soccer, I guess the argument can be made for that — there are all types of sports and I think my major objection is that we have to say enough is enough.

Mr. Speaker, I move indefinite postponement of this bill and all its accompanying papers.

The SPEAKER: The Chair recognizes the Representative from Bridgton, Representative Kutasi.

Representative KUTASI: Mr. Speaker, Ladies and Gentlemen of the House: The Representative from Hampden is right, we did pass a similar bill on skiing and passed a similar bill on roller skating. All of these places have got rules posted on what proper action is to be taken in whatever activity is going on. If there is tomfoolery on the roller rink or the ice-skating rink, there are notices on the walls or wherever. There are signs that are hung saying that you can't do those kinds of activities at this establishment.

I feel that the ice-skating rink and the roller rink people and the ski people came to us and said they needed to lower their liability insurance and this is one way of doing it, to define in law that yes, it is an inherent risk to ski, to ice-skate and to roller skate. You have to have some kind of coordination, some ability to do these activities and that is all this law is saying. They post that sign up, they post their rules up at their establishments to what it takes and what are the rules to participate. That is all we are saying. If the person is running a shoddy operation, if he doesn't enforce those rules, then I think people do have a case that that person is not adhering to the law. This bill, basically, is taking care of the last component and really there are only four or five public ice-skating rinks throughout the state, this has nothing to do with municipalities or schools or whatever the case is. This is strictly private enterprises that are doing business in this state.

I hope you will oppose Representative Richards motion to indefinitely postpone.

The SPEAKER: The Chair recognizes the Representative from Houlton, Representative Graham.

Representative GRAHAM: Mr. Speaker, Men and Women of the House: We are not plowing new ground with this bill, it is very much a pro-business bill to help them control their costs. It doesn't surprise me at all that a lawyer would object to a bill that would decrease the number of lawsuits that we have in this state.

The SPEAKER: The Chair recognizes the Representative from Hampden, Representative Richards.

Representative RICHARDS: Mr. Speaker, Men and Women of the House: I guess we now have a new phrase of when you have a bill you want to pass through that is a bad bill, call it pro-business. Well, let me tell you, this is anti-family and I guess that is the label that I can put on it.

My last statement is that we have got to say,

enough is enough.

Representative Anthony of South Portland moved that this item be tabled one legislative day.

Representative Tracy of Rome requested a roll call.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and less than one-fifth of the members present and voting expressing a desire for a roll call, a roll call was not ordered.

The SPEAKER: The Chair will order a vote. The pending question before the House is the motion of the Representative from South Portland, Representative Anthony, that L.D. 1775 be tabled one legislative day. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

54 having voted in the affirmative and 43 in the negative, the motion to table did prevail.

PASSED TO BE ENACTED

An Act to Clarify the Relevant Information in Administrative Rule-making Procedures (H.P. 1235) (L.D. 1799) (C. "A" H-873)

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

The SPEAKER: The Chair recognizes the Representative from Mexico, Representative Luther.

Representative LUTHER: Mr. Speaker, Ladies and Gentlemen of the House: I have serious misgivings with this Committee Amendment. I have read the Statement of Fact and I would like to read it to you. "This amendment changes the title of the bill and replaces the original language of the bill. The amendment specifies that economic, environmental, fiscal and social impact analyses are relevant information and must be considered by agencies when adopting rules. An agency is not prohibited from considering other information the agency considers relevant."

I have problems with this because, for one thing, it was sent to State and Local Government and where it could seriously impact environmental laws that this body passed in very good faith, I question whether we should pass this here today.

I am concerned that things we passed dealing with the Rivers Bill, dealing with ambient air, when we go home the Department of Environmental Protection will be under great and severe stress under different industries to come in and look at the fiscal impact seeing as we are in a serious recession and I feel that it is a dangerous thing for us to undertake lightly.

I was told that this was already the edict of the Governor. I didn't know that we ran the state by edict. Just because the Governor thinks this is a good idea, that does not mean that I think it is a good idea.

I would urge you to think seriously before you okay this bill.

Mr. Speaker, I would request a roll call.

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

Representative JOSEPH: Mr. Speaker, Men and Women of the House: I think the good Representative misunderstands the intention of this piece of legislation. Yes, the title was changed and I am sorry I don't have either of the amendments or the bill before me but I will in a second.

I do want to say that it was the committee's intention to have departments and agencies consider and evaluate the environmental and economic impact in their criteria as they are developing and promulgating rules which have the effect of law.

The committee worked long and hard on this piece of legislation and it was a carryover bill. In fact, had the bill itself been before us today, I am sure that it would have received an "Ought Not to Pass" Report from the committee but we felt by balancing the environmental impact and the economic impact that one would not supersede the other.

I would urge you to enact this piece of legislation.

The SPEAKER: The Chair recognizes the Representative from Mexico, Representative Luther.

Representative LUTHER: Mr. Speaker, Ladies and Gentlemen of the House: I am sure that the State and Local Government Committee did work long and hard and I certainly applaud the work of the committee. I am not criticizing that at all.

I just feel that this bill had it gone to Energy and Natural Resources Committee would have gotten a lot of us down there to look at it and to speak on it. It really got by the desk, practically. It is a very dangerous bill and I really urge you to defeat this.

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

Representative KILKELLY: Mr. Speaker, Ladies and Gentlemen of the House: As a member of the State and Local Government Committee who did work on this bill and very strongly supports this bill, I think it is important to point out that not all rule-making that happens in the state is in fact environmental rule-making. The original idea of the bill was to incorporate into the decision-making process of departments the fiscal impact of particular rules. A compromise was struck within the committee to also include in that environmental impact so that there would be a balance but there are many, many rules that go through in this state that are not environmental rules. I think what we were attempting to do was to put that balance in and for this bill to have gone to the Energy and Natural Resources Committee would mean possibly that many of the rules that are not environmentally related might not have had the kind of scrutiny that it deserves. So, it was more of a general bill than just being environmental.

I think it is really important to understand that the reason the committee took this step was to assure that all of the issues involved in rule-making were addressed. The concern that was brought to us was that the fiscal impact of a rule was not part of the information that was taken into consideration by departments. I think most of us would agree that it is very, very important for that consideration to be part of the rule-making process. Certainly it is a consideration that we all have as part of our decision-making process when laws are passed and

because rules do have the effect of law, it is very important that that be a consideration when rules are passed.

I would urge your strong support for this legislation.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is passage to be enacted. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 304

YEA - Aikman, Aliberti, Anderson, Anthony, Ault, Bailey, H.; Bailey, R.; Barth, Bell, Bennett, Boutilier, Bowers, Butland, Cahill, M.; Carleton, Carroll, D.; Carroll, J.; Cathcart, Chonko, Clark, H.; Clark, M.; Coles, Constantine, Cote, Crowley, Daggett, DiPietro, Donnelly, Duffy, Dutremble, L.; Erwin, Farnsworth, Farnum, Farrow, Foss, Garland, Gean, Goodridge, Gould, R. A.; Graham, Gray, Greenlaw, Gurney, Gwadosky, Hale, Handy, Hanley, Hastings, Heino, Hepburn, Hichborn, Hichens, Hoglund, Hussey, Jalbert, Joseph, Kerr, Ketover, Ketterer, Kilkelly, Kontos, Larrivee, Lawrence, Lemke, Look, Lord, MacBride, Mahany, Manning, Marsano, Marsh, Martin, H.; Mayo, Melendy, Michael, Mitchell, E.; Mitchell, J.; Morrison, Murphy, Nadeau, Nash, Norton, O'Dea, O'Gara, Oliver, Ott, Paradis, J.; Paradis, P.; Paul, Pendexter, Pendleton, Pfeiffer, Pines, Plourde, Poulin, Pouliot, Reed, G.; Reed, W.; Richards, Richardson, Ricker, Rotondi, Ruhlin, Rydell, Saint Onge, Savage, Sheltra, Simonds, Simpson, Small, Spear, Stevens, A.; Stevens, P.; Stevenson, Strout, Tammaro, Tardy, Tracy, Vigue, Waterman, Whitcomb.

NAY - Adams, Duplessis, Heeschen, Holt, Jacques, Kutasi, Lebowitz, Libby, Luther, Macomber, McHenry, McKeen, Merrill, Michaud, Nutting, Parent, Pineau, Powers, Rand, Salisbury, Swazey, Tupper, Wentworth.

ABSENT - Cashman, Dore, Lipman, Skoglund, Townsend, Treat, The Speaker.

Yes, 121; No, 23; Absent, 7; Paired, 0; Excused, 0.

121 having voted in the affirmative and 23 in the negative with 7 being absent, the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

PASSED TO BE ENACTED

An Act to Establish a Forest Service Bureau in Each Division of the District Court (H.P. 1482) (L.D. 2094)

An Act to Authorize Transfer of Venue for Multiple Cases by the Chief Justice of the Superior Court (H.P. 1511) (L.D. 2123)

Were reported by the Committee on Engrossed Bills as truly and strictly engrossed, passed to be enacted, signed by the Speaker and sent to the Senate.

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

SENATE PAPERS

The following Joint Order: (S.P. 914)

ORDERED, the House concurring, that when the House and Senate adjourn, they do so until Tuesday, February 18, 1992, at four o'clock in the afternoon.

Came from the Senate, read and passed.

Was read and passed in concurrence.

Bill "An Act to Provide Additional Funding for the Department of Inland Fisheries and Wildlife Through Increased License Fees" (S.P. 912) (L.D. 2332)

Came from the Senate, referred to the Committee on Fisheries and Wildlife and Ordered Printed.

Was referred to the Committee on Fisheries and Wildlife in concurrence.

Bill "An Act to Encourage Private Sector Investment in Tourism" (S.P. 911) (L.D. 2331)

Came from the Senate, referred to the Committee on Housing and Economic Development and Ordered Printed.

Was referred to the Committee on Housing and Economic Development in concurrence.

Resolve, to Expand the Use of the University of Maine System's Interactive Television System (S.P. 902) (L.D. 2322)

Came from the Senate, referred to the Committee on State and Local Government and Ordered Printed.

Was referred to the Committee on State and Local Government in concurrence.

The following items appearing on Supplement No. 2 were taken up out of order by unanimous consent:

SENATE PAPERS

Bill "An Act to Implement the Recommendations of the Special Commission on Governmental Restructuring" (S.P. 910) (L.D. 2330)

Resolve, to Study the Structure of the University of Maine System and Examine Options for Better Integrating the University of Maine System and Maine Maritime Academy (S.P. 903) (L.D. 2323)

Resolve, to Establish Regional Boundaries for Health and Social Services (EMERGENCY) (S.P. 904) (L.D. 2324)

Resolve, to Establish Regional Boundaries for Natural Resource Services (EMERGENCY) (S.P. 905) (L.D. 2325)

Resolve, to Review the Public Safety and Criminal and Civil Justice Systems (EMERGENCY) (S.P. 906) (L.D. 2326)

Resolve, to Implement Total Quality Management Procedures in State Government (EMERGENCY) (S.P. 907) (L.D. 2327)

Resolve, Authorizing the Maine Coalition for Excellence in Education to Study Education Policy in the State (EMERGENCY) (S.P. 908) (L.D. 2328)

Resolve, to Establish a Mechanism for Assessing the Potential for Privatization of State Services (EMERGENCY) (S.P. 909) (L.D. 2329)

Came from the Senate, referred to the Committee on State and Local Government and Ordered Printed.

Were referred to the Committee on State and Local Government in concurrence.

The following item appearing on Supplement No. 3 was taken up out of order by unanimous consent:

PASSED TO BE ENACTED

Emergency Measure

An Act to Allow the Towns of Castle Hill, Chapman and Mapleton to Enter into an Interlocal Agreement (H.P. 1438) (L.D. 2050) (C. "A" H-930)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 113 voted in favor of the same and none against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

By unanimous consent, ordered sent forthwith to the Senate.

The following item appearing on Supplement No. 4 was taken up out of order by unanimous consent:

SENATE PAPER

Bill "An Act Concerning Anatomical Gifts Under the Motor Vehicle Laws" (S.P. 900) (L.D. 2319)

Came from the Senate, referred to the Committee on Judiciary and Ordered Printed.

(The Committee on Reference of Bills had suggested reference to the Committee on Transportation.)

Was referred to the Committee on Judiciary in concurrence.

The following item appearing on Supplement No. 5 was taken up out of order by unanimous consent:

SENATE PAPER

Non-Concurrent Matter

Bill "An Act to Establish a Limit on Noneconomic Damages in Medical Liability Actions" (H.P. 253) (L.D. 344) on which the Majority "Ought Not to Pass" Report of the Committee on Judiciary was read and accepted in the House on February 6, 1992.

Came from the Senate with the Minority "Ought to Pass" as amended Report of the Committee on Judiciary read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (H-875) in non-concurrence.

The SPEAKER: The Chair recognizes the Representative from Augusta, Representative Paradis.

Representative PARADIS: Mr. Speaker, I move that the House adhere.

Mr. Speaker, Ladies and Gentlemen of the House: Very briefly, I would just like to share some of the points that were mentioned last week when we debated this issue in this body.

We defeated this bill overwhelmingly and I believe the Roll Call vote was 89 votes in the affirmative to defeat this legislation and 59 votes in the negative.

We have had testimony before our committee in the last several years that paints a picture of medical insurance premiums going down, liability insurance premiums going down for our physicians. The last year we had reliable data, the testimony was that the average liability medical claim against a physician in this state or against a hospital, in 1989, was \$13,000. You do not need a cap of \$250,000 in order to address a liability claim on the average of \$13,000.

You will recall that two years ago I cosponsored a measure which this body overwhelmingly accepted, the Medical Access Program, which helps to underwrite medical malpractice premiums for our rural physicians. The average premium return that the State of Maine is giving today is \$5,000 to our rural physicians, \$5,000 that is going to help them. Their average liability premium is only \$3,900, that is the average, but that is a real program, The Rural Access Medical Program that this body enacted. It is making a real difference for our rural health care physicians. We do not need a cap of \$250,000 when it doesn't address a real need.

You heard debate in this body last week that spoke about the fact that this was overwhelmingly negative to the women in our state who must stay home either to care for their children or because they are unemployed or they are unemployable. It is an injustice to them and to the people of this state to have a cap, a noneconomic cap, against the damages that they would sustain.

I believe more than any attorney in this body in the jury system. It is the best system that has been devised under our Constitution to bring justice. We

the people decide the verdict. We are familiar with it in the criminal justice system but it has a real bearing in our civil courts.

I said in 1988 on the Record, why is it that this body would feel that we assembled sworn members would have more knowledge, more access to the facts of a medical claim without hearing one case, without knowing one particular, that we could impose ourselves, interject ourselves instead of a jury in deciding a medical claim and say artificially that it is good to have a cap, even though it doesn't reduce the premiums, it is good to have a cap even though it doesn't help our physicians or our hospitals, it is good to have a cap for the expressed reason that other states have a cap. They were told that caps, according to the Rand Corporation just last week, actually reduced claims by 23 percent, not 23 percent fewer claims, it reduces the award that a person gets by 23 percent. I said four years ago that we in this body should superimpose ourselves against a jury? The people who elect us are those same jurors. If they have enough ability to elect us, over and over again, and have faith in this body as a constitutional government, cannot they make that same decision for the person who has a claim, who has a tort against them in civil court?

If you are going to put on a cap, you might as well abolish the jury system for all civil trials because we are saying that we don't believe in the people, that the people of this body don't believe in the people who elect us, that they can't make a sound judgment, that we have to listen to the insurance companies advocate for caps and other artificial barriers to recovery. It makes no sense. Many states have ruled that it is unconstitutional because of the deprivation of the rights of people to recover when they have been hurt. You don't have to be a lawyer to understand or to appreciate that. Lay people can have more of an appreciation because we are the ones that are out there who need the system to respond to us.

I urge that the body adhere to its former position and defeat this legislation soundly tonight.

The SPEAKER: The Chair recognizes the Representative from Paris, Representative Hanley.

Representative HANLEY: Mr. Speaker, I move that the House recede and concur and I request a roll call.

Men and Women of the House: I will just be very brief this evening. I want to clear up some misconceptions that have been shared throughout this House regarding Medical Mutual. Medical Mutual was a company started by physicians back in 1978 when malpractice premiums were soaring out of the sky. Physicians got together and said, how can we address the problem so we can continue to provide health care services to the people in the state? From 1978 until 1992, no dividends were paid out. For the first time, in January of this year, a dividend of 10 percent of their premiums were returned to the doctors. In a 14 year period, that is the only dividend that has been paid out.

Currently, there are 276 claims still outstanding. That is why Medical Mutual has a balance of over \$30 million dollars, which by law they are required to hold through the Bureau of Insurance to be able to cover all these claims. Medical Mutual has paid out 13 claims for noneconomic damages in excess of \$250,000. Those are the points I wanted to raise because I knew there were some misconceptions on both sides of the aisle with what

the figures were exactly with Medical Mutual, what type of money they have, what type of dividends had been paid out.

Let me reiterate, the company started in 1978, they paid no dividends until January of this year and the only dividend was a premium reduction of 10 percent. The money that they are currently holding are for the claims outstanding, which by law they are required to hold.

I hope that you will support the motion to recede and concur.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The Chair recognizes the Representative from Houlton, Representative Graham.

Representative GRAHAM: Mr. Speaker, Ladies and Gentlemen of the House: I will be very brief. My philosophy on these issues is that we should not take away a right or a privilege that a citizen has unless we have a solid guarantee that there will be some benefit in return.

I am glad that Representative Hanley brought up the subject of Medical Mutual. One of my local doctors approached me who insures through Medical Mutual and he is very much in favor of this bill. I suggested to him that, if he could produce for me from Medical Mutual (in writing) how much premiums would decline if we passed this bill, that they would have a lot firmer standing with me and have my ear in a stronger manner. So far, no letter. Therefore, I urge all of you to vote against the pending motion.

The SPEAKER: The Chair recognizes the Representative from Fryeburg, Representative Hastings.

Representative HASTINGS: Mr. Speaker, Ladies and Gentlemen of the House: Two years ago, the legislature decided to look at a Collateral Source Doctrine, which was something that was allowed as a method so people could have multiple insurances and collect them. Even though you sued under your existing claim, they couldn't take away the benefits you've got from all these various insurances. Now that provision was a doctrine which had grown out of the common law, it was something which had been around for centuries and yet what happened was that this legislature decided that it was appropriate to take that right away for the benefit of the common good.

The deal that was struck was kind of interesting. We were having difficulty in the far reaches of rural Maine and in many locations where there were health care clinics to get, if you will, doctors who would do OB/GYN, deliver babies, post and prenatal care, and secondly, that would take Medicaid patients. That was a difficulty so we said, look, we don't know for sure because all the actuaries came before us and said, we don't know for sure and we cannot tell you Representative Bell whether or not this is going to save money. We think it will, so what did we do? At that time we said to them, look, if it saves based on when you apply for your rate, if it saves \$250,000, the first \$250,000 has to go as a refund to increase access to these rural providers of care. We also said that the next \$250,000 was theirs

by rate or premium decrease. There was a sharing formula. Let me tell you, even though we had no concrete evidence, nobody stood up in blood and said, you are going to save so much by eliminating collateral source, indeed, tens of doctors received a \$5,000 credit on their insurance.

The issue was raised here tonight whether or not this particular cap is going to cut down on rates. Everyone says, I can't see that that is going to happen. We don't have any actuaries who come before the committee and signs, seals and guarantees that, indeed, this is going to reduce rates. Ladies and gentlemen, we didn't know it two years ago but it did. Now we are proposing another doctrine to be limited as the one before and I can only tell you that it has to have an effect. It has to.

It is argued that we should leave everything up to a jury, that we shouldn't intervene in this type of a process — people, we have done that time after time after time. This legislature makes laws, it did it when it changed the adoption of the Comparative Negligence Law, it did it with the Maine Tort Claims Act, it has done it with the Death Benefit Act — there are hundreds of provisions, I would dare say, that have been changed by this legislature. They have done it because they felt it was beneficial to many people.

I don't think I will probably convince anybody tonight to change their vote but let me tell you that it did work when we looked at another issue and erased that type of claim. The people who did not want us to make that change are the same people fighting this change tonight. I will tell you that this one will have some effect as well. How much — the report back in 1986 or 1987 by the good Senator from Auburn at that time indicated that it would have an effect. It has been effective in California and has been upheld in many places. Whether you choose to vote for it or not is whether or not you think it is common good.

The SPEAKER: The Chair recognizes the Representative from Orono, Representative Cathcart.

Representative CATHCART: Mr. Speaker, Women and Men of the House: I won't repeat my speech from the other night but just remind you that I still do believe that this kind of cap would really hurt women most of all.

I wanted to relate a conversation I had just before the session with a doctor constituent of mine. I respected his opinion, he was very sincere. He admitted to me that he knew that I objected on the basis of women being hurt by this cap and he admitted to me that that was true, that I was probably right about that, that women would certainly get smaller settlements if we cap noneconomic damages. However, he also said that he didn't see why physicians like himself should be expected to correct the social injustices that we have. I agreed and I do not think that I am asking him or other physicians to do that, rather I think it is our job as the elected Representatives of the people to correct the social ills that we see in our state and to assure equal treatment for all.

I urge you to vote against the motion to recede and concur.

The SPEAKER: The pending question before the House is the motion of the Representative from Paris, Representative Hanley, that the House recede and concur.

The SPEAKER: The Chair recognizes the

Representative from Bar Harbor, Representative Constantine.

Representative CONSTANTINE: Mr. Speaker, pursuant to House Rule 7, I request permission to pair my vote with the Representative from St. George, Representative Skoglund. If he were present and voting, he would be voting nay; I would be voting yea.

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

Representative CLARK: Mr. Speaker, pursuant to House Rule 7, I request permission to pair my vote with the Representative from Gardiner, Representative Treat. If she were present and voting, she would be voting nay; I would be voting yea.

The SPEAKER: The Chair recognizes the Representative from York, Representative Ott.

Representative OTT: Mr. Speaker, pursuant to House Rule 7, I request permission to pair my vote with the Representative from Augusta, Representative Lipman. If he were present and voting, he would be voting nay; I would be voting yea.

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

Representative SIMONDS: Mr. Speaker, pursuant to House Rule 7, I request permission to pair my vote with the Representative from Eastport, Representative Townsend. If he were present and voting, he would be voting nay; I would be voting yea.

The SPEAKER: The Chair recognizes the Representative from Buxton, Representative Waterman.

Representative WATERMAN: Mr. Speaker, pursuant to House Rule 7, I request permission to pair my vote with the Representative from Old Town, Representative Cashman. If he were present and voting, he would be voting nay; I would be voting yea.

The SPEAKER: A roll call has been ordered. The pending question before the House is the motion of the Representative from Paris, Representative Hanley, that the House recede and concur. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 305

YE - Aikman, Aliberti, Anderson, Ault, Bailey, R.; Barth, Bennett, Boutillier, Bowers, Butland, Carroll, J.; DiPietro, Donnelly, Farnum, Farren, Foss, Garland, Gray, Greenlaw, Hanley, Hastings, Heino, Hepburn, Hichborn, Lebowitz, Libby, Look, Lord, MacBride, Merrill, Murphy, Nash, Norton, Nutting, O'Gara, Paul, Pendexter, Pendleton, Pines, Plourde, Pouliot, Reed, G.; Reed, W.; Richards, Richardson, Ricker, Ruhlin, Salisbury, Savage, Small, Spear, Stevens, A.; Stevenson, Tammaro, Vigue, Whitcomb.

NAY - Adams, Anthony, Bailey, H.; Bell, Cahill, M.; Carleton, Carroll, D.; Cathcart, Chonko, Clark, H.; Coles, Cote, Crowley, Daggett, Duffy, Duplessis, Dutremble, L.; Erwin, Farnsworth, Gean, Goodridge, Gould, R. A.; Graham, Gurney, Gwadosky, Hale, Handy, Heeschen, Hichens, Hogle, Holt, Hussey, Jacques, Joseph, Kerr, Ketover, Ketterer, Kilkelly, Kontos, Kutasi, Larrivee, Lawrence, Lemke, Luther, Macomber, Mahany, Manning, Marsano, Martin, H.; Mayo, McHenry, Melendy, Michael, Michaud, Mitchell, E.; Mitchell, J.; Morrison, Nadeau, O'Dea, Oliver, Paradis, J.; Paradis, P.; Pfeiffer, Pineau, Poulin, Powers, Rand, Rotondi, Rydell, Saint Onge, Sheltra, Simpson, Stevens, P.; Strout, Swazey, Tardy, Tracy, Tupper, Wentworth, The Speaker.

ABSENT - Dore, Jalbert, Marsh, McKeen, Parent.
 PAIRED - Cashman, Clark, M.; Constantine, Lipman, Ott, Simonds, Skoglund, Townsend, Treat, Waterman.
 Yes, 56; No, 80; Absent, 5; Paired, 10; Excused, 0.

56 having voted in the affirmative and 80 in the negative with 5 being absent and 10 having paired, the motion did not prevail.

Subsequently, on motion of Representative Paradis of Augusta, the House voted to adhere. Sent up for concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

ORDERS OF THE DAY

BILL HELD

Bill "An Act to Promote Motor Vehicle Fuel Efficiency" (H.P. 1168) (L.D. 1709)
 - In House, Majority "Ought Not to Pass" Report of the Committee on Taxation read and accepted.
 HELD at the Request of Representative HOGLUND of Portland.

Representative Hogle of Portland moved that the House reconsider its action whereby the Majority "Ought Not to Pass" Report was accepted.

On further motion of the same Representative, tabled pending her motion that the House reconsider its action whereby the Majority "Ought Not to Pass" Report was accepted and specially assigned for Tuesday, February 18, 1992.

BILL RECALLED FROM LEGISLATIVE FILES

(Pursuant to Joint Order - House Paper 1647)

Bill "An Act to Amend and Improve the Laws Relating to Education" (S.P. 469) (L.D. 1252)

On motion of Representative Kilkelly of Wiscasset, under suspension of the rules, the House reconsidered its action whereby it voted to recede and concur.

On further motion of the same Representative, under suspension of the rules, the House reconsidered its action whereby L.D. 1252 was passed to be enacted.

On further motion of the same Representative, under suspension of the rules, the House reconsidered its action whereby L.D. 1252 was passed to be engrossed.

On further motion of the same Representative, under suspension of the rules, the House reconsidered its action whereby Committee Amendment "A" (S-153) was adopted.

On further motion of the same Representative, Committee Amendment "A" (S-153) was indefinitely postponed.

The same Representative offered House amendment "B" (H-918) and moved its adoption.

House Amendment "B" (H-918) was read by the Clerk and adopted.

The Bill was passed to be engrossed as amended by House Amendment "B" (H-918) in non-concurrence and sent up for concurrence.

On motion of Representative Handy of Lewiston,

Adjourned at 6:24 p.m. until Tuesday, February 18, 1992 at four o'clock in the afternoon pursuant to Joint Order (S.P. 914) in memory of Stanton Yeaton of Farmington.
