

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

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FIRST CONFIRMATION SESSION

October 2, 1991

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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
14th Legislative Day
Tuesday, February 18, 1992

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

Prayer by Reverend Carl Gustafson, Leeds Community Church.

Pledge of Allegiance.

The Journal of Thursday, February 13, 1992, was read and approved.

SENATE PAPERS

Unanimous Ought Not to Pass

Report of the Committee on Aging, Retirement and Veterans reporting "Ought Not to Pass" on Bill "An Act to Restore Maine State Retirement Service Credit to Certain Part-time, Seasonal, Intermittent or Legislative Employees" (S.P. 809) (L.D. 2008)

Report of the Committee on Energy and Natural Resources reporting "Ought Not to Pass" on Bill "An Act Dealing with the Powers of the Maine Low-level Radioactive Waste Authority" (S.P. 880) (L.D. 2252)

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

Ought to Pass as Amended

Report of the Committee on Education reporting "Ought to Pass" as Amended by Committee Amendment "A" (S-539) on Bill "An Act to Amend the Laws Concerning High School Equivalency Certificates" (S.P. 828) (L.D. 2132).

Came from the Senate, with the report read and accepted and the Bill Passed to be Engrossed as amended by Committee Amendment "A" (S-539).

Report was read and accepted, the bill read once. Committee Amendment "A" (S-539) was read by the Clerk and adopted and the Bill assigned for second reading Thursday, February 20, 1992.

Divided Report

Tabled and Assigned

Majority Report of the Committee on Labor reporting "Ought to Pass" as amended by Committee Amendment "A" (S-537) on Bill "An Act to Amend the Municipal Public Employees Labor Relations Laws" (S.P. 465) (L.D. 1248)

Signed:

Senators: CONLEY of Cumberland
ESTY of Cumberland

Representatives: RUHLIN of Brewer
PINEAU of Jay
McKEEN of Windham
McHENRY of Madawaska
RAND of Portland
ST. ONGE of Greene

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

Signed:

Senator: CARPENTER of York

Representatives: BENNETT of Norway
HASTINGS of Fryeburg
AIKMAN of Poland
LIPMAN of Augusta

Came from the Senate with the Majority "Ought to Pass" as amended Report read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (S-537).

Reports were read.

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

On further motion of the same Representative, tabled pending his motion that the House accept the Majority "Ought to Pass" Report in concurrence and specially assigned for Thursday, February 20, 1992.

**PETITIONS, BILLS AND RESOLVES
REQUIRING REFERENCE**

The following Bills 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:

Tabled and Assigned

Bill "An Act to Amend the Radioactive Waste Laws" (H.P. 1671) (L.D. 2347) (Presented by Representative COLES of Harpswell) (Cosponsored by Representative LORD of Waterboro and Representative MITCHELL of Freeport) (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 Energy and Natural Resources.)

On motion of Representative Jacques of Waterville, tabled pending reference and specially assigned for Thursday, February 20, 1992.

Energy and Natural Resources

Bill "An Act to Establish a Technical and Environmental Compliance Assistance Program for Businesses and Municipalities" (EMERGENCY) (H.P. 1678) (L.D. 2355) (Presented by Representative

ANDERSON of Woodland) (Cosponsored by Representative LORD of Waterboro, Representative AULT of Wayne and Senator TITCOMB of Cumberland) (Submitted by the Department of Environmental Protection pursuant to Joint Rule 24.)

Ordered Printed.
Sent up for Concurrence.

Judiciary

Bill "An Act to Enact a New Article on Negotiable Instruments in the Uniform Commercial Code" (H.P. 1680) (L.D. 2357) (Presented by Representative MARSANO of Belfast) (Cosponsored by Representative MAYO of Thomaston, Senator CONLEY of Cumberland and Senator HOLLOWAY of Lincoln) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.)

Ordered Printed.
Sent up for Concurrence.

Legal Affairs

Bill "An Act to Restore Control and Stability to the Bureau of Alcoholic Beverages" (H.P. 1670) (L.D. 2346) (Presented by Representative PLOURDE of Biddeford) (Cosponsored by Representative TAMMARO of Baileyville, Representative STEVENS of Sabattus and Senator MILLS of Oxford) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.)

Bill "An Act to Strengthen the Campaign Finance Reporting Laws" (H.P. 1679) (L.D. 2356) (Presented by Representative MAYO of Thomaston) (Cosponsored by Representative GWADOSKY of Fairfield and Representative LAWRENCE of Kittery) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.)

Ordered Printed.
Sent up for Concurrence.

Transportation

Bill "An Act to Make Supplemental Allocations of Funds from the Highway Fund for the Fiscal Years Ending June 30, 1992 and June 30, 1993" (EMERGENCY) (H.P. 1677) (L.D. 2354) (Presented by Representative STROUT of Corinth) (Cosponsored by Senator GOULD of Waldo, Senator TWITCHELL of Oxford and Representative MACOMBER of South Portland)

Ordered Printed.
Sent up for Concurrence.

Reported Pursuant to Public Law

Representative MELENDY for the Commission to Study State Permitting and Reporting Requirements,

pursuant to Public Law 1991, chapter 606 ask leave to submit its findings and to report that the accompanying Bill "An Act to Revise the Purpose of the Board and Department of Environmental Protection and to Temporarily Exempt Certain Activities from Certain Permit Requirements" (EMERGENCY) (H.P. 1672) (L.D. 2348) be referred to the Joint Standing Committee on **Energy and Natural Resources** for public hearing and printed pursuant to Joint Rule 18.

Report was read and accepted, and the bill referred to the Committee on **Energy and Natural Resources**, ordered printed and sent up for concurrence.

Reported Pursuant to Public Law

Tabled and Assigned

Representative MELENDY for the Commission to Study State Permitting and Reporting Requirements, pursuant to Public Law 1991, chapter 606 ask leave to submit its findings and to report that the accompanying Bill "An Act to Provide Regulatory and Permitting Assistance to Businesses" (EMERGENCY) (H.P. 1673) (L.D. 2349) be referred to the Joint Standing Committee on **Energy and Natural Resources** for public hearing and printed pursuant to Joint Rule 18.

Report was read and accepted.

On motion of Representative Melendy of Rockland, tabled pending reference and specially assigned for Thursday, February 20, 1992.

Reported Pursuant to Public Law

Representative MELENDY for the Commission to Study State Permitting and Reporting Requirements, pursuant to Public Law 1991, chapter 606 ask leave to submit its findings and to report that the accompanying Bill "An Act Concerning Economic Impact Analysis in Agency Rulemaking" (H.P. 1674) (L.D. 2350) be referred to the Joint Standing Committee on **State and Local Government** for public hearing and printed pursuant to Joint Rule 18.

Report was read and accepted, and the bill referred to the Committee on **State and Local Government**, ordered printed and sent up for concurrence.

Reported Pursuant to Public Law

Representative MELENDY for the Commission to Study State Permitting and Reporting Requirements, pursuant to Public Law 1991, chapter 606 ask leave to submit its findings and to report that the accompanying Bill "An Act to Improve the Environmental Permitting Process" (H.P. 1675) (L.D. 2351) be referred to the Joint Standing Committee on **Energy and Natural Resources** for public hearing and printed pursuant to Joint Rule 18.

Report was read and accepted, and the bill referred to the Committee on **Energy and Natural Resources**, ordered printed and sent up for concurrence.

ORDERS

Tabled and Assigned

On motion of Representative MELENDY of Rockland, the following Joint Resolution: (H.P. 1676) (Submitted by the Commission to Study State Permitting and Reporting Requirements pursuant to Public Law 1991, chapter 606)

**JOINT RESOLUTION SUPPORTING CREATION OF
THE WOLFE NECK INSTITUTE**

WHEREAS, one of the most difficult issues facing the State is determining the proper balance between environmental protection and economic development; and

WHEREAS, one of the weakest components of environmental policy and regulation is the link between science and the policy-making and regulatory process; and

WHEREAS, there is a lack of objective scientific data concerning many of the benefits and costs of environmental regulation and a lack of understanding of the methodologies for evaluating this data; and

WHEREAS, at the state level, the environmental regulatory process has almost no research and development function; and

WHEREAS, it is very important and appropriate for a state such as Maine to have an institute for environmental studies; and

WHEREAS, the federal Environmental Protection Agency, through its new Office of Environmental Education and its Office of Technology Transfer and Regulatory Support, has recognized the importance of many of the things proposed by the University of Southern Maine and has funds available to help support such activities; and

WHEREAS, the University of Southern Maine has proposed an institute for environmental studies, to be called the Wolfe Neck Institute, that addresses these issues and problems and will include a baccalaureate degree in environmental science and policy, an applied research function available to the regulatory community and a conferencing and outreach function; now, therefore, be it

RESOLVED: That We, the Members of the One Hundred and Fifteenth Legislature of the State of Maine now assembled in the Second Regular Session, support the concept of an environmental study institute as proposed by the University of Southern Maine and support priority being given to its funding at such time as the State's budgetary situation will allow such funding; and be it further

RESOLVED: That we respectfully request that the

Members of the Maine Congressional Delegation support the efforts of the University of Southern Maine to obtain funding for the institute from the Office of Technology Transfer and Regulatory Support and the Environmental Education Grants Program of the Office of Environmental Education of the federal Environmental Protection Agency and assist the university in identifying other funding sources with that agency; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Chancellor of the University of Maine System, the Chair of the Board of Trustees of the University of Maine System, the President of the University of Southern Maine and each Member of the Maine Congressional Delegation.

Was read.

On motion of Representative Melendy of Rockland, tabled pending adoption and specially assigned for Thursday, February 20, 1992.

On motion of Representative HICHBORN of Howland, the following Order:

ORDERED, that Representative Tracy R. Goodridge of Cornville be excused January 28 and February 4 for personal reasons.

AND BE IT FURTHER ORDERED, that Representative Rodney V. Bowers of Sherman be excused February 4 for personal reasons.

AND BE IT FURTHER ORDERED, that Representative Sharon Anglin Treat of Gardiner be excused February 13 for personal reasons.

AND BE IT FURTHER ORDERED, that Representative George A. Townsend of Eastport be excused February 13 for legislative business.

AND BE IT FURTHER ORDERED, that Representative Omar P. Norton of Winthrop be excused Feb. 18 and 20 for personal reasons.

Was read and passed.

REPORTS OF COMMITTEES

Unanimous Ought Not to Pass

Representative ROTONDI from the Committee on **Fisheries and Wildlife** on Bill "An Act to Alter the Fishing Season in a Certain Area in Northern Maine" (H.P. 1429) (L.D. 2041) reporting "**Ought Not to Pass**"

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

Ought to Pass as Amended

Representative JOSEPH from the Committee on State and Local Government on Bill "An Act Regarding the Parking Violations that Occur on State Controlled Property within the Capitol Area" (H.P. 1509) (L.D. 2121) reporting "Ought to Pass" as amended by Committee Amendment "A" (H-933)

Report was read and accepted, the bill read once. Committee Amendment "A" (H-933) was read by the Clerk and adopted and the bill assigned for second reading Thursday, February 20, 1992.

Divided Report

Majority Report of the Committee on Legal Affairs reporting "Ought Not to Pass" on Bill "An Act Amending the Laws Governing Concealed Weapons Permits to Allow County Sheriffs to be Designated Issuing Authorities" (H.P. 1495) (L.D. 2107)

Signed:

Senators: MILLS of Oxford
KANY of Kennebec
SUMMERS of Cumberland

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

Minority Report of the same Committee reporting "Ought to Pass" as amended by Committee Amendment "A" (H-910) on same Bill.

Signed:

Representative: JALBERT of Lisbon

Reports were read.

Representative Lawrence of Kittery moved that the House accept the Majority "Ought Not to Pass" Report.

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

Representative GRAHAM: Mr. Speaker, Ladies and Gentlemen of the House: This is my bill and that is why I am up to speak on it. First, I would like to thank the Representative from Lisbon, Representative Jalbert, for giving me a chance to speak on my bill.

First of all, I would like to address the fact that it is a 12 to 1 Report. The actual vote the first time around in the committee was much closer than that, much closer to an even split. The Chairs wanted to attempt to have a unanimous committee report so they moved reconsideration and had another vote and it came out this way.

The bill, as originally presented, would have done a number of things but the Report as amended before you just does one thing. It allows small towns who do not have their own police forces to select the sheriff's department to be the issuing

authority for concealed weapons permits. Right now, small towns may designate the state police to be their issuing authority or they may do it on their own. Some towns in the more rural districts contract with the Sheriff's Department for police protection. It is felt on their part that that local person who is Deputy Sheriff is the person they want to send their citizens to in order to gain a concealed weapons permit. That is what this bill would allow them to do.

One problem that some people had a question about was the problem dealing with controlling the issuing of concealed weapons permits. To that, I answer that, right now, part-time boards of selectmen are issuing these and sometimes don't do very detailed researches on the background of the people who are applying for them.

This bill, as amended, is not opposed by the Sportman's Alliance of Maine or NRA or any other group. It is an acceptable bill.

I would appreciate your vote against the pending motion so that we can go on to accept it and put this bill through so our small towns will have one more option to use in dealing with concealed weapons permits.

The SPEAKER: The Chair recognizes the Representative from Lisbon, Representative Jalbert.

Representative JALBERT: Mr. Speaker, Ladies and Gentlemen of the House: On a 12 to 1 vote, I feel like the lady that is watching the parade and said, "Look, everybody but my son is out of step." I feel that's the way the committee was.

I don't think they fully understood because the majority of the members on the committee are from a more metropolitan area, not a rural area. My big argument is that some of the northern counties, many of those towns and municipalities do not have any police force whatsoever. Sometimes the board of selectmen meet at one of the selectman's house, they don't even have a town office. Under the present setup, if they want a concealed weapons permit, they have to go to a state trooper. Take someone up in Aroostook County, let's say Allagash or any of those towns, they must contact a state trooper and probably the nearest spot would be either Houlton or Presque Isle. Under this setup and the way that it was amended in the Minority Report, most towns have a deputy from the sheriff's department. He or she could issue those permits and save that person a trip to Presque Isle or Houlton or even some of the western parts of the state. The majority of the towns in Maine do not have any police force or full-time police force. They don't even have the facility to process those concealed weapon permits. This is just a fairness issue.

In the committee hearings, the question was that you would have problems between the sheriff's department and the local police and so forth. That may be so in the big cities like Portland, Lewiston, Bangor and Augusta, even my hometown, but I am thinking of the people in the real rural areas such as Washington County, Franklin County and even some parts of York County. These people would have to go a long way to get a permit from the state police.

All this bill says is, if you don't have a full-time police department, that municipal officers may option to allow people to go to the sheriff's department to do it. Normally, there is a deputy sheriff in each town so I would ask at this time that you do not vote for the Majority "Ought Not to Pass"

so we can adopt the Minority Report.

The SPEAKER: The Chair recognizes the Representative from Kittery, Representative Lawrence.

Representative LAWRENCE: Mr. Speaker, Ladies and Gentlemen of the House: Two years ago when the small towns that did not have a chief of police came to us, they asked us if we could allow the state police to be the issuing authority for them in those towns so they could turn this issuing of concealed weapons permits over to the state police. We agreed to do that and the state police hired additional people with the idea that they would get, under that bill, part of the fee that the town would get for the concealed weapons permits, which would go as a handling fee to the state police. Now the sheriffs have come back and they want in on this too and they want to be able to issue concealed weapons permits. The problem we are facing now is, if the sheriff's department starts issuing concealed weapons permits that the state police would have issued, the state police have now hired those people and they are not getting the revenues to pay for those people and they ran into a deficit. We have a turf battle between the state police and the sheriffs over who is going to issue the concealed weapons permits.

This does not leave those small towns without someone to take up the slack, the state police is there to assist them in issuing the concealed weapons permits. Opening up to the sheriffs would have two places you could go and the committee wanted to keep it in one place, one authority, if the town does not have its own police force, that could issue that concealed weapons permit. That is why the committee had problems with this bill.

There was an earlier vote but we reached a consensus at the end (with the exception of one member) that it was not the best thing to do because of the fiscal problems at this time.

The SPEAKER: The Chair recognizes the Representative from Lisbon, Representative Jalbert.

Representative JALBERT: Mr. Speaker, Ladies and Gentlemen of the House: I beg to differ with my good Chair. That is not the question, we are not concerned (at least I'm not) whether the state troopers will get the money they want or need. We are in this business to accommodate each and everyone in the State of Maine.

Two years ago, we did pass legislation where the state troopers would handle it. If that is not sufficient, it is up to us to change it.

I know they are worried about turf fights, I couldn't care less if the state troopers feel offended. I am concerned about somebody who lives in a real rural section of the State of Maine and being accommodated the way they should be.

I would ask again that you would support the Minority Report.

The SPEAKER: The Chair will order a vote. The pending question before the House is the motion of the Representative from Kittery, Representative Lawrence, that the House accept the Majority "Ought Not to Pass" Report. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken,

80 having voted in the affirmative and 26 in the negative, the Majority "Ought Not to Pass" Report was accepted. Sent up for concurrence.

Divided Report

Majority Report of the Committee on Human Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (H-915) on Bill "An Act to Establish a Trauma Advisory Committee and a Voluntary Trauma Reporting System" (H.P. 1233) (L.D. 1797)

Signed:

Senators: BOST of Penobscot
GILL of Cumberland
CONLEY of Cumberland

Representatives: TREAT of Gardiner
WENTWORTH of Arundel
DUPLESSIS of Old Town
SIMONDS of Cape Elizabeth
PENDLETON of Scarborough
PENDEXTER of Scarborough
MANNING of Portland
GOODRIDGE of Cornville

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

Signed:

Representatives: GEAN of Alfred
CLARK of Brunswick

Reports were read.

On motion of Representative Manning of Portland, the Majority "Ought to Pass" Report was accepted, the Bill read once.

Committee Amendment "A" (H-915) was read by the Clerk and adopted and the Bill assigned for second reading Thursday, February 20, 1992.

Divided Report

Majority Report of the Committee on Energy and Natural Resources reporting "Ought Not to Pass" on Bill "An Act to Supplement State Environmental Enforcement" (H.P. 1062) (L.D. 1551)

Signed:

Senators: BALDACCI of Penobscot
LUDWIG of Aroostook
TITCOMB of Cumberland

Representatives: ANDERSON of Woodland
LORD of Waterboro
HOGLUND of Portland
JACQUES of Waterville
GOULD of Greenville
POWERS of Coplin Plantation

Minority Report of the same Committee reporting "Ought to Pass" as amended by Committee Amendment "A" (H-911) on same Bill.

Signed:

Representatives: MARSH of West Gardiner
MITCHELL of Freeport

COLES of Harpswell
SIMPSON of Casco

Reports were read.

Representative Jacques of Waterville moved that the House accept the Majority "Ought Not to Pass" Report.

The SPEAKER: The Chair recognizes the Representative from Harpswell, Representative Coles.

Representative COLES: Mr. Speaker, Ladies and Gentlemen of the House: I request a roll call.

This bill could be known (by a short title) as "The Citizens' Suit Bill." What it does is very simple, it allows citizens of the state to bring suit to enforce environmental laws. It does it through a process that was designed and in fact will discourage any frivolous suits. It allows citizens, who are frustrated by the inaction of government or the refusal of government to enforce its own laws, some recourse to resolve problems.

It says very simply that, if a citizen believes there is a violation of law, it brings that alleged violation to the attention of the responsible governing body. That governing body has 60 days to either agree to enforce the law or to say that there is no violation or to do nothing. If that agency agrees to enforce the law, the citizen's right to sue terminates. If that agency says that they investigated it and there was no violation, the citizen's right to sue terminates. Only in a case where the governing body refuses to take any action, positive or negative, where the governing body is wholly unresponsive, does the citizen then have a right to sue in civil court the alleged violator. Once the citizen sues, that citizen can't sue for damages, can't sue for money, can sue only for injunctive relief so there is no personal profit, no incentive for a citizen to bring frivolous suits purely to gain money for financial gain. The only remedy is injunctive relief, that is correction of the violation. If a judge deems that a suit, despite the precautions that are already taken by the law, is indeed frivolous, the person who brought the suit may be charged all costs for the party they brought the suit against.

In this time when we are cutting back in government resources and our environmental laws are admittedly and openly acknowledged not to be enforced at the level they should be for lack of resources, when our citizens have complained about government not being responsible to their concerns, this bill gives citizens an opportunity to act on their own when government refuses to do so.

I hope that you will vote against the pending motion and go on to accept the other report.

The SPEAKER: The Chair recognizes the Representative from Waterboro, Representative Lord.

Representative LORD: Mr. Speaker, My Learned Colleagues: There are a couple of things on this bill that I am against, totally against. Number one, how bad of a violation would you have to have before a person who doesn't like me would step in and take me to court if the DEP didn't do anything?

Number two, what is a frivolous suit? One judge may think a frivolous suit is one thing and another judge may think it is something different. I think if we have an agency, DEP, who is supposed to be enforcing the law and have people out there, they are the ones who should be enforcing that. I hope you

will vote with the Majority Report.

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

Representative JACQUES: Mr. Speaker, Men and Women of the House: I am sure some of you who know me as a radical environmentalist are surprised that I would vote on the "Ought Not to Pass" Report and it is for two very basic reasons. One, I think the DEP is there to provide enforcement. I have been listening to many of you tell me how you felt DEP has gone too far in their enforcement in the last couple of years so I am really amazed that we would have all these wanton violations across the state that the DEP wasn't enforcing. That is not what I hear from you and that is not what I hear from citizens of the state. They are complaining that DEP is too over-zealous in their enforcement actions.

The second reason I am against this bill, we have a person in Waterville who saw construction going on at a site, went to the people who was doing it and said, "I know that you are violating state law. Where is your permit?" He was told at the time that they didn't need a permit for what they were doing, that they had had contact with DEP, with Fisheries and Wildlife, with the local planning board, zoning board, they were all assured that they weren't in violation. He said, "I know you must be doing something wrong because I don't like the looks of what you are doing." He went to every agency on the local, state and federal level to get someone to say to him that they were doing something wrong. He went so far as to threaten to sue the people that were doing what they were doing. Well, you know what the threat of the lawsuit did? It jeopardized their financing in the first bank they went to. It delayed the project three months so when they started, they were digging in frozen ground. That was just a threat of a potential suit.

I don't know about the rest of you but I have heard enough from businesses in the state right now, that one more straw, it may be a light straw, but one more straw is more than some of these small businesses can afford to have occur. Just the threat, just the potential that you might be involved in litigation because someone happens to believe you are violating an environmental law I don't think is enough reason to vote for this bill and that is why I didn't do it.

Clearly, if these wanton violations are occurring and nobody in DEP is doing anything about it, then you come to us and we will address that issue but that is not the message I got from you, the members of this House, or the members of the general citizenry out there who are trying to operate businesses in the real world.

I would urge you to support the motion "Ought Not to Pass" so we can go along and let the businesses that are doing any business out there continue to try to climb out of the hole that they are in right now.

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

Representative MITCHELL: Mr. Speaker, Ladies and Gentlemen of the House: I hope you vote against the pending motion. I think it is only common sense that if you are victimized by a violation of the law and the government doesn't step in to help you resolve the problem that you ought to have some recourse. The recourse is to file a suit and you are not filing a suit for damages, you are only filing for

injunctive relief. I don't think that that is too much to ask for.

When I first came to this legislature in 1980, I represented the old House District 27 before reapportionment, which had Freeport, Pownal and part of the town of Gray. That part of the town of Gray was the part of the town where the oily waste had been taken after the oil spill in Casco Bay and thrown in an old gravel pit in the middle of an aquifer and polluted all the drinking water of a nice middle-class neighborhood. Looking back on it, I imagine that about 60 houses were affected. There were a lot of complaints and the neighbors in that particular town went to the DEP and they went to the DEP year after year after year and asked for help. They didn't get any help and there was nothing they could do about it. It wasn't until they imposed on their town officials and the town health officer of the community went in and realized what was happening that they finally shut the facility down. By that time, the facility was the 40th on the nation's superfund list of major hazardous wastesites so it does happen that things do get out of hand and the DEP doesn't react to these issues.

The DEP enforces the air laws and the water laws and I want you to remember that those laws, especially the air law and the water law, directly affect public health. You cannot live without clean air and you cannot live without clean water. If the DEP doesn't protect you and enforce those laws, you are out on your own and there is nothing you can do about it.

This is a small bill, it is not opening the door to harassment, it just gives you an opportunity that, if you are victimized by someone who is breaking the law, you can do something about it. It is not too much to ask for and I hope you will vote against the pending motion.

The SPEAKER: The Chair recognizes the Representative from Woodland, Representative Anderson.

Representative ANDERSON: Mr. Speaker, Ladies and Gentlemen of the House: I agree with our good Chairman, this is a terrible bill. I hope you will support the "Ought Not to Pass" Report for this reason, I think the frivolous suits would occupy all of the department's time trying to deal with these things and the real essential things that should be done will not be done. This is just one of the reasons that I would like to bring out to you people tonight and I hope you will support the "Ought Not to Pass" Report.

The SPEAKER: The Chair recognizes the Representative from Harpswell, Representative Coles.

Representative COLES: Mr. Speaker, Men and Women of the House: I just want to reiterate one point. If the enforcing agency determines that there is no violation and so informs the complainant, that person has no right to sue. That person can sue only if government ignores them completely.

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

Waterville, Representative Jacques, that the House accept the Majority "Ought Not to Pass" Report.

The SPEAKER: The Chair recognizes the Representative from Gardiner, Representative Treat.

Representative TREAT: Mr. Speaker, pursuant to Joint Rule 10 and House Rule 19, may I be excused from this vote?

The SPEAKER: The Chair will excuse the Representative from Gardiner, Representative Treat, from voting on L.D. 1551.

The SPEAKER: The pending question before the House is the motion of the Representative from Waterville, Representative Jacques, that the House accept the Majority "Ought Not to Pass" Report. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 306

YEA - Aikman, Aliberti, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Bell, Bennett, Boutilier, Bowers, Butland, Cahill, M.; Carroll, J.; Cashman, Clark, H.; Cote, Crowley, DiPietro, Donnelly, Duffy, Duplessis, Dutremble, L.; Erwin, Farnum, Farren, Foss, Garland, Gould, R. A.; Graham, Greenlaw, Gurney, Gwadosky, Hale, Hanley, Heino, Hichborn, Hichens, Hoglund, Hussey, Jacques, Jalbert, Joseph, Kerr, Ketover, Ketterer, Kilkelly, Kutasi, Larrivee, Lebowitz, Libby, Look, Lord, Luther, MacBride, Macomber, Mahany, Manning, Marsano, Martin, H.; McHenry, Melendy, Merrill, Morrison, Murphy, Nadeau, Nash, Nutting, Ott, Paradis, J.; Parent, Paul, Pendexter, Pineau, Pines, Plourde, Poulin, Pouliot, Rand, Reed, G.; Reed, W.; Richards, Ricker, Rotondi, Ruhlin, Saint Onge, Salisbury, Savage, Sheltra, Skoglund, Small, Spear, Stevens, A.; Stevenson, Strout, Swazey, Tammaro, Tardy, Townsend, Tupper, Waterman, Whitcomb.

NAY - Adams, Anthony, Carroll, D.; Cathcart, Chonko, Clark, M.; Coles, Constantine, Daggett, Farnsworth, Gean, Goodridge, Gray, Handy, Heeschen, Holt, Kontos, Lawrence, Lemke, Marsh, Mayo, McKeen, Michael, Michaud, Mitchell, E.; Mitchell, J.; O'Dea, O'Gara, Oliver, Paradis, P.; Pfeiffer, Powers, Richardson, Rydell, Simonds, Simpson, Tracy, Wentworth.

ABSENT - Carleton, Dore, Hastings, Hepburn, Lipman, Norton, Pendleton, Stevens, P.; Vigue, The Speaker.

EXCUSED - Treat.

Yes, 102; No, 38; Absent, 10; Paired, 0; Excused, 1.

102 having voted in the affirmative and 38 in the negative with 10 being absent and one excused, the Majority "Ought Not to Pass" Report was accepted. Sent up for concurrence.

Divided Report

Tabled and Assigned

Majority Report of the Committee on Transportation reporting "Ought to Pass" as amended by Committee Amendment "A" (H-928) on Bill "An Act to Amend the Motor Vehicle Salvage Laws" (H.P. 1500) (L.D. 2112)

Signed:

Senators: TWITCHELL of Oxford
MILLS of Oxford

Representatives: HALE of Sanford
STROUT of Corinth
MACOMBER of South Portland
RICKER of Lewiston
MARTIN of Van Buren
TAMMARO of Baileyville
HUSSEY of Milo
BAILEY of Farmington

Minority Report of the same Committee reporting "Ought to Pass" as amended by Committee Amendment "B" (H-929) on same Bill.

Signed:

Senator: GOULD of Waldo

Representatives: BOUTILIER of Lewiston
SMALL of Bath

Reports were read.

Representative Macomber of South Portland moved that the House accept the Majority "Ought to Pass" Report.

On motion of the same Representative, tabled pending his motion that the House accept the Majority "Ought to Pass" Report and specially assigned for Thursday, February 20, 1992.

CONSENT CALENDAR

First Day

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

(S.P. 803) (L.D. 2002) Bill "An Act to Amend the Law Governing the Rumford-Mexico Sewerage District" Committee on Utilities reporting "Ought to Pass"

(S.P. 447) (L.D. 1191) Bill "An Act to Amend the State Ground Water Classification System and Implement the Maine Wellhead Protection Program for the Protection of Public Water System Wellheads" (EMERGENCY) Committee on Energy and Natural Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (S-543)

(S.P. 682) (L.D. 1810) Bill "An Act to Provide for the Orderly Transfer of Contracts from Union Schools to Separate School Systems upon Dissolution" Committee on Education reporting "Ought to Pass" as amended by Committee Amendment "A" (S-540)

(S.P. 795) (L.D. 1994) Bill "An Act Regarding the Repayment of Blaine House Scholarships" Committee on Education reporting "Ought to Pass" as amended by Committee Amendment "A" (S-541)

(S.P. 797) (L.D. 1996) Bill "An Act to Amend the Laws Governing Telecommunications Interexchange Carrier Selection" (EMERGENCY) Committee on

Utilities reporting "Ought to Pass" as amended by Committee Amendment "A" (S-542)

(S.P. 845) (L.D. 2149) Bill "An Act to Repeal a Provision Concerning Low Sulfur Fuel" Committee on Energy and Natural Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (S-544)

(H.P. 1309) (L.D. 1891) Bill "An Act Concerning Railroad Personnel" Committee on Business Legislation reporting "Ought to Pass" as amended by Committee Amendment "B" (H-931)

(H.P. 1478) (L.D. 2090) RESOLUTION, Proposing an Amendment to the Constitution of Maine to Clarify Succession to the Positions of Treasurer of State and Secretary of State Committee on State and Local Government reporting "Ought to Pass" as amended by Committee Amendment "A" (H-932)

There being no objections, the above items were ordered to appear on the Consent Calendar of Thursday, February 20, 1992, under the listing of Second Day.

CONSENT CALENDAR

Second Day

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

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

(S.P. 870) (L.D. 2217) Bill "An Act to Amend the Mars Hill Utility District"

(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" (C. "A" S-538)

(H.P. 1480) (L.D. 2092) Bill "An Act to Increase the Debt Limit of the South Berwick Sewer District" (EMERGENCY) (C. "A" H-914)

(H.P. 1011) (L.D. 1479) Bill "An Act to Protect the Copyright and Ownership Rights of Maine Artists" (C. "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" (C. "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) (C. "A" H-922)

(H.P. 1534) (L.D. 2167) Bill "An Act Concerning the Operation of the Maine Automobile Insurance Plan" (C. "A" H-923)

(H.P. 711) (L.D. 1016) Bill "An Act Relating to Distribution of Retirement Benefits in Divorce" (C. "A" H-924)

(H.P. 1025) (L.D. 1498) Bill "An Act to Promote Gun Safety" (C. "A" H-925)

(H.P. 1484) (L.D. 2096) Bill "An Act to Amend the Group Health Insurance Conversion Laws" (C. "A" H-926)

(H.P. 1557) (L.D. 2195) Bill "An Act to Revise the Basis for Semiannual Assessment on Financial Institutions" (C. "A" H-927)

No objections having been noted at the end of the Second Legislative Day, the Senate Papers were Passed to be Engrossed or 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 Authorize the Establishment of Nondepository Trust Companies" (H.P. 1489) (L.D. 2101) (C. "A" H-905)

Was reported by the Committee on Bills in the Second Reading, read the second time, Passed to be Engrossed as Amended, and sent up for concurrence.

SECOND READER

Later Today Assigned

Bill "An Act to Prohibit the Sale and Distribution of Certain Milk Products" (H.P. 1163) (L.D. 1704) (C. "A" H-897)

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

On motion of Representative Mayo of Thomaston, tabled pending passage to be engrossed and later today assigned.

PASSED TO BE ENGROSSED

As Amended

Bill "An Act to Encourage Lawful Rental Practices" (H.P. 1423) (L.D. 2035) (C. "A" H-903)

Bill "An Act Relating to Returned Check Charges" (H.P. 1505) (L.D. 2119) (C. "A" H-904)

Bill "An Act to Ensure Complete Recovery for Injuries to Children" (H.P. 1551) (L.D. 2189) (C. "A" H-906)

Were reported by the Committee on Bills in the Second Reading, read the second time, Passed to be Engrossed as Amended, and sent up for concurrence.

PASSED TO BE ENACTED

Emergency Measure

An Act to Extend the Reporting Date of the Commission to Study the Retirement Benefits Provided by the State (S.P. 807) (L.D. 2006) (C. "A" S-531)

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. 107 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.

PASSED TO BE ENACTED

Emergency Measure

An Act to Clarify the Scope of the Laws Governing Administrative Correction of Statutory Errors (H.P. 1492) (L.D. 2104) (H. "A" H-880)

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. 112 voted in favor of the same and 1 against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

PASSED TO BE ENACTED

Emergency Measure

An Act Providing Nursing and Boarding Home Residents with a Right of Action for Violations of Their Resident Rights (S.P. 590) (L.D. 1562) (C. "A" S-532)

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. 108 voted in favor of the same and 1 against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

ORDERS OF THE DAY

TABLED AND TODAY ASSIGNED

The Chair laid before the House the first tabled and today assigned matter:

HOUSE DIVIDED REPORT - Majority (7) "Ought to Pass" as amended by Committee Amendment "A" (H-898) - Minority (5) "Ought Not to Pass" - Committee on Labor on Bill "An Act Concerning Prevailing Wages Established by the Department of Labor" (H.P. 471) (L.D. 665)

TABLED - February 13, 1992 by Representative MCHENRY of Madawaska.

PENDING - Motion of same Representative to accept the Majority "Ought to Pass" as amended Report.

Subsequently, on motion of the Representative from Madawaska, Representative McHenry, the Majority "Ought to Pass" Report was accepted, the Bill read once.

Committee Amendment "A" (H-898) was read by the Clerk.

Representative McKeen of Windham offered House Amendment "A" (H-934) to Committee Amendment "A" (H-898) and moved its adoption.

House Amendment "A" (H-934) to Committee Amendment "A" (H-898) was read by the Clerk and adopted.

Committee Amendment "A" (H-898) as amended by House Amendment "A" (H-934) thereto was adopted and the bill assigned for second reading Thursday, February 20, 1992.

The Chair laid before the House the second tabled and today assigned matter:

HOUSE DIVIDED REPORT - Majority (8) "Ought Not to Pass" - Minority (4) "Ought to Pass" as amended by Committee Amendment "A" (H-902) - Committee on Utilities on Bill "An Act to Authorize the Public Utilities Commission to Regulate Rates for Cable Television" (H.P. 1018) (L.D. 1491)
TABLED - February 13, 1992 by Representative CLARK of Millinocket.

PENDING - Motion of same Representative to accept the Minority "Ought to Pass" as amended Report.

Subsequently, on the motion of the Representative Clark of Millinocket, the Minority "Ought to Pass" Report was accepted, the Bill read once.

Committee Amendment "A" (H-902) was read by the Clerk and adopted and the Bill assigned for second reading Thursday, February 20, 1992.

The Chair laid before the House the third tabled and today assigned matter:

Bill "An Act to Prevent Certain Restraint of Trade Practices" (H.P. 1291) (L.D. 1866)
TABLED - February 13, 1992 by Representative GRAHAM of Houlton.

PENDING - Adoption of Committee Amendment "A" (H-919)

On motion of Representative Graham of Houlton, retabled pending adoption of Committee Amendment "A" (H-919) and specially assigned for Thursday, February 20, 1992.

The Chair laid before the House the fourth tabled and today assigned matter:

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)
TABLED - February 13, 1992 by Representative ANTHONY of South Portland.

PENDING - Motion of Representative RICHARDS of Hampden to Indefinitely Postpone Bill and All Accompanying Papers.

The SPEAKER: The Chair recognizes the Representative from Biddeford, Representative Sheltra.

Representative SHELTRA: Mr. Speaker, Ladies and Gentlemen of the House: This is really quite an ordinary bill. It is like Representative Kutasi said last week, it protects the small businessman regarding something that might occur on the premises that would be out of sorts, something out of the ordinary. Actually, this bill prescribes the duties and the liabilities of ice-skating rink operators and persons who use ice-skating rinks. This bill also provides for the acceptance of certain risks by persons who utilize ice-skating rinks.

I urge that this motion be defeated.

The SPEAKER: The Chair recognizes the Representative from South Portland, Representative Anthony.

Representative ANTHONY: Mr. Speaker, Ladies and Gentlemen of the House: It was I that asked that this bill be tabled so I could look at the bill itself because I only had the amendment.

As I see it, the bill with the amendment does in fact exempt ice-skating rinks from liability for anything that happens on the premises. A skater takes all risks and even if that ice-skating rink operator operates a rink in a slipshod manner without adequate safety precautions, then the ice-skating rink operator is insulated from all liability.

These liability laws do not exist just to protect individuals, they also act as a way to monitor a particular industry and ensure that the industry performs in a moderately, safe, reasonable manner. I believe that insulating ice-skating rinks from liability on the theory that what goes on there is inherently risky does not make sense if you consider the fact that what you are really doing is exempting them from the principal mechanism that ensures they are operated properly, that is to say, the liability system.

I would support the motion of indefinite postponement.

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

Representative KUTASI: Mr. Speaker, Ladies and Gentlemen of the House: In the Business Legislation Committee, we passed this same law pertaining to ski resorts, the same law pertaining to roller rinks and, all of a sudden, ice rinks come up as an issue and there are only four or five public ice rinks in the whole state. Basically, the wording is the same for ski resorts - does that mean that ski resorts don't carry liability insurance? I think that they do carry liability insurance. My ski resort in my town has to carry liability insurance.

It just says that there is a danger when you are being active in this activity and that you have to have certain coordination to ski, to roller skate or to ice skate. It basically just protects the owner in case somebody gets on the floor that isn't fully coordinated and falls down and gets hurt. It happened to my son just three months ago. He was roller skating, fell down and broke his arm. I did not sue the roller rink because they had a shoddy operation because they have a wonderful operation. He is a fairly uncoordinated kid, you know. He is at that age level where he is uncoordinated and he broke

his arm. I wasn't about to sue them, it was his own fault, it happened and that's it. It is something he has to live with. This is just taking that same thing in not everybody being able to sue the small organizations such as roller rinks, ice rinks and ski resorts, that everytime a kid falls down, they are going sue the place.

They have certain rules. They have to, of course, keep the place clean and they have to make sure that they police it well so kids aren't in uproar there with people going around knocking people down. Ski resorts have people that take people off the hills if they are hotdogging it or whatever — same thing with roller rinks and ice-skating rinks, people police their own private business so this is all this is saying, that when you are doing those activities, you have to be able to do them. If your coordination or whatever is not too good and you happen to hurt yourself, some of that is part of your own responsibility. There is nothing here where somebody could run a shoddy operation and be able to be exempt for all liability. That is totally ridiculous.

I don't want to get into an argument with lawyers, I don't think I have a chance and whatever to get into an argument with those guys, I just think this is a simple, simple bill. That's all it is.

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

Representative RICHARDS: Mr. Speaker, Ladies and Gentlemen of the House: Just two points, the ski laws have been around for a long time and I think when you look at the ski industry and the amount of slopes and the amount of control that an individual has, that that was one of the compelling reasons for doing that. Being a major industry in the state, I guess, gave them a little more clout.

The fact is that that is a limited liability, it is not total liability. The only corollary to this bill would be the one that we passed last year and we did do it and it would be my argument that it was a mistake. To do this will only enhance that mistake.

This would be total liability.

Representative Anthony of South Portland 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 South Portland, Representative Anthony.

Representative ANTHONY: Mr. Speaker, Ladies and Gentlemen of the House: Every industry in our state is subject to a lawsuit if they perform in a shoddy manner with one previous exception and that is the ski industry. We made exception for the ski industry and it has been on the books for some time because it was believed that the nature of that industry is such that you couldn't possibly have that industry function without protecting them from liability because of the frequency of accidents and the likelihood that suits would occur against the ski slope operator.

Roller rinks were accepted in the last session

and, quite honestly, I don't think they should have been. If I had realized that it had slid through, I would have spoken against that one as well.

I can understand it for the ski industry but I can't understand extending that beyond that one industry. The nature of an ice-skating rink — the good Representative from Bridgton points out that his own child fell and broke an arm and it was a well operated rink. Of course, he didn't sue. My hunch is, if the reason that that accident had occurred was because of the way the ice-skating rink was operated, he might have had a different point of view. I think any of us would. If our own child was injured on an ice-skating rink because of the sloppiness of the rink operator rather than the nature of the sport, then I think we might consider bringing a lawsuit against such an operator. So, I would encourage indefinite postponement.

I think we should be very, very careful in providing exceptions to the general laws relating to liability.

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

Representative PARADIS: Mr. Speaker, Ladies and Gentlemen of the House: I rise to support the motion to indefinitely postpone this bill because of the reasons which the previous speakers indicated. This legislation doesn't help the skating rink operator as much it helps the insurance companies because it limits any cause of action that the skater might have against the skating rink operator. It severely limits the cause of action and yet they still have to buy liability insurance. They still have to buy some sort of insurance and pay the premium.

If I could be convinced that if we pass this legislation and they didn't have to buy insurance and it would reduce their cost of doing business, I would vote for the bill but here we are preventing our people, customers that are requested to go to that business establishment, advertising is done to please come skate at our rink, so our citizens go to the rink and we limit their ability to recover damages. I am reading the bill and it defines the duties of the skaters. I am quoting from Section 24-1 of the bill: "Each skater shall know the range of that skater's ability to travel while on ice-skates and shall skate within the limits of that ability." If I am ice-skating on that rink, I am supposed to know the ability of everybody else on the rink and I am supposed to skate within the range of that person's ability. Now, I don't know if that has ever been done, I used to skate a little bit outdoors and I don't ever recall knowing the range and the ability of everyone else's ice-skating ability, let alone my own.

Each skater, in Section 2 of 624, "shall maintain control of the skaters speed and course at all times when skating and be alert and observant as to avoid other skaters, spectators and objects. A skater attempting to overtake other skaters shall do so in a manner that avoids collision with structures and other skaters in that skater's field of vision." Holy toledo, this isn't a bill so much as to limit the ability of ice-skating rinks to avoid lawsuits because I don't know of a dozen or three dozen lawsuits out there. I don't know of one lawsuit out there against a skating rink. This bill limits the ability of people to go and pay a \$5.00 fee to skate and they are supposed to be experts at knowing what everybody else is doing. This isn't the Olympics

that we are watching. If you go to the Kennebec Ice Arena or another ice arena, you are watching people enjoy themselves, recreate, they are paying a fee and yet they are supposed to be responsible, not only for their own ability, but for everybody else's ability. If they fall, if they break an arm or limb, God forbid. The owner can say, "Well, that's not my responsibility, you failed to observe the other person's ability and the range of her or her own ability."

This is stupid legislation and it doesn't reduce the cost of insurance. Not one insurance company has ever testified to my knowledge and said, "You pass this bill, we will reduce your rates." It reduces their ability to pay, they are not going to have to pay on a lot of claims because they will say to look at the bill that was passed here. It really requires that most of this was a problem of the skaters, it wasn't a problem of the rink.

Don't reduce people's constitutional rights of action just so we can say that we did something for that industry. There is no crying need for this type of legislation.

The two previous speakers, the Representative from Hampden and the Representative from South Portland, defined what the type of risk ought to be. It isn't easy to bring a lawsuit. It is a very difficult thing and you have to assume a lot of responsibility. You have got to show that they were very reckless, the burden of proof is on you to show with a preponderance of the evidence that they were reckless in the way they operated their skating rink. That is not an easy burden to do.

With this bill, you are going to have to also show that all the other skaters were violating your rights because they didn't know how to skate. You will have to have witnesses come in and show that you were aware of everyone that was on the rink and you were watching them and that they didn't violate any of these norms. I think this is ridiculous legislation and I urge you to indefinitely postpone the bill.

The SPEAKER: The Chair recognizes the Representative from Portland, Representative Richardson.

Representative RICHARDSON: Mr. Speaker, I would like to pose a question through the Chair.

The question is this — Section 625 on inherent dangers refers to the standard of allowing suits if there shall be a "breach of the operators common law duties." May I ask why that is not adequate to protect the public from the general problems of an irresponsible or common law violating operator?

The SPEAKER: The Representative from Portland, Representative Richardson, has posed a question through the Chair to anyone who may respond if they so desire.

The Chair recognizes the Representative from Hampden, Representative Richards.

Representative RICHARDS: Mr. Speaker, Ladies and Gentlemen of the House: As I understand the question — what this means is we are designating as an inherently dangerous sport or activity like 30 others that we haven't yet but I guess we can start — and it says that when I enter onto that ice, I assume the risk; therefore, anything that comes down the pike that injures me, too bad. That is what this bill does. It immunizes the person that should have controlled a situation and didn't but should have by good reason to intervene and stop an activity that

didn't. Okay? That doesn't matter. That person is immunized.

After answering the question, I just want to make one other comment. Last week I watched the debate on caps and this House voted with a wide majority to say that we are not going to have caps because people have a constitutional right. I guess it comes down to consistency.

In this bill, you are making an absolute cap. There is no cause of action.

The SPEAKER: The Chair recognizes the Representative from Portland, Representative Richardson.

Representative RICHARDSON: Mr. Speaker, Ladies and Gentlemen of the House: The point that I was attempting to raise was the reality that there is clear basis for this bill for suits being brought against irresponsible individuals that go beyond the standards set in the bill.

Furthermore, in the inherent dangerous section of the bill, Section 625, there is a description of what we would expect to be the kinds of common law duties that lay to an operator, reckless disregard, those kinds of things. I am not a lawyer, I don't understand all the ramifications of those but I do understand that, if it can be clearly shown that an operator violates what is understood to be common law in this area, there is the ability of an individual to bring a lawsuit.

What we are really talking about here in this bill is beginning to reduce the constant turn to seeing a lawsuit in every unforeseen (of what we used to call) accident. I would raise for the members of the House the perspective that this is a reasonable standard put out, puts reasonable burden on behavior on the ice-skating rink that can be sustained in a court were there to be an accident but there are environments in which there are accidents in the process of running the business that the redress ought not always to be to the legal mechanisms.

The SPEAKER: The Chair recognizes the Representative from Rome, Representative Tracy.

Representative TRACY: Mr. Speaker, Men and Women of the House: I would like to let Representative Paradis from Augusta know that this bill was put in for the primary business of the Kennebec Ice Arena out on the Whitten Road in Hallowell. If I am correct, at the public hearing, there was no opposition.

Yes, there were plenty of lawyers and doctors in the House but I guess they weren't concerned about this bill, they were worried about the optometrists bill.

I would hope that you would go against the pending motion for indefinite postponement of this bill and allow it to go on to become law along with the previous bill that we passed last year dealing with roller skating.

The SPEAKER: The Chair recognizes the Representative from Biddeford, Representative Sheltra.

Representative SHELTRA: Mr. Speaker, Ladies and Gentlemen of the House: This is turning into a lawyers bill, I can see that. I have skated all my life, I don't think anyone in this House has done anymore ice-skating than I have, including hockey. I have gone to plenty of skating ponds and plenty of other places whereby, if you are doing something out of sorts, if you are going in the wrong direction for instance, or if someone should be inebriated and causing problems, it certainly isn't the operators

fault.

By the way, this was a unanimous report out of committee. Frankly, I can't see a darn thing wrong with it. I hope you defeat the present motion.

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

Representative PARADIS: Mr. Speaker, Ladies and Gentlemen of the House: To my good friend, the Representative from Biddeford, this is not a lawyers bill, I am not a lawyer. I don't get up to defend lawyer bills, I never have and I do not intend to do that. This is against the right of people in this state (of which I am a proud member) to limit people's rights for no real reason. If one business comes in and even though it is a neighboring business, I still do not support that reason.

The example the good Representative gave as someone being inebriated on the rink, it isn't the responsibility of the other skaters to watch the inebriated skater roll around the rink, it the responsibility of the management not to permit that person access to the business. They are endangering the safety of the others if they allow someone inebriated on that rink.

This bill would limit those persons right to recover damages if that person is on the rink and that businessperson didn't take the right precautions on that. This is not a lawyers bill, this is a people's rights bill. This bill is bad because it takes away people's rights for no real reason. That is why I urge indefinite postponement.

The SPEAKER: The Chair recognizes the Representative from Belfast, Representative Marsano.

Representative MARSANO: Mr. Speaker, Men and Women of the House: I apologize for getting involved at this late hour in this debate but I have waffled on this question because of the things that were said the other day.

I had the opportunity to go to one of our ski areas this weekend and read very carefully the things that are written for ski areas pursuant to this kind of law. I thought the kinds of admonitions that appeared in that were consistent with good law because it would reduce the opportunity for the kind of litigation that I like to think we seek to reduce.

I am inclined to agree with the Representative from Portland, Representative Richardson, that there is an over-abundance of caution on the part of my learned colleagues, Representative Anthony, Representative Paradis and Representative Richards. I think that this a fair balance and that Representative Kutasi is right and I intend to support his report.

The SPEAKER: The Chair recognizes the Representative from Hallowell, Representative Farnsworth.

Representative FARNSWORTH: Mr. Speaker, Ladies and Gentlemen of the House: If for no other reason than the rink is in my district that generated this bill, I would just like to comment that I think one can be in favor of ice-skating, can love ice-skating, and one can be in favor of having that industry without supporting this bill. I haven't heard anything to suggest that there is a real urgent need for this bill either in this discussion.

I am seriously concerned that in trying to help the industry, what they are doing for skaters here is not necessarily going to help the industry. Trying to legislate that skaters have to skate within their own ability, that they are liable to suit if they

don't, that seems to me that that is a lawyers bill.

I think the reason that members of the Judiciary Committee are rising in support of the motion to indefinitely postpone is because we have seen such a parade in the last several years of industries and businesses coming in to ask for just this kind of legislation. This sets up liabilities for anybody who participates in this sport and I am sure that that parade will increase to proportions that we will not be able to handle. I think at the very least that this deserves a little bit more of a look and I would urge you to vote for indefinite postponement.

The SPEAKER: A roll call has been ordered. The pending question before the House is the motion of the Representative from Hampden, Representative Richards, that L.D. 1775 and all its accompanying papers be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 307

YEA - Aikman, Aliberti, Anthony, Ault, Bell, Butland, Cahill, M.; Carroll, D.; Carroll, J.; Cathcart, Chonko, Clark, M.; Coles, Cote, Duplessis, Erwin, Farnsworth, Foss, Garland, Gean, Goodridge, Gray, Hale, Handy, Heeschen, Hichens, Hoglund, Holt, Joseph, Ketover, Ketterer, Kilkelly, Kontos, Larrivee, Lawrence, Lemke, Luther, Macomber, Mahany, Marsh, Martin, H.; McHenry, McKeen, Melendy, Michael, Michaud, Mitchell, E.; Mitchell, J.; Nadeau, O'Dea, Oliver, Ott, Paradis, J.; Paradis, P.; Pendexter, Pfeiffer, Reed, G.; Richards, Ruhlman, Rydell, Saint Onge, Salisbury, Simonds, Swazey, Townsend, Treat, Wentworth, The Speaker.

NAY - Anderson, Bailey, H.; Bailey, R.; Barth, Bennett, Boutilier, Bowers, Cashman, Clark, H.; Constantine, Crowley, Daggett, DiPietro, Donnelly, Duffy, Farnum, Farren, Gould, R. A.; Graham, Greenlaw, Gurney, Gwadosky, Hanley, Heino, Hichborn, Hussey, Jacques, Jalbert, Kerr, Kutasi, Lebowitz, Libby, Look, Lord, MacBride, Manning, Marsano, Mayo, Merrill, Morrison, Murphy, Nash, Nutting, O'Gara, Parent, Paul, Pineau, Pines, Plourde, Poulin, Pouliot, Powers, Reed, W.; Richardson, Ricker, Rotondi, Savage, Sheltra, Simpson, Skoglund, Small, Spear, Stevens, A.; Stevenson, Strout, Tannaro, Tardy, Tracy, Tupper, Waterman, Whitcomb.

ABSENT - Adams, Carleton, Dore, Dutremble, L.; Hastings, Hepburn, Lipman, Norton, Pendleton, Rand, Stevens, P.; Vigue.

Yes, 68; No, 71; Absent, 12; Paired, 0; Excused, 0.

68 having voted in the affirmative and 71 in the negative with 12 being absent, the motion did not prevail.

Subsequently, L.D. 1775 was passed to be enacted, signed by the Speaker and sent to the Senate.

The Chair laid before the House the fifth tabled and today assigned matter:

Bill "An Act to Promote Motor Vehicle Fuel Efficiency" (H.P. 1168) (L.D. 1709)

TABLED - February 13, 1992 by Representative HUGLUND of Portland.

PENDING - Motion of same Representative to Reconsider acceptance of the Majority "Ought Not to Pass" Report.

The SPEAKER: The Chair recognizes the Representative from Old Town, Representative Cashman.

Representative CASHMAN: Mr. Speaker, Ladies and Gentlemen of the House: I would hope that the House would not reconsider the vote it took the other night. This bill was debated at great length and I think the vote was a clear vote.

Mr. Speaker, I would request that the motion on reconsideration be taken by the yeas and nays.

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 Bath, Representative Holt.

Representative HOLT: Mr. Speaker, Men and Women of the House: The reason the good Representative from Portland, Representative Hoglund, made this motion to reconsider this bill was because we could tell that there were many, many people who didn't understand all the ins and outs of it. Many people thought it applied to the fuel efficiency of secondhand cars as well, which would be very hard on Maine people. I hope that you will vote to reconsider. This is considered by the press and many, many people as one of the most important bills that we are dealing with to do with the environment this session. Please give us another chance.

The SPEAKER: The Chair recognizes the Representative from Harpswell, Representative Coles.

Representative COLES: Mr. Speaker, Ladies and Gentlemen of the House: I am glad I had a chance to be here for this vote because I missed the one the other day.

The thing that is really interesting about this bill is the many complaints about the command and control type of system for dealing with environmental issues. Some people have been saying that we need to move toward market solutions and this is a market solution. This is the ideal form of a market solution. This is the way many people say that we ought to be going. Let's please go that way.

The SPEAKER: The Chair recognizes the Representative from Saco, Representative Nadeau.

Representative NADEAU: Mr. Speaker, Ladies and Gentlemen of the House: You might have already noticed that I had a couple of pieces distributed this afternoon. Basically, they can both be paraphrased as saying that this law would be totally administrably ineffective. I will give you an example. Suppose my good friend Representative Cashman goes out and purchases a Ford Escort. It would make sense because, according to this law, he would get a rebate on that purchase. My good friend Representative Lord over here has a need for a larger car so he gets a larger car which isn't so efficient on fuel consumption. He ends up paying a surtax in order for Representative Cashman to get a rebate. This purchase takes place in February of a certain year. I go out in July and purchase the same identical car as Representative Cashman but there is no money in the fund, I don't get anything. Is that fair? Does that make any sense? That is essentially the problem with this vehicle.

As I stood up, I heard from my friend behind me, Representative Strout saying, "You talk about large families, look at me." He has a larger family, he can't put them all in a Ford Escort — should we penalize him because he has a large family? It is nice if you can financially and for other reasons afford a larger family — should we be getting into that kind of policy? I don't think so.

The long and the short of this whole argument, and I would remind members of the House that this was an 11 to 2 report and the reason it was an 11 to 2 report was that we discussed and we decided that this proposal might have some merit but it would have to be refined and we didn't quite have either the time nor the energy to figure out how far we would have to go to make it administrable.

The SPEAKER: The Chair recognizes the Representative from Bath, Representative Holt.

Representative HOLT: Mr. Speaker, Men and Women of the House: I hope that you understand that this bill does not penalize large families or large cars. What we are trying to reconsider is a bill that would reward buyers of new, non-commercial vehicles that are fuel efficient. We are trying to give them an incentive. This has been done in Ontario, it is administrable, it works. The mathematics are simple.

What I have to say first and foremost is that policy-makers and politicians who are not willing to make this kind of step are making sure that our air quality will worsen. I want you to understand that, contrary to what most people think, the size of the car is not an absolute determinant of its fuel efficiency. Large cars are not always the worst cars. Even among the smaller cars that are in the same size class, there can be a large difference in fuel efficiency.

It is not a sales tax. Some of the information that landed on our desks today seemed to me to apply to the original bill. It was amended considerable. The first bill was a sliding sales tax, this is a fee paid by gas guzzlers and then there will be a rebate to those buyers of new cars that do not guzzle gas, that protects our air quality. This bill is required to be revenue neutral. By the way, it works and it is not hard to figure out the fees or the rebates because a simple math is already done. All you need is fifth grade ability to use a calculator. If you can do decimal points, it is very easy.

There will be sufficient funds to pay the rebates. Much work was done by the research assistants on this bill to show that more than \$2 million dollars would be in the kitty for administration of this work. It was not even taking into account the sale of light trucks, it was extremely conservative. I think we are being afraid of doing something new but, if we don't do something new, we will be choking every year in the summer and hurting our health and helping to destroy our environment. We have to start on this kind of thing. We know that it is working in Ontario. Please understand that it will encourage the sale of thrifty new vehicles and will help young families and full-sized vehicles for large families are available without any fee at all. In other words, for instance, Plymouth Voyager, Ford Explorer — why would anyone want to leave the State of Maine when it has such a wonderful law in place that would give strong incentives to get on the path of cleaning up our environment? Those states south of us won't be kicked in the butt to do it if we don't. We have all

kinds of arguments in favor of it and I think you should give us a chance to reconsider some of those and we will make them pointed to you.

It will, indeed, prompt admiration for our car dealers. This has been wanted in other parts of the country and it is going to go forward. You have on your desks lists of cars and you know perfectly well if you have read it that it is going to give an incentive to do what is right, it is not to punish people. Headlines keep saying punishing and that sort of thing, you are being misled. Actually, it is rewarding us for doing the right thing.

You know, it is hard to remember that ten years ago in the dim mist of the 1970's that we did have a good energy program that was going to give us incentives to get on to fuel efficient cars. Well, Ford, Chrysler and another big company got together and called themselves "Citizens for Fuel Efficiency" and killed the bill in Congress so we are still going backwards. We are stuck in reverse, let's not be stuck in reverse anymore. Give us a chance, please, on this motion to reconsider. There are more things that more people would like to say.

The SPEAKER: The Chair recognizes the Representative from Norway, Representative Bennett.

Representative BENNETT: Mr. Speaker, Friends and Colleagues of the House: What Representative Holt has told you and what I have tried to tell you before about the facts of this bill, I wish you would believe. Misconceptions, myths and misunderstandings about this bill continue and I am surprised at that. I would think that when Representative Holt and Representative Bennett and Representative Mahany and Representative Hepburn are on the same side of an issue and give you the same facts, I would hope that you would think we are telling you the truth. If it was just me, I would understand your reluctance.

I have heard a lot about this bill. One argument is that it opens the door — well, what about boats and what about houses that aren't particularly fuel efficient? The fact of the matter is that 50 percent of our pollution problem, 50 percent, comes from motor vehicles. Forty-nine percent of nitrous oxides, 52 percent of hydrocarbons that go into our atmosphere comes from motor vehicles. We are dealing with the bulk of the problem by passing this bill.

I have heard a lot about the administrative costs and you have a sheet on your desks which goes into some problems with the bill. They are the same myths and misunderstandings that we hoped to have addressed the other night.

The fact is that the revenue neutrality of this bill demands that administrative costs be added to the money to be recouped by the gas guzzler fees. We have heard that the bill cannot be revenue neutral. It is impossible to predict, they say, how many vehicles will be sold in each mileage category — true, it is impossible to say exactly how much but you can predict closely. The fee and rebate scheme will be adjusted yearly to minimize the impact fiscally.

We have heard the complaint that this scheme discourages the purchase of some new vehicles and it doesn't deal with the bulk of the problem, which is older vehicles. That's true, it only deals with new vehicles. We live in a very dynamic, fluid society and the fact of the matter is that new vehicles very quickly become old vehicles. Ten years from now, we are going to have a more fuel efficient fleet of cars on our roads because we passed this bill.

Lastly, the sheet on your desks said that this bill discriminates against those individuals and families who need large, less fuel efficient vehicles — again, that is not correct. As Representative Holt has stated, most of the popular mini-vans, some of the four-wheel drive vehicles such as the Ford Explorer would have no impact, there would be no fee attached to those vehicles. Handicapped vehicles and commercial vehicles are not included under this bill. This does not discriminate against large families. The issue of safety — size of vehicle and the safety have nothing to do with one another. One of the safest cars on the road is the Chevy Cavalier which has a very fuel efficient record and it will receive a rebate under this bill.

Again, the American Lung Association supports this bill because of health and safety concerns. This bill will promote safety, it doesn't need to discourage it.

I hope that you will let us reconsider this vote and vote yes on the pending motion.

The SPEAKER: The Chair recognizes the Representative from South Portland, Representative Macomber.

Representative MACOMBER: Mr. Speaker, Ladies and Gentlemen of the House: I didn't speak on this bill the last time we had it before us. I thought other people spoke and did a very good job. I think perhaps I would like to say a few things.

For the last 12 years I have served on the committee that deals with car dealers. We have never had a year go by that we don't have car dealers in our committee for one reason or another, so I think I know them quite well.

At this particular time when the economy is so bad and we are trying so hard to get something started to help the economy out, it seems to me that we are sort of going in the wrong direction with this. I listened to everything, I thought it was a very interesting debate the other day and I have heard the same arguments today but I think you have to take into consideration what the car dealers and people out there in the business are going through. They are probably one of the businesses that are hardest hit as any business we have in the state today.

Yesterday being Washington's birthday and I was in the market for a car, I went out looking around to see if I could find some good deals. I went to two places, Classic Buick in Portland and O'Connor Buick in Augusta to talk to them. While I was talking to them, I asked both of them what they thought of this bill and if they were aware of it. They were very much aware of it and I asked them what their position would be. They felt very strongly that this would hurt sale and they thought, even if it was explained, it was a confusing bill and people would just be under the impression that they have got to buy a new car of a certain make, a certain model, and that they would be forced to pay a fee that somebody else would recover from buying a Ford Escort or something along that line.

I took the opportunity today to call several other car dealers that have been before my committee at one time or another and I will say this, I didn't find one car dealer who was in favor of this particular bill.

The SPEAKER: The Chair recognizes the Representative from Presque Isle, Representative Donnelly.

Representative DONNELLY: Mr. Speaker, Ladies and Gentlemen of the House: This is going to sound a little strange coming from someone who works for a car dealer but I think this bill is probably not such a bad idea. My boss may strangle me for that when I get home but that is the price we have to pay for being courageous in Augusta.

The fees that will be charged are going to encourage people to buy more fuel efficient cars. The administrative costs, as everybody has spoken to before, will be included in the fee. If there is no fee for someone who buys a small car to recoup as their rebate they don't get one. That doesn't take away from the effectiveness when there is money in that pool and it doesn't really take away from the effectiveness.

All we are saying is that the State of Maine is worried about what is happening to our ozone layer, what is happening over New England, and 50 percent of the problem is right here within our cars. We can help cure this problem by encouraging people to buy more fuel efficient cars. It is not just Japanese cars or German cars, there are American cars. There is a spectrum and all makes have fuel efficient cars and I would encourage you to vote for this bill and, hopefully, Representative Macomber won't call my boss.

The SPEAKER: The Chair recognizes the Representative from Windham, Representative McKeen.

Representative MCKEEN: Mr. Speaker, Men and Women of the House: I realize that most of the car dealers in this state are having a very hard time right now but in the Portland area, there is one car dealer that can't keep cars in stock. I believe the public has put them on notice. This particular car has California emissions, the strictest in the country. They are selling cars so fast that they can't keep them in stock. I am sure that they would not be opposed to this bill because their cars would receive rebates because they are the cleanest burning automobiles in the country. They have the California emissions which make them the cleanest burning and I am sure the people have spoken by keeping the dealership very busy.

The SPEAKER: The Chair recognizes the Representative from Easton, Representative Mahany.

Representative MAHANY: Mr. Speaker, Ladies and Gentlemen of the House: I just want to remind everybody about the global warming problem of our time and remember that the CO₂, the carbon dioxide emissions from the fuel in inefficient cars are a major contributing factor to that.

Also remember that we have a real problem with respect to the ozone layer in the stratosphere which is being depleted. We have a hole up there developing and pretty soon we will have a sieve if we don't start to take constructive action. The nitrogen oxide and sulfur dioxide emissions and fuel in inefficient cars contributes to the depletion of that ozone layer. They also, the inefficient cars, contribute to the ozone pollution and the layer that we happen to be in as well as the atmosphere.

These are serious problems. I guess I don't think that our economic problems, as bad as they are, are so bad that they should be blocking this piece of legislation. There is much to be said about the economic benefits of this piece of legislation.

I have heard some of my friends say this and that about the bill and some of those against it say that it is not a good bill. Well, where are the good ones? The problems with the ozone layer, the

problems with ozone pollution and global warming are there and increasing by leaps and bounds, so where is the good one? If this concept is so bad, how come it has been embraced by Ontario?

My good friend from the Taxation Committee said we ran out of time and energy to deal with this. I think I would differ with him there and I wouldn't like to admit that the people from Ontario have more energy and intelligence than we do to deal with an issue like this. If it is such a bad concept, how come a similar concept was passed 7 to 1 by the California legislature? It was vetoed by their then Governor but the present Governor is in favor of it so it probably will get the green light.

There are a number of other states considering this concept, states like Arizona, Wisconsin, Maryland and Connecticut. With some reluctance, I also say Massachusetts. So, I don't think it is such a bad bill, really, and I don't see anything better on the horizon right now. We have a real problem there.

Another one of my friends said, "I feel guilty." I said, "Why?" "I should be voting for this." I said, "Why aren't you then?" "I don't think it is politically expedient right now, the political climate is not just right." Well, I hope that person and anybody else who feels that way resolves their pangs of conscience and votes for this and does the right thing. Speaking of climates, if we don't do the right thing pretty soon, we are going to have scenarios of climate out there that we can't even imagine in our wildest dreams and the emphasis is on wildest there. We've got a tiger by the tail here, we don't seem to realize how serious this problem is but we don't want to admit to ourselves. It is difficult for human beings to admit to themselves what is uncomfortable. We have a great defense mechanism for just fending off dealing with difficult issues that are uncomfortable. They are uncomfortable because there is some more immediate short-term need that we are more conscious of.

All I can say to my friends who might feel guilty for not voting for this is, if you vote against it, you are getting what you deserve, I guess.

Another one of my friends said, "It doesn't really do anything." Well, if it doesn't do anything, how come it is getting so much attention both from the pros and the cons? It does do something, it is a first step, it can make a difference and I think that people who are not so affluent will welcome the opportunity to buy a car within the realm of their possibilities and get a rebate on it.

Ladies and gentlemen, we are up against a powerful foe here, namely I think our own human nature in dealing with this issue. As I said before, we are really good at blocking out or suppressing what we don't want to deal with, especially if we are pressed by economic and political immediacies, you might say. Morally, I believe firmly that it is wrong at this time to think only about economics as bad as a situation we are in and about the political climate. Let's think about the climate out there and forget about the political climate. Let's think about the economic benefits of this bill rather than of what some people perceive as economic disadvantages.

I wish there was something I could find to say to persuade you that we are dealing with something we need to address in the stratosphere, the atmosphere,

and right here for own health, the health of our children and grandchildren. It is a long-term issue, we cannot afford to put off dealing with it. There is a point of no return and I kind of think we haven't really grasped that fact yet.

The SPEAKER: The Chair recognizes the Representative from Berwick, Representative Murphy.

Representative MUPRHY: Mr. Speaker, Ladies and Gentlemen of the House: During the course of discussion on this L.D. when we had it in committee, we got an interdepartmental memorandum from the State Tax Assessor's office and in it he tells us that it would cost us approximately \$250,000 annually for a startup. There would need to be authority to borrow \$500,000 from the General Fund to be repaid with the proceeds from the account.

Secondly, the bill mandates that the State Tax Assessor to set fees and rebates. I doubt that it is constitutionally permissible for this legislature to delegate its powers of taxation in this manner.

Article 9, Section 9, the Constitution of Maine provides that "the legislature shall never in any manner suspend or surrender the power of taxation." Therefore, I do not believe that this bill is even constitutional under our constitution. We would have to put it out to a vote of the people.

Representative Holt of Bath was granted permission to speak a third time.

Representative HOLT: Mr. Speaker, Ladies and Gentlemen of the House: Very briefly, we borrow funds to pay back all the time. I have said more than once that this has been costed out sensibly and conservatively. We know that it is over \$2 million and no rebates will be paid until there is money for it. There will be plenty of money to pay back. We are able to get around that sticky wording, if it is unconstitutional and I think that is questionable, by simply taking out those words which we can do if we have a chance to do it and let the legislature most explicitly, which of course it is meant to do anyway, ask the State Tax Assessor to do the adjustments. Those are little, tiny, bitty stumbling blocks that are not real.

If you want an excuse to kill something, you can find it, but I want you to know that I brought this bill on behalf of particularly those people who are sitting in the front of this chamber tonight, the young people whose lungs are suffering from our smog. If this bill came to us in July, when we were all suffering from smog and our eyes were stinging, last year 11 days during that month, we were told to stay inside if we didn't have to go out — you know, this bill would whiz right through this House I think. Don't forget that lung irritation, which causes asthma, is the fastest growing cause of death among our children. It has doubled in the last ten years. We owe it to them, not to worry so much about the car dealers for I am sure that they are going to get gold stars for this eventually, but we want to keep the children out of the hospitals and from an untimely death. They are the ones who are going to run out of energy and time because their lives will be shortened. Look at these young faces down in the front of this hall and in good conscience vote not to let us reconsider this bill.

The SPEAKER: The Chair recognizes the Representative from Easton, Representative Mahany.

Representative MAHANY: Mr. Speaker, Ladies and Gentlemen of the House: You all know and I don't have to really tell you because I think most of you

have been in that situation at some point, that if you want to kill something in this establishment, which may be what the Tax Assessor wants to do, you put a fiscal note on it and say etcetera, etcetera, we can't be sure how much we are going to take in. We can't be absolutely sure of anything in this life, let's face it. But, as sure as anybody can be on the basis of figures, we are, that this bill is revenue neutral.

I suppose the constitutional issue that was dug out somewhere by somebody refers to the instruction to the Tax Assessor to adjust the fees on an annual basis — well, it is very easy to put an amendment in to have any adjustment reviewed and okayed by the Committee on Taxation but it seems to me that, if this legislature instructs anybody to do something, that this legislature is the one that is in control. I just hope, having been there probably yourself one time before at some point, that you will ignore the artificial and mythical barriers that are being put up here with respect to a fiscal note. The people from Ontario, if they can administer their bill which is a little more complicated than this one, we ought to be able to administer this one. If we can't, we ought to get some new people to do the administering for us, so I hope you will disregard that argument as well and follow your common sense.

Obviously, this isn't really going to hurt car dealers. Probably most of the car dealers in this state don't really understand this bill and how simple it is.

What we ought to be concerned about is the depletion of the ozone in the stratosphere and the pollution of the ozone in the atmosphere and global warming — that's what we really ought to be concerned about. I certainly don't want to push any panic buttons but I don't mind telling you that I am a little afraid and I think everybody else ought to be. I am not afraid in a panicky sense, I am afraid in a very cold and sobering sense that our species is going to react too slowly to a problem that is life threatening. To put it another way, that our species is the one that is going to create the circumstances for its own demise, unlike any other species. If we are so smart, we ought to be able to avoid that situation but I am not so sure that we don't have much more than a 50/50 chance I think.

Not to be too pessimistic and still wanting to maintain hope, I hope that you will tonight realize that the real problem here is the air pollution in all of our spheres, here and above us, that is the real problem. Compared with that, our temporary economic problem isn't really that big. The problem of getting re-elected isn't really that important either.

The SPEAKER: The Chair recognizes the Representative from Old Town, Representative Cashman.

Representative CASHMAN: Mr. Speaker, Ladies and Gentlemen of the House: The comments by some of the other members of the House has brought me to my feet. Usually on a reconsideration motion, I do not normally debate the bill but I think it has been debated and I would like to just clarify a couple of things on behalf of the majority of the committee who signed the Majority (11 to 2) "Ought Not to Pass" Report.

The people who signed that Report are not trying to do the wrong thing, the people who signed that Report are not in favor of ozone depletion or global warming and are not in favor of over-dependence on

oil and we are not in favor of things that hurt children.

My good friend from the Transportation Committee brought up some concerns that he has about the business effect on the car business in this state and I think some members of the committee had that concern also. I think some members of the committee had some concerns that a bill that is going to affect such a small fraction of the cars that are driven in this state, which in this state is a small fraction of the cars that are driven in this country, is not going to do as much good to correct the problems of ozone depletion and correct the problems of global warming as some might lead you to believe. I think some had that consideration.

The reason that I opposed this bill, and I think the committee gave this bill consideration, it was brought in here last year. The bill was held over from last session, and I don't consider it a minor stumbling block or reason to kill the bill because of some of the objections that have been raised by myself and Representative Murphy and Representative Nadeau. The committee came to a conclusion that this bill could not be administered. The Taxation office has told us that the most difficult audits that they do are on car dealers. For a number of reasons, those audits are very complicated and they are not very, how should I say, friendly. It is very difficult for the Bureau to obtain the information it needs to do the audits. This adds another problem to that. The Bureau, who does have to administer it, doesn't feel that it is administrable.

As Representative Murphy pointed out last week when we debated this bill, there are a number of ways to skirt this law. I have a very difficult time sitting on the Taxation Committee supporting something like this that I feel has got too many administrative problems and is too easy to avoid. This state's tax policy comes under enough criticism without passing taxes that are as easy to avoid paying as this one is. That is why I voted against it, not because I am in favor of global warming and I don't anybody else on the Majority Report is either. This tax is too easy to avoid and it is too difficult to administer, simply put.

The SPEAKER: The pending question before the House is the motion of the Representative from Portland, Representative Høglund, that the House reconsider its action whereby the House accepted the Majority "Ought Not to Pass" Report.

The SPEAKER: The Chair recognizes the Representative from Eliot, Representative Hichens.

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

The SPEAKER: The Chair recognizes the Representative from Fairfield, Representative Gwadosky.

Representative GWADOSKY: Mr. Speaker, pursuant to House Rule 7, I request permission to pair my vote with the Representative from Lewiston, Representative Aliberti. 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 Portland, Representative Høglund, that the House reconsider its action whereby the House accepted the Majority "Ought Not to Pass"

Report. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 308

YEA - Adams, Anthony, Ault, Barth, Bennett, Butland, Clark, M.; Coles, Constantine, Daggett, Donnelly, Duplessis, Farnsworth, Garland, Gean, Goodridge, Gray, Handy, Hanley, Heeschen, Holt, Joseph, Ketover, Kilkelly, Kontos, Kutasi, Larrivee, Lawrence, Lemke, Luther, Mahany, Marsh, Mayo, McHenry, McKeen, Michael, Michaud, Mitchell, J.; Nutting, O'Dea, O'Gara, Oliver, Ott, Paradis, J.; Paradis, P.; Pendexter, Pfeiffer, Pines, Powers, Rand, Richardson, Rydell, Simonds, Simpson, Skoglund, Tracy, Treat, Tupper, Wentworth, Whitcomb.

NAY - Aikman, Anderson, Bailey, R.; Bell, Boutillier, Bowers, Cahill, M.; Carroll, D.; Carroll, J.; Cashman, Cathcart, Chonko, Clark, H.; Cote, Crowley, DiPietro, Duffy, Erwin, Farnum, Farren, Foss, Gould, R. A.; Graham, Greenlaw, Gurney, Hale, Heino, Hichborn, Høglund, Hussey, Jacques, Jalbert, Kerr, Ketterer, Lebowitz, Libby, Look, Lord, MacBride, Macomber, Manning, Marsano, Martin, H.; Melendy, Mitchell, E.; Morrison, Murphy, Nadeau, Nash, Parent, Paul, Pineau, Plourde, Poulin, Pouliot, Reed, G.; Reed, W.; Richards, Ricker, Rotondi, Ruhlin, Saint Onge, Salisbury, Savage, Sheltra, Small, Spear, Stevens, A.; Stevenson, Strout, Swazey, Tammaro, Tardy, Townsend, Waterman.

ABSENT - Bailey, H.; Dore, Dutremble, L.; Hastings, Hepburn, Lipman, Merrill, Norton, Pendleton, Stevens, P.; Vigue, The Speaker.

PAIRED - Aliberti, Carleton, Gwadosky, Hichens.
Yes, 60; No, 75; Absent, 12; Paired, 4; Excused, 0.

60 having voted in the affirmative and 75 in the negative with 12 being absent and 4 having paired, the motion to reconsider did not prevail.

Subsequently, the Majority "Ought Not to Pass" Report was accepted and sent up for concurrence.

(Off Record Remarks)

On motion of Representative Marsano of Belfast, Adjourned at 6:12 p.m. until Thursday, February 20, 1992, at four o'clock in the afternoon.