

# 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 SPECIAL SESSION**

December 18, 1991 to January 7, 1992

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#### **SECOND REGULAR SESSION**

House of Representatives

January 8, 1992 to March 9, 1992

ONE HUNDRED AND FIFTEENTH MAINE LEGISLATURE  
SECOND REGULAR SESSION  
15th Legislative Day  
Thursday, February 20, 1992

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

Prayer by Reverend Russell Chase, Vassalboro United Methodist Church.

The Journal of Tuesday, February 18, 1992, was read and approved.

**SENATE PAPERS**

The following Communication:

Maine State Senate  
Augusta, Maine 04333

February 18, 1992

The Honorable John L. Martin  
Speaker of the House  
115th Legislature  
Augusta, Maine 04333

Dear Speaker Martin:

In accordance with Joint Rule 38, please be advised that the Senate today confirmed, upon the recommendation of the Joint Standing Committee on Agriculture, Charles F. Davis of Gouldsboro for reappointment to the Maine Milk Commission.

Sincerely,

S/Joy J. O'Brien  
Secretary of the Senate

Was read and ordered placed on file.

The following Communication:

Maine State Senate  
Augusta, Maine 04333

February 18, 1992

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

Dear Clerk Pert:

Please be advised that the Senate today Adhered to its former action whereby it accepted the Minority Ought Not to Pass Report on the Bill "An Act to Modify Weight Limits for Farm Trucks" (S.P. 189) (L.D. 498).

Sincerely,

S/Joy J. O'Brien  
Secretary of the Senate

Was read and ordered placed on file.

Bill "An Act to Establish a Supervised Community Confinement Program for Certain Prisoners of the Department of Corrections" (S.P. 916) (L.D. 2353)

Came from the Senate, referred to the **Joint Select Committee on Corrections** and Ordered Printed.

On motion of Representative Anthony of South Portland, was referred to the Committee on **Education** in non-concurrence and sent up for concurrence.

**Later Today Assigned**

Bill "An Act to Grant Immunity for Directors of Rural Electrification Cooperatives" (S.P. 915) (L.D. 2352)

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

On motion of Representative Paradis of Augusta, tabled pending reference in concurrence and later today assigned.

**Unanimous Ought Not To Pass**

Report of the Committee on **Business Legislation** reporting "**Ought Not to Pass**" on Bill "An Act to Exempt Novelty Beverage Containers from the Deposit Laws" (S.P. 867) (L.D. 2214)

Report of the Committee on **Labor** reporting "**Ought Not to Pass**" on Bill "An Act to Amend the Child Labor Laws Related to Specified Hours of Employment" (EMERGENCY) (S.P. 796) (L.D. 1995)

Report of the Committee on **Labor** reporting "**Ought Not to Pass**" on Bill "An Act to Provide Certain Exemptions to the Limitations on Students Hours of Work" (EMERGENCY) (S.P. 832) (L.D. 2136)

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

**Unanimous Leave to Withdraw**

Report of the Committee on **Labor** reporting "**Leave to Withdraw**" on Bill "An Act to Clarify Certain Classifications under the Prevailing Wage Laws" (S.P. 883) (L.D. 2255)

Report of the Committee on **Marine Resources** reporting "**Leave to Withdraw**" on Bill "An Act Regarding Dragging for Scallops in the Swan's Island Cable Area" (EMERGENCY) (S.P. 886) (L.D. 2271)

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

concurrence.

February 14, 1992

**Non-Concurrent Matter**

Bill "An Act to Amend the Secret Voting Provision Governing School Administrative District Budget Proceedings" (H.P. 1440) (L.D. 2052) on which the Minority "Ought Not to Pass" Report of the Committee on Education was read and accepted in the House on February 11, 1992.

Came from the Senate with the Majority "Ought to Pass" Report of the Committee on Education read and accepted and the Bill passed to be engrossed as amended by Senate Amendment "A" (S-548) in non-concurrence.

The House voted to recede and concur.

**COMMUNICATIONS**

The following Communication: (S.P. 917)

115TH MAINE LEGISLATURE

February 13, 1992

Senator Bonnie L. Titcomb  
Rep. Paul F. Jacques  
Chairpersons  
Joint Standing Committee on Energy and  
Natural Resources  
115th Legislature  
Augusta, Maine 04333

Dear Chairs:

Please be advised that Governor John R. McKernan, Jr. has nominated the Honorable Orland McPherson of Eliot for appointment to the Low-Level Radioactive Waste Authority.

Pursuant to Title 38, MRSA Section 1512, this nomination will require review by the Joint Standing Committee on Energy and Natural Resources and confirmation by the Senate.

Sincerely,

S/Charles P. Pray  
President of the Senate

S/John L. Martin  
Speaker of the House

Came from the Senate, Read and Referred to the Committee on Energy and Natural Resources.

Was Read and Referred to the Committee on Energy and Natural Resources in concurrence.

The following Communication: (S.P. 918)

115TH MAINE LEGISLATURE

Senator Stephen C. Estes  
Rep. Nathaniel J. Crowley, Sr.  
Chairpersons  
Joint Standing Committee on Education  
115th Legislature  
Augusta, Maine 04333

Dear Chairs:

Please be advised that Governor John R. McKernan, Jr. has nominated Peter Bell of Northeast Harbor for appointment to the Maine Maritime Academy Board of Trustees.

Pursuant to P.L. 1975, Chapter 771, Section 428, this nomination will require review by the Joint Standing Committee on Education and confirmation by the Senate.

Sincerely,

S/Charles P. Pray  
President of the Senate

S/John L. Martin  
Speaker of the House

Came from the Senate, Read and Referred to the Committee on Education.

Was Read and Referred to the Committee on Education in concurrence.

**PETITIONS, BILLS AND RESOLVES  
REQUIRING REFERENCE**

The following Bills, Resolve and Resolution 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:

**Appropriations and Financial Affairs**

RESOLUTION, Proposing an Amendment to the Constitution of Maine to Protect Revenues Raised By the Department of Inland Fisheries and Wildlife (H.P. 1686) (L.D. 2366) (Presented by Representative JACQUES of Waterville) (Cosponsored by Senator PEARSON of Penobscot, Representative ROTONDI of Athens and Senator SUMMERS of Cumberland) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.)

Ordered Printed.  
Sent up for Concurrence.

**Business Legislation**

Bill "An Act to Repeal a State Mandate Requiring a National Plumbing Code" (EMERGENCY) (H.P. 1681) (L.D. 2361) (Presented by Representative KILKELLY of Wiscasset) (Cosponsored by Senator RICH of

Cumberland, Representative SHELTRA of Biddeford and Senator BALDACCI of Penobscot) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.)

Bill "An Act Concerning the Authority of Podiatrists" (H.P. 1682) (L.D. 2362) (Presented by Representative BUTLAND of Cumberland) (Cosponsored by President PRAY of Penobscot, Representative HOLT of Bath and Representative PENDLETON of Scarborough) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.)

Ordered Printed.  
Sent up for Concurrence.

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**Joint Select Committee on Corrections**

Bill "An Act Relating to the Arthur R. Gould School" (H.P. 1695) (L.D. 2375) (Presented by Representative ANTHONY of South Portland) (Cosponsored by Senator GILL of Cumberland, Senator ESTES of York and Representative OLIVER of Portland) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.)

Ordered Printed.  
Sent up for Concurrence.

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**Tabled and Assigned**

Bill "An Act to Amend the Fuel Use Tax to Provide Regulatory Oversight of Over-the-road Transportation of Hazardous Materials" (H.P. 1694) (L.D. 2374) (Presented by Representative LORD of Waterboro) (Cosponsored by Representative DONNELLY of Presque Isle and Senator TITCOMB of Cumberland) (Submitted by the Department of Environmental Protection pursuant to Joint Rule 24.)

(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 Tuesday, February 25, 1992.

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**Labor**

Resolve, to Establish a Blue Ribbon Commission to Examine Alternatives to the Workers' Compensation System and to Make Recommendations Concerning Replacement of the Present System (H.P. 1696) (L.D. 2376) (Presented by Representative SIMONDS of Cape Elizabeth) (Cosponsored by Representative LORD of Waterboro, Representative PINEAU of Jay and Senator ESTY of Cumberland) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.)

Ordered Printed.  
Sent up for Concurrence.

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**Legal Affairs**

Bill "An Act Relating to Gambling" (EMERGENCY) (H.P. 1685) (L.D. 2365) (Presented by Representative LAWRENCE of Kittery) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.)

Bill "An Act to Broaden Reporting of Persons Operating Vehicles under the Influence of Intoxicating Liquor or Drugs" (H.P. 1691) (L.D. 2371) (Presented by Representative MARSH of West Gardiner) (Cosponsored by Representative JACQUES of Waterville) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.)

Ordered Printed.  
Sent up for Concurrence.

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**State and Local Government**

Bill "An Act Concerning Water Utilities" (EMERGENCY) (H.P. 1683) (L.D. 2363) (Presented by Representative CLARK of Millinocket) (Cosponsored by Senator VOSE of Washington, Representative LOOK of Jonesboro and Senator HOLLOWAY of Lincoln) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.)

Bill "An Act to Clarify the Funding of State Mandates" (EMERGENCY) (H.P. 1684) (L.D. 2364) (Presented by Representative GRAY of Sedgwick) (Cosponsored by Senator BERUBE of Androscoggin, Representative LOOK of Jonesboro and Representative KERR of Old Orchard Beach) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.)

Bill "An Act Regarding a Piscataqua River Basin Council" (H.P. 1693) (L.D. 2373) (Presented by Representative LAWRENCE of Kittery) (Cosponsored by Senator ESTES of York, Representative HICHENS of Eliot and Representative OTT of York) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.)

Ordered Printed.  
Sent up for Concurrence.

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**Taxation**

Bill "An Act to Allow Municipalities to Appeal the New State Valuation" (EMERGENCY) (H.P. 1692) (L.D. 2372) (Presented by Representative LORD of Waterboro) (Cosponsored by Senator TITCOMB of Cumberland and Representative AIKMAN of Poland) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.)

Ordered Printed.  
Sent up for Concurrence.

**Transportation**

Bill "An Act to Enforce Registration of Motor Vehicles" (H.P. 1690) (L.D. 2370) (Presented by Representative LAWRENCE of Kittery) (Cosponsored by Representative MORRISON of Bangor) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.)

Ordered Printed.  
Sent up for Concurrence.

**Utilities**

Bill "An Act to Create the Searsmont Village Water District" (H.P. 1687) (L.D. 2367) (Presented by Representative WHITCOMB of Waldo) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.)

Bill "An Act to Create the Dresden Mills Water District" (EMERGENCY) (H.P. 1688) (L.D. 2368) (Presented by Representative HOLT of Bath) (Cosponsored by Senator HOLLOWAY of Lincoln) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.)

Ordered Printed.  
Sent up for Concurrence.

**ORDERS**

On motion of Representative CLARK of Brunswick, the following Joint Resolution: (H.P. 1689) (Cosponsors: Senator CLARK of Cumberland, Senator GILL of Cumberland, and Representative PARADIS of Frenchville) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 35)

JOINT RESOLUTION MEMORIALIZING THE  
PRESIDENT AND THE CONGRESS OF THE UNITED STATES  
TO AUTHORIZE TRANSFER OF SAVINGS IN FEDERAL  
MILITARY ACCOUNTS TO THE DOMESTIC BUDGET

WE, your Memorialists, the Members of the One Hundred and Fifteenth Legislature of the State of Maine, now assembled in the Second Regular Session, most respectfully present and petition the President and the Congress of the United States, as follows:

WHEREAS, the State of Maine faces an increasing array of critical needs that can not be met by state revenues; and

WHEREAS, state and local government responsibility for providing human services and paying for their infrastructure has increased over the past decade as have federal mandates to do so; and

WHEREAS, federal aid to states and communities has dropped from 29.4% to 16% of their budgets over the past decade; and

WHEREAS, this budget crisis results in deep cuts in human services that will increase homelessness, hunger and health risks for our citizens; in severe

cuts in local aid, public schools, day care and higher education; in deep cuts in public health and hazardous waste cleanup, endangering the health of our citizens; in cuts that will debilitate safety, corrections and youth services; and in cuts in infrastructure maintenance and repair, increasing transportation problems and endangering public safety; and

WHEREAS, the recent end to the Cold War and the death of communism have greatly reduced the need for military spending; now, therefore, be it

RESOLVED: That We, your Memorialists, respectfully recommend and urge the Congress of the United States to amend the Budget Enforcement Act of 1991 to allow for transfers of savings in the military account to the domestic budget; and be it further

RESOLVED: That the United States significantly reduce military spending to a level more appropriate to the post-Cold War world environment, thereby providing savings that can and will be transferred to meet the country's enormous social and economic needs; and be it further

RESOLVED: That, in order to avoid unnecessary economic dislocation, there be developed a mechanism to provide for the timely and orderly conversion from a military to a civilian-oriented economy; and be it further

RESOLVED: That We, your Memorialists, respectfully recommend and urge the Congress of the United States to amend and pass and the President to sign into law the amendment to the Budget Enforcement Act of 1991; and be it further

RESOLVED: That suitable copies of this Memorial, duly authenticated by the Secretary of State, be transmitted to the Honorable George H. W. Bush, President of the United States, to the President of the Senate and the Speaker of the House of Representatives of the Congress of the United States and to each Member of the Maine Congressional Delegation.

Was read and adopted and sent up for concurrence.

**SPECIAL SENTIMENT CALENDAR**

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

In Memory of:

John Jay Willard, Sr., of Bethel, our respected colleague, who served as a member of the House of Representatives during the 106th Legislature, and who was a prominent member of the community. In addition to civic duties, Mr. Willard was a member of the Knights of Templar, the Bethel Lions Club, the Gould Academy Alumni Council and the West Paris Congregational Church of Bethel. He was a 50-year member of the Grange and a Past Master of Jefferson Lodge 100 AF and AM; (HLS 850) by Representative BARTH of Bethel. (Cosponsors: Senator MILLS of

Oxford, Representative BENNETT of Norway)

On motion of Representative Barth of Bethel, was removed from the Special Sentiment Calendar.

Was read.

The SPEAKER: The Chair recognizes the Representative from Bethel, Representative Barth.

Representative BARTH: Mr. Speaker, Men and Women of the House: I know very few of you here served with Jay in the 106th but he was a gentle man. He and his wife, Melva, raised seven children, all of whom are college graduates. He will be missed and I thank you for your thoughts about Jay.

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

Representative BENNETT: Mr. Speaker, Friends and Colleagues of the House: Although John Jay Willard only served but one term in the House of Representatives, his whole life was dedicated to community service.

I would like to take just a brief moment in memory of him and recap some of the highlights. He was born on August 21, 1910 at Coventry, Vermont, the son of Dr. Rodney F. and Louise McClan Willard. He moved to Bryant Pond from Littleton, New Hampshire in 1914. Willard attended Woodstock schools, the Maine Institute in Pittsfield and graduated from Gould Academy in the class of 1929.

He was prominent in athletics and was considered an outstanding basketball player of that era. As a matter of fact, just shortly before his death he was recognized in a ceremony at Gould Academy for his contributions in the baseball program there. He attended the University of Vermont and Shaw's Business School in Portland.

For two decades, Jay Willard worked in mills in Bryant Pond before moving to Bethel in 1950 where he was foreman of the Hanover Dowel Company until retiring in 1972. He served as Bethel's selectman for several years and was elected to the House of the 106th Legislature, narrowly defeated in 1974.

He retired to his farm on Paradise Hill and his later years were occupied by gardening, travel and supporting local organizations as Representative Barth has mentioned.

I think we should all think about people like Jay Willard for what they have done for their communities and what they have done for the state, contributing in what ways they can for the betterment of all.

Subsequently, was adopted and sent up for concurrence.

#### REPORTS OF COMMITTEES

##### Unanimous Ought Not to Pass

Representative McKEEN from the Committee on Labor on Bill "An Act to Amend the Laws Governing Student Work Hours" (H.P. 1431) (L.D. 2043) reporting "Ought Not to Pass"

Representative ROTONDI from the Committee on Fisheries and Wildlife on Bill "An Act to Require That People Who Must Wear Corrective Lenses for Driving a Motor Vehicle Wear Corrective Lenses While

Hunting" (H.P. 1456) (L.D. 2068) reporting "Ought Not to Pass"

Representative PARADIS from the Committee on Judiciary on Bill "An Act to Clarify the Conduct of Proceedings in Child Protection Cases" (H.P. 1421) (L.D. 2033) reporting "Ought Not to Pass"

Representative MITCHELL from the Committee on Marine Resources on Resolve, Concerning the Transfer of Property to Bigelow Laboratory (EMERGENCY) (H.P. 1426) (L.D. 2038) reporting "Ought Not to Pass"

Representative SHELTRA from the Committee on Business Legislation on Bill "An Act to Regulate Home Repair by Transient Contractors" (H.P. 1566) (L.D. 2204) reporting "Ought Not to Pass"

Representative TAMMARO from the Committee on Transportation on Bill "An Act Prohibiting Persons Convicted of Operating under the Influence from Operating School Buses" (H.P. 1641) (L.D. 2304) reporting "Ought Not to Pass"

Representative LAWRENCE from the Committee on Legal Affairs on Bill "An Act to Preserve Public Trust in the State Police" (H.P. 1445) (L.D. 2057) reporting "Ought Not to Pass"

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

##### Unanimous Leave to Withdraw

Representative PARADIS from the Committee on Judiciary on Bill "An Act Concerning Juvenile Offenders" (H.P. 1567) (L.D. 2209) reporting "Leave to Withdraw"

Representative SHELTRA from the Committee on Business Legislation on Bill "An Act to Amend the Law Regulating Architects" (H.P. 1624) (L.D. 2287) reporting "Leave to Withdraw"

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

##### Ought to Pass as Amended

Representative BELL from the Committee on Agriculture on Bill "An Act to Permit Pari-mutuel Pools" (H.P. 1549) (L.D. 2187) reporting "Ought to Pass" as amended by Committee Amendment "A" (H-948)

Report was read and accepted, the bill read once. Committee Amendment "A" (H-948) was read by the Clerk and adopted and the bill assigned for second reading Tuesday, February 25, 1992.

#### CONSENT CALENDAR

**First Day**

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

(H.P. 1568) (L.D. 2210) Bill "An Act to Correct an Omission from the Recodification of Title 30" (EMERGENCY) Committee on **Housing and Economic Development** reporting "Ought to Pass"

On motion of Representative Melendy of Rockland, was removed from the Consent Calendar, First Day.

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

Under suspension of the rules, the Bill was read a second time, passed to be engrossed and sent up for concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

(H.P. 1565) (L.D. 2203) Bill "An Act to Amend the Laws Concerning Continuity of Health Insurance" Committee on **Banking and Insurance** reporting "Ought to Pass" as amended by Committee Amendment "A" (H-937)

(H.P. 1493) (L.D. 2105) Bill "An Act Regarding Loans to Stockholders, Directors, Corporators or Officers of Financial Institutions" Committee on **Banking and Insurance** reporting "Ought to Pass" as amended by Committee Amendment "A" (H-938)

(H.P. 1447) (L.D. 2059) Bill "An Act to Require Reporting of Daily Routine Releases of Radioactive Materials" Committee on **Utilities** reporting "Ought to Pass" as amended by Committee Amendment "A" (H-939)

(H.P. 1417) (L.D. 2029) Bill "An Act to Amend the Maine High-Risk Insurance Organization Laws" Committee on **Banking and Insurance** reporting "Ought to Pass" as amended by Committee Amendment "A" (H-940)

(H.P. 1504) (L.D. 2117) Bill "An Act to Repeal the Laws Creating the Mandated Benefits Advisory Commission" Committee on **Banking and Insurance** reporting "Ought to Pass" as amended by Committee Amendment "A" (H-941)

(H.P. 1570) (L.D. 2212) Bill "An Act to Amend the Laws Governing the State Claims Commission" Committee on **Transportation** reporting "Ought to Pass" as amended by Committee Amendment "A" (H-942)

(H.P. 1526) (L.D. 2155) Bill "An Act to Amend the Motor Vehicle Laws" Committee on **Transportation** reporting "Ought to Pass" as amended by Committee Amendment "A" (H-943)

(H.P. 1450) (L.D. 2062) Bill "An Act to Allow Transfer of Commercial Moorings" Committee on **Marine Resources** reporting "Ought to Pass" as amended by Committee Amendment "A" (H-946)

(H.P. 1452) (L.D. 2064) Bill "An Act to Provide

an Exemption to the Sunday Fishing Ban When a Storm Advisory or Storm Warning Is in Effect" Committee on **Marine Resources** reporting "Ought to Pass" as amended by Committee Amendment "A" (H-947)

(H.P. 1462) (L.D. 2074) Bill "An Act to Amend the Financial Responsibility Laws" Committee on **Legal Affairs** reporting "Ought to Pass" as amended by Committee Amendment "A" (H-949)

(H.P. 1475) (L.D. 2087) Bill "An Act to Allow the Maine Harness Racing Community to Adopt a Controlled Medication Program" (EMERGENCY) Committee on **Agriculture** reporting "Ought to Pass" as amended by Committee Amendment "A" (H-950)

There being no objections, the above items were ordered to appear on the Consent Calendar of Tuesday, February 25, 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. 803) (L.D. 2002) Bill "An Act to Amend the Law Governing the Rumford-Mexico Sewerage District"

(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) (C. "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" (C. "A" S-540)

(S.P. 795) (L.D. 1994) Bill "An Act Regarding the Repayment of Blaine House Scholarships" (C. "A" S-541)

(S.P. 797) (L.D. 1996) Bill "An Act to Amend the Laws Governing Telecommunications Interexchange Carrier Selection" (EMERGENCY) (C. "A" S-542)

(S.P. 845) (L.D. 2149) Bill "An Act to Repeal a Provision Concerning Low Sulfur Fuel" (C. "A" S-544)

(H.P. 1309) (L.D. 1891) Bill "An Act Concerning Railroad Personnel" (C. "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 (C. "A" H-932)

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 Amend the Laws Concerning High School Equivalency Certificates" (S.P. 828) (L.D. 2132) (C. "A" S-539)

Bill "An Act Regarding the Parking Violations that Occur on State Controlled Property within the Capitol Area" (H.P. 1509) (L.D. 2121) (C. "A" H-933)

Bill "An Act to Establish a Trauma Advisory Committee and a Voluntary Trauma Reporting System" (H.P. 1233) (L.D. 1797) (C. "A" H-915)

Bill "An Act Concerning Prevailing Wages Established by the Department of Labor" (H.P. 471) (L.D. 665) (H. "A" H-944 to C. "A" H-898)

Bill "An Act to Authorize the Public Utilities Commission to Regulate Rates for Cable Television" (H.P. 1018) (L.D. 1491) (C. "A" H-902)

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

**PASSED TO BE ENACTED**

**Emergency Measure**

An Act to Clarify the Extension of the Municipal Landfill Closure Deadline and to Extend the Rule-making Deadline for Labeling of Recycled and Reused Products (H.P. 1435) (L.D. 2047) (C. "A" H-890)

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. 110 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**

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

An Act to Enable the Department of Human Services to Have a Presence in Every County through Enhanced Administrative Flexibility (H.P. 620) (L.D. 890) (C. "A" H-884)

An Act to Establish an Electric Facilities Siting Process (H.P. 1135) (L.D. 1660) (C. "A" H-889)

An Act to Safeguard Money Held for Minors (H.P. 1172) (L.D. 1713) (C. "A" H-876 and H. "A" H-894)

An Act to Repeal the Provisions of the Uniform Commercial Code Relating to Bulk Transfers (H.P.

1420) (L.D. 2032)

An Act to Clarify the Status of Wood Yard Debris (H.P. 1427) (L.D. 2039) (C. "A" H-891)

An Act to Establish Ambient Air Quality Standards for Toluene and Perchloroethylene (H.P. 1448) (L.D. 2060) (C. "A" H-882)

An Act to Institute Conformity to the Low-cost Drug Program (H.P. 1521) (L.D. 2146)

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

**FINALLY PASSED**

Resolve, to Establish the Commission on Recall (H.P. 1377) (L.D. 1964) (C. "A" H-868)

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

**ORDERS OF THE DAY**

**UNFINISHED BUSINESS**

The following matter, in the consideration of which the House was engaged at the time of adjournment Tuesday, February 18, 1992 has preference in the Orders of the Day and continues with such preference until disposed of as provided by Rule 24.

The Chair laid before the House the first item of Unfinished Business:

Bill "An Act to Prohibit the Sale and Distribution of Certain Milk Products" (H.P. 1163) (L.D. 1704) (C. "A" H-897)  
TABLED - February 18, 1992 (Till Later Today) by Representative MAYO of Thomaston.  
PENDING - Passage to be engrossed.

On motion of Representative Mayo of Thomaston, retabled pending passage to be engrossed and specially assigned for Tuesday, February 25, 1992.

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

SENATE DIVIDED REPORT - Majority (8) "Ought to Pass" as amended by Committee Amendment "A" (S-537) - Minority (5) - "Ought Not to Pass" - Committee on Labor on Bill "An Act to Amend the Municipal Public Employees Labor Relations Laws" (S.P. 465) (L.D. 1248) - In Senate, 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)  
TABLED - February 18, 1992 by Representative McHENRY of Madawaska.  
PENDING - Motion of same Representative to accept the

Majority "Ought to Pass" as amended Report.

The SPEAKER: The Chair recognizes the Representative from Poland, Representative Aikman.

Representative AIKMAN: Mr. Speaker, Men and Women of the House: I ask that when you vote, you vote against the pending motion of the "Ought to Pass" as amended by Committee Amendment "A" (S-537) Report.

L.D. 1248 is a bill that would change and broaden the kind of issues open for collective bargaining. Under present statute, local elected school boards retain authority and responsibility for establishing educational policy. That is where it belongs. Teachers and employees are consulted in the development of policy, formally through their association representatives and informally through other networks that ensure an opportunity for input.

This bill, if enacted, would make certain policy matters part of negotiations and ultimately part of arbitration. Implied here is that these are work condition issues that teachers play no role in deciding. That is not true. Teachers already negotiate rest and meal breaks, vacations, and compensatory time. They simply are not able to negotiate when these will take place. There is an important distinction here. Meal breaks, vacations and so on are policy decisions that have a major effect on the school calendar. If the school board has no control on setting the school calendar, it really has no control.

Any disagreement would be the subject to a third party arbitrator. In settling disputes, this arbitrator would (in effect) be setting school policy and making the kinds of decisions that could have a profound effect on the quality of education for our children.

This bill would remove the policy setting responsibilities from the public forum where parents have an opportunity to comment and to put them behind closed doors. From public participation to closed door negotiations — is this what we really want?

Please consider our children when you vote and base your decision on what is best for them. I am sympathetic to the working conditions of the teachers but the school calendar is not something to negotiate. Personally, I find it hard to imagine that anyone with sufficient educational background to qualify as a teacher would not be accurately aware of the vacations that come with the job.

I urge you to vote against the motion before us so we can go forth and accept the "Ought Not to Pass" Report.

Mr. Speaker, I request a roll call.

The SPEAKER: The Chair recognizes the Representative from Jay, Representative Pineau.

Representative PINEAU: Mr. Speaker, Ladies and Gentlemen of the House: I will be really brief because I know we have a lot of items before us.

The Majority Report in front of you is a good bill, it is a strong bill. When the bill came to the Labor Committee it was of a much wider scope and the majority of the committee scaled it down dramatically. The bill deals with working conditions and defines them. The bill does not, and I repeat, it does not deal with educational policy. If the bill did deal with educational policy, this bill would have been in front of the Committee on Education, not the Committee on Labor. What we did was define it.

It does not exclude the educational policy as part of not collective bargaining rights that they now have. I think that should be understood.

When I saw the superintendents and the school board association running around in a panic, it kind of made me smirk because I was thinking, these are the groups who are talking about total school restructuring and what they are trying to say is that life as we know it will end if this bill passes. No, if this bill passes, working conditions will be more clearly defined, transfer language will be more clearly defined and that is all it will do. It doesn't force anything down anyone's throat. It just means that we have to discuss it at the bargaining level, that's all it means.

No, this won't end life as we know it as the superintendents and school boards thought it would when we gave collective bargaining rights to the teachers.

The SPEAKER: The Chair recognizes the Representative from Westbrook, Representative O'Gara.

Representative O'GARA: Mr. Speaker, Ladies and Gentlemen of the House: I have to say right off the bat, this is neither a good bill nor a strong bill. It is a bill that is not necessary.

It grieves me, having been a teacher for 23 years and having been a very strong supporter of the Maine Teachers Association and for many others in this body who try very hard to be supportive of teachers and of educational policy to be put in a spot of having to vote against this — certainly for me to have to speak against it. I could not just let it go by without telling you that as a teacher, as a strong, strong supporter of education, and there isn't anybody in this body who could challenge that statement, believe me, I urge you to vote against the motion to support this legislation. It is not a good bill, it is not necessary.

There are so many other things for teachers that I would fight to my last breath to support, at all levels, in the curriculum, in text and things that involve the everyday life of a child. I would support things like basement breaks, conversation time for staying after school to talk with your student — those kinds of things are just not issues. I will say, and if MTA is listening it is all right with me if they hear this, it was very poor judgment, this is not a good bill and it is unnecessary. I urge you to vote against the motion.

The SPEAKER: The Chair recognizes the Representative from Madawaska, Representative McHenry.

Representative MCHENRY: Mr. Speaker, Ladies and Gentlemen of the House: The bill that is before this House right now says that educational policy is not wages, salary, pension or insurance, rest and meal breaks, vacation, and compensatory time, working conditions for non-instructional duties and internal transfers or reassignment of non-probationary employees or contract grievances. These same issues were in the law in the past but this is making it very clear that these are not policy issues. There was one superintendent who appeared before my committee and I asked that superintendent, "What is educational policy?" He told me that everything is educational policy meaning that he can sit there and negotiate on nothing. As far as he was concerned, there is nothing to negotiate. Well, people with that attitude are the people that force people to put legislation such as this before this body. We are defining exactly what educational policy is and what

is not educational policy. We are saying that they can go to arbitration but that does not mean that the arbitrator can decide for the municipalities what will be paid or what will not be paid. It still remains with the voters.

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

Representative HASTINGS: Mr. Speaker, Men and Women of the House: Most of us probably don't have L.D. 1248 because it was a holdover bill from last year but were you to have it, you would find that that indicates what is to be negotiated between school boards and teachers. It does indicate that educational policies are not to be negotiated. However, it does specifically state what is not an educational policy.

The amendment that was brought to us in the Labor Committee or the bill, L.D. 1248 and now its amendment by that committee, the majority, enlarges the scope of issues that may be negotiated taking them out of explicitly educational policy. The areas which they have taken out explicitly include rest and meal breaks. I don't know what rest means because none of the teachers that I know have too many rest breaks — but rest and meal breaks, vacations and compensatory time. That has never been in the statutes before. They have also taken out working conditions for non-instructional duties and internal transfers or reassignments for non-probationary employees. Those items were never on the negotiating table before. They were part of the law that said the school boards had to consult with the teachers regarding these issues but they did not have to negotiate within the legal meaning of that term. This broadens that substantially.

It does, as has been indicated, change the relationship between the two parties in areas which are very fundamental (in my opinion) regarding schools, that is, meal break time, vacations, compensatory time, rest time for teachers, those types of things as well as reassignments of non-probationary teachers. It enlarges it. Do not be fooled by the fact that there is still the same wording, educational policies need not be negotiated. What the statute by this amendment does is say, regardless of educational policies, these shall not be deemed educational policies and, therefore, they shall be negotiated.

I think the bill creates just more acrimony, at least in our district. The people that I have talked with on both sides of the negotiating table think that it is an unnecessary bill.

I would urge you to vote against the motion on the floor so we can go forward and pass the "Ought Not to Pass" Report.

The SPEAKER: The Chair recognizes the Representative from Ellsworth, Representative Salisbury.

Representative SALISBURY: Mr. Speaker, Men and Women of the House: I try basically not to speak. I feel on this issue that I have to go on the Record. This bill is no good. I am saying this as a school board member, I am saying this as a teacher of 30 years. I don't need to add anymore than what the Representative from Westbrook has already said or the Representative from Fryeburg has already said. It is unnecessary, it goes beyond what is needed so please reject the motion on the floor.

The SPEAKER: The Chair recognizes the Representative from Brewer, Representative Ruhlin.

Representative RUHLIN: Mr. Speaker, Ladies and Gentlemen of the House: First of all, I want to share with you my disappointment in those individuals who I have a lot of respect for who have spoken against this particular bill because they have not told you the full story, the complete story.

I also want to share with you though the unique position that I am faced with today. In 1969, when my hair was darker and I walked with a lighter step, I was a municipal officer for the city of Brewer. We were very concerned as a municipal community about the bargaining rights and losing the powers that we felt we, as a local community, should have in a negotiating status with the teachers. I came down to this legislature, participated in the discussions at that point in time, worked through work sessions, followed that legislation as a municipal officer and was very pleased when this legislature said that "you may not negotiate educational policy but you shall be allowed to negotiate working policies." It was broken into two parts, education here and working here. What happened? That was such a general statement, that over the years since then, there have been 43 (count them) decisions from the Maine Labor Relations Board trying to define what is educational policy and, therefore, non-negotiable. What is in fact working policy and negotiable?

When this bill first came before the Labor Committee last year, I looked at it and, frankly, I did not like it. I thought it intruded on the municipalities right to protect themselves from having to negotiate educational policy with their teachers. I made my feelings known, I think we had very fair hearings and we had people from both sides but also neutral people, people from the Maine Labor Relations Board who came in and gave excellent testimony (and I had hoped that everybody in the committee would have heard that testimony) saying that there was a need to codify what was working policy and what was educational policy. After hearing that testimony, I changed from being an opponent to that piece of legislation that was before us to a person who, if we could work out codification without affecting or destroying the balance on negotiations, then I would attempt to do that in good faith. Our discussions on the bill were long and involved. I spent a great amount of time and I sincerely feel that I kept that goal that I had uppermost in my mind not to change the balance in negotiations but simply to codify so that both sides could go in knowing what they were talking about. I feel this bill that was reported out to you in fact does that.

This bill, and I know that you don't have it in front of you so I will give you some comparisons, says, "You shall not negotiate educational policy but you can discuss wages, salaries, pensions and insurance." That is a working condition and most of that is in present law but has added insurance as a part of that working condition or pay portion. It says, "rest and meal breaks" — rest and meal breaks, ladies and gentlemen of this House, are not educational policy, it is a work policy, it is a labor issue. "You may negotiate for vacations but those vacations may not affect the opening and closing, the beginning or the ending of the school year." Therefore, it does not affect educational policy.

You may discuss compensatory time but that is a portion of wages and is a working condition, not

educational policy. You may negotiate working conditions for non-instructional duties, this is clearly written in this bill, this committee amendment that is before you. You may negotiate the work duties and internal transfers which are presently negotiable within the State of Maine through decisions of the Maine Labor Relations Board. You may negotiate for reassignment for non-probationary employees, in other words, those employees who have tenure. That is presently negotiated within the State of Maine between the school board and the teachers' union so that does not change that.

Item 4 in this amendment says that you may also negotiate contract grievance arbitration. That is a part of existing law now. Why? I have told you and that is why I wanted to go into such detail. Speaking as one of the majority of that committee, we tried very, very hard to not change the balance on that negotiating field. I think we have succeeded, it was not easy, we were pulled in a lot of directions.

I talked to the chair of my school board, I talked to the superintendent and I explained to them what I felt about it, why I felt the way I did, what I read into it and the fact that it had people with legal backgrounds advising me on it — they, frankly, agreed with me.

When I hear some of the arguments, I think some people still have the original bill in their minds or some people have such a mind set on that original bill that they are not listening to what this amendment says. I hope tonight, now that you have heard the rest of the story, that you will consider the bill for what it is and please vote with the Majority Report.

The SPEAKER: The Chair recognizes the Representative from Lewiston, Representative Aliberti.

Representative ALIBERTI: Mr. Speaker, Ladies and Gentlemen of the House: Our forefathers established some protections from arbitrary judgment. They kept the authority of the school decisions at a certain plane so it could not be tampered with.

This bill, in my opinion, will eliminate the input of the parents, of the public, and it will defy the electoral responsibility by saying that you have elected these people under certain conditions with certain mandates with certain responsibilities but now just have them sit there and not do the job that they have been constitutionally delegated to do.

We will designate all these major decisions, not by this bill, but what comes after this bill to arbitration. Your arbitrators will become the people responsible for running the schools. I consider this bill to go in a limited direction. Yes, a limited direction but the first step is in a chasm of the unknown. What is to come after this first step? I am in a very, very difficult position. I heard back along some of the previous speakers that were against this bill. I, too, served in the teaching profession for well over 30 years as a teacher and an administrator. I have served for 10 years on the school board and now I have reached the epitome of all my desires by being the chair of that committee.

I know what the responsibilities are as a member of that committee. This bill minimizes it by saying, look, you have to negotiate this, that and the other thing. We still have the right to negotiate anything we want to but you are saying that we must do this.

I feel torn but I know that I am right in asking you and pleading with you to vote against this bill.

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

Representative SMALL: Mr. Speaker, Ladies and Gentlemen of the House: We are debating this issue today as a labor/management dispute but I think it has ramifications that far exceed labor issues.

Every break, every vacation and every lunch period also affects the students and I haven't heard them mentioned here yet today. When teachers eat, students eat. When teachers have vacations, students take vacations and I do not wish to give up my right as a parent to have input when my child will eat lunch or have spring break. When it is negotiated into a contract, my voice as a parent will be stilled.

Every school system should consider the best interest of the teachers when they set their schedules but, in the end, the final decision must be what is in the best interest of the students.

I urge you to vote against the "Ought to Pass" Report.

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 Portland, Representative Oliver.

Representative OLIVER: Mr. Speaker, Ladies and Gentlemen of the House: Having been a teacher and having been a participant in various labor unions, it is very obvious that what we are dealing with is whether we believe in what's already in the law. These are working conditions, look at them again and see what the bill is saying. It is very clear that if you are dealing with scheduling and you are dealing with wages and you are dealing with meal breaks, that they are working conditions. Everywhere in this country you go where you have a union, those unions are bargaining those working conditions. Yet, here in Maine, we are denying it for those who live in your communities who are called teachers and educators. This is basically unfair and I think that it is more than that, it is the legislature interfering with what I think should be a local decision. We have to trust the process, the process does work, people are very reasonable at the local level. You will have the bargaining units coming together in good faith. All people in the bargaining units believe in education, schools boards, management and teachers, so no one is going to compromise educational policy. What we are really talking about is fairness. If you go to other states, most other states allow collective bargaining for their teachers including all working conditions. These are obvious working conditions. This is also local control. As I said before, leave it to the locals, trust in the process.

I remember when collective bargaining first came in there was great fear raised that somehow we are going to give up controls of our school to teachers. It never happened. Those fears never materialized, those editorials of one day were soon forgotten a year later. What we are saying now is simply, give the working men and women who live in our communities

who are called teachers, the right that other workers have to determine their working conditions. Trust in the collective bargaining system and the wisdom of people at the local level.

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

Representative BENNETT: Mr. Speaker, Friends and Colleagues of the House: I do not believe that this is a local control issue. I think it may turn out to be just the opposite as Representative Aliberti has eloquently stated.

I must respectfully disagree with my seatmate in the Labor Committee, Representative Ruhlin. I do not believe this bill simply codifies with existing case law. I believe that there would not be a pressing need for this bill if it simply did that and there wouldn't be such controversy over it, not only the expected opposition from school board members and school administrators but among teachers themselves as well. I believe that this bill, if enacted, might impose greater financial burdens on school systems which are already severely strapped for funding to provide educational services to today's students.

Allowing employee groups to negotiate its issues such as scheduling the assignment of employee duties within the school day, vacation periods, meal breaks and non-instructional duties would necessitate perhaps the hiring of additional personnel in order to provide appropriate supervision of students during school hours. Permitting various employee groups to negotiate vacation periods might result in conflicting provisions in the contracts of different groups and might further hamper efforts to coordinate school calendars among school districts who send students to central vocational programs. If the assignment of teachers to specific teaching duties or the transfer of teachers within a school unit becomes part of a collective bargaining process, it may become possible for local school boards to lose the ability to ensure that the best assignments of teaching talent are made. For example, if seniority were to become the primary consideration for internal transfers under a negotiated contract, school boards could be forced to assign a teacher who was not the best qualified among the faculty into a specific teaching position. Obviously, this would be to the detriment of the students involved. These types of issues must remain in the control of locally elected representatives, school board members, who need to be allowed to continue to make educational policy for the local school units.

I believe this might turn in complete opposite to Representative Oliver to be another unfunded mandate from the state.

I urge your opposition to the pending motion.

The SPEAKER: The Chair recognizes the Representative from Sanford, Representative Hale.

Representative HALE: Mr. Speaker, Ladies and Gentlemen of the House: I rise today to urge you to vote against the pending motion on the floor.

This certainly does not equalize a balance in any playing field. We have elected in our municipalities and in our districts people to represent us on our school boards. We have given them our faith and confidence to carry out the duties and make the tough decisions in their area as they have expressed their confidence in our ability to make decisions for them. I don't know about you but I have never worked any place where I walk in and tell them when I am going to take my vacation, when I am going to have my

rest break, how much of a work load I am going to have or what my duties are going to be. At the time of an interview, each person is told exactly what the job entails. They are given a salary or an hourly wage and they accept that. Once they accept that, they can't say, oh gee, I don't like that, I'm going to have to change that because, once you start setting the criteria for your job that you are applying for, you no longer have one.

I have had many of my constituents speak about this particular piece of legislation and their impression right now is, and I am very reluctant to say it here in the chamber but I feel that I must, that the teachers are on vacation half of the time now. This is not true but it is perceived to be true because of their working conditions, the length of time that they have to work.

I would urge you to vote against the pending motion on the floor.

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

Representative JALBERT: Mr. Speaker, Ladies and Gentlemen of the House: If the truth were known, the rank-and-file teachers wouldn't be too much in love with this proposal. They would lose some flexibility with the internal administration of their schools.

I served for over 10 years as a school board member in my hometown and I found that every time something became a negotiable item that the teachers had their hands tied as to what could happen next. At one time, we used to have the flexibility that the school board could give leave to the teachers in case of emergencies. When that became a negotiable item and we decided what we could do, there was no way unilaterally that we could make any decision. A couple of times, I felt bad about it. You will find that the teachers want to teach.

The people who want this bill are not the rank-and-file teachers in the classrooms of our children. They are the administrators of the unions so they can come back to the teachers and say that they have this for you and that for you.

Let's leave the system alone. I think you will find if there are any internal problems within the school system, they are able to iron it out themselves. Don't say that this item here cannot be settled between the administration and the schools but it must be negotiated, then you are going to be in trouble.

I would urge that you vote against the pending motion.

The SPEAKER: The Chair recognizes the Representative from Madawaska, Representative McHenry.

Representative MCHENRY: Mr. Speaker, Ladies and Gentlemen of the House: The superintendents and the school boards fear this piece of legislation. I have had calls from my own superintendent and I asked what the fear was. When you treat our teachers with respect, and I always felt that my school board and my superintendent and our teachers negotiated in good faith and they have always come out with a good contract. I had heard from the rank-and-file (not from the leadership of the union) that they wish they could bargain on these issues but they are grayish so we are saying that we ought to make them clear that you can bargain on these issues. Ladies and gentlemen, you know very well that in the State of Maine, as well as anywhere else, when you sit down and negotiate a contract, you get what they tell you are going to get, irregardless of what we may think.

When the school board sits down to negotiate with the teachers and the teachers wants such and such, if the school board says you are going to get this, they have already decided before they sat down what they can negotiate on and what they can give and how much money they have, what you give here, you are going to have to take away there. That is negotiating, that is the way it is done as we all know. We should all know that.

My superintendent, when I said that I think that when you negotiate, you respect people, you get respect. If you treat people well, you get treated well; if you treat them bad, you get treated bad. I know of some school boards where they have contracts that have been pending for three years. They don't have any contract. As I said awhile ago, superintendents that figure that everything is educational policy that they ought not to negotiate a darn thing. We should not fear negotiating in good faith with our teachers. I truly believe that my teachers are out there for the best interest of the children, not like Mr. Brunelle said in the paper here. He said that they are out there for the best interest of themselves. Maybe Mr. Brunelle is but I don't believe the majority of the teachers are. There might be a few here and there. Some of us here are of self-interest in this body just like anywhere else. There is always a rotten apple anywhere but I truly believe that the majority of teachers are out there in the best interest of our children. Those teachers have children and I truly believe that they want what is best for their children too. We are not in a vacuum here. These teachers need clear language and I am willing to give them clear language.

Years ago, when we first started with these negotiations, all heck was breaking loose because we would be losing control. That is a fib, a lie, it is not true, we are not losing control. Let's treat our people with respect and we will get respect back. If we do not treat them with respect, we will not get respect and we don't deserve it.

I hope you vote for this.

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

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

I would like to direct this question to Representative Ruhlin or anyone who would like to answer it.

I want to be perfectly clear with respect to two things. First of all, there are certain parameters here and, as I understand it, this doesn't really affect a budget, the budget is set by the school board or school committee or budget committee as it is called. More specifically, since the statement was made that this would make the school calendar negotiable, it is my understanding on the basis of my discussions with people who promote this bill that this does not affect the school calendar, that the school calendar would be in the hands of the school board, period.

The SPEAKER: The Representative from Easton, Representative Mahany, has posed a question through the Chair to the Representative from Brewer, Representative Ruhlin, who may respond if he so desires.

The Chair recognize that Representative.

Representative RUHLIN: Mr. Speaker, Ladies and Gentlemen of the House: I want to thank the good Representative for asking two very intelligent

questions.

This bill will have no effect on the budget. I don't want to prolong the debate but I was really doing a slow little burn here. I hear people in this chamber get up and tell us that the right to negotiate is going to automatically increase the budget? Give me a break! Go get a clue! The right to negotiate by itself does not have an affect on the budget. It is the outcome of those negotiations. So, in answer to the Representative on the first part of the question is that it will not have a direct and immediate effect on the budget.

On the school calendar, and this we went into in great length in the committee, the setting of the beginning of the school year, the ending of the school year, the official vacation periods during the school year are a matter of educational policy established by the school boards within the community and they are not negotiable. I heard one comment that somewhat ties into that — can a teacher walk in and say, I will do this and I will do that. That is not the way it is now, that is not the way it is going to be if this bill passes and it is not the way it is ever going to be as long as we have a democracy. We still believe in the process of negotiations and have to abide by the outcomes of those negotiations.

I hope that I have answered the questions.

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

Representative HASTINGS: Mr. Speaker, Ladies and Gentlemen of the House: While the school calendar as it starts and closes a school year may not be negotiated, I will tell you that vacations are among those items that may be negotiated. They are specifically put in the Committee Amendment that they may be negotiated.

The second thing is compensatory time — that may also be negotiated.

The SPEAKER: The pending question before the House is the motion of the Representative from Madawaska, Representative McHenry, that the House accept the Majority "Ought to Pass" Report.

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

Representative MAYO: Mr. Speaker, pursuant to House Rule 7, I request permission to pair my vote with the Representative from Palmyra, Representative Tardy. 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 Madawaska, Representative McHenry, that the House accept the Majority "Ought to Pass" Report. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 309

YEA - Adams, Anthony, Cahill, M.; Cashman, Cathcart, Chonko, Clark, H.; Clark, M.; Cote, Duffy, Erwin, Farnsworth, Gean, Gurney, Gwadosky, Handy, Heeschen, Hoglund, Holt, Kerr, Ketover, Kontos, Larrivee, Lawrence, Lemke, Mahany, McHenry, McKeen, Mitchell, J.; Nadeau, Nutting, O'Dea, Oliver, Paradis, J.; Paradis, P.; Paul, Pfeiffer, Pineau, Pouliot, Rand, Richardson, Ruhlin, Rydell, Sheltra, Simonds, Townsend, Tracy, Treat, Wentworth, The Speaker.

NAY - Aikman, Aliberti, Anderson, Ault, Bailey,

H.; Bailey, R.; Barth, Bell, Bennett, Boutilier, Bowers, Butland, Carroll, D.; Carroll, J.; Coles, Constantine, Crowley, Daggett, DiPietro, Donnelly, Duplessis, Dutremble, L.; Farnum, Farren, Foss, Garland, Goodridge, Gould, R. A.; Gray, Greenlaw, Hale, Hanley, Hastings, Heino, Hichborn, Hichens, Jacques, Jalbert, Ketterer, Kilkelly, Kutasi, Lebowitz, Libby, Lipman, Look, Lord, Luther, MacBride, Macomber, Manning, Marsano, Marsh, Martin, H.; Melendy, Merrill, Michaud, Mitchell, E.; Murphy, Nash, O'Gara, Ott, Parent, Pendexter, Pendleton, Pines, Plourde, Poulin, Powers, Reed, G.; Reed, W.; Richards, Ricker, Rotondi, Saint Onge, Salisbury, Savage, Simpson, Skoglund, Small, Spear, Stevens, A.; Stevenson, Strout, Swazey, Tamaro, Tupper, Waterman, Whitcomb.

ABSENT - Carleton, Dore, Graham, Hepburn, Hussey, Joseph, Michael, Morrison, Norton, Stevens, P.; Vigue.

PAIRED - Mayo, Tardy.

Yes, 50; No, 88; Absent, 11; Paired, 2; Excused, 0.

50 having voted in the affirmative and 88 in the negative with 11 being absent and two having paired, the motion did not prevail.

Subsequently, the Minority "Ought Not to Pass" Report was accepted in non-concurrence and sent up for concurrence.

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

Bill "An Act to Amend the Radioactive Waste Laws" (H.P. 1671) (L.D. 2347)

(Committee on Energy and Natural Resources suggested)

TABLED - February 18, 1992 by Representative JACQUES of Waterville.

PENDING - Reference.

Subsequently, was referred to the Committee on Energy and Natural Resources, ordered printed and sent up for concurrence.

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

Bill "An Act to Provide Regulatory and Permitting Assistance to Businesses" (EMERGENCY) (H.P. 1673) (L.D. 2349)

(Committee on Energy and Natural Resources suggested)

TABLED - February 18, 1992 by Representative MELENDY of Rockland.

PENDING - Reference.

On motion of Representative Melendy of Rockland, was referred to the Committee on Housing and Economic Development, ordered printed and sent up for concurrence.

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

JOINT RESOLUTION SUPPORTING CREATION OF THE WOLFE

NECK INSTITUTE (H.P. 1676)

TABLED - February 18, 1992 by Representative MELENDY of Rockland.

PENDING - Adoption.

On motion of Representative Melendy of Rockland, retabled pending adoption and specially assigned for Tuesday, February 25, 1992.

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

**SENATE PAPERS**

The following Joint Order: (S.P. 925)

ORDERED, the House concurring that when the House and Senate adjourn, they do so until Tuesday, February 25, 1992, at four o'clock in the afternoon.

Came from the Senate, read and passed.

Was read and passed in concurrence.

Bill "An Act Regarding Maine's Comprehensive Early Intervention System for Infants and Children under 6 Years of Age" (S.P. 921) (L.D. 2360)

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

Was referred to the Committee on Education in concurrence.

Bill "An Act to Amend the Underground Oil Storage Facilities and Ground Water Protection Laws and the Uncontrolled Hazardous Substance Sites Laws" (S.P. 919) (L.D. 2358)

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

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

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

**SENATE PAPERS**

Bill "An Act Regarding the Charter for Kennebunk, Kennebunkport and Wells Water District" (S.P. 920) (L.D. 2359)

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

Was referred to the Committee on Utilities in concurrence.

**Reported Pursuant to Resolve**

Report of the Commission on Maine Lakes, pursuant to Resolve 1989, chapter 100 ask leave to submit its findings and to report that the accompanying Bill "An Act to Further Enhance and Protect Maine's Great Ponds" (S.P. 922) (L.D. 2369) be referred to the Joint Standing Committee on **Energy and Natural Resources** for public hearing and printed pursuant to Joint Rule 18.

Came from the Senate with the report read and accepted and the bill referred to the Committee on **Energy and Natural Resources** and ordered printed.

Report was read and accepted and the bill referred to the Committee on **Energy and Natural Resources** and ordered printed in concurrence.

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

**PASSED TO BE ENACTED****Emergency Measure**

An Act to Correct an Omission from the Recodification of Title 30 (H.P. 1568) (L.D. 2210)

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. 105 voted in favor of the same and none against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

By unanimous consent, ordered sent forthwith to the Senate.

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

HOUSE DIVIDED REPORT - Majority (10) "Ought to Pass" as amended by Committee Amendment "A" (H-928) - Minority (3) "Ought to Pass" as amended by Committee Amendment "B" (H-929) - Committee on **Transportation** on Bill "An Act to Amend the Motor Vehicle Salvage Laws" (H.P. 1500) (L.D. 2112)  
TABLED - February 18, 1992 by Representative MACOMBER of South Portland.

PENDING - Motion of same Representative to accept the Majority "Ought to Pass" as amended by Committee Amendment "A" (H-928)

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

Representative MACOMBER: Mr. Speaker, Ladies and Gentlemen of the House: Very briefly, I would like to explain to you why L.D. 2112 is before us and what it does.

I was asked by the Department of Motor Vehicle during the summer to present this bill as a consumer protection bill. I think that describes it quite well.

What it says is that a car that has been in an accident and has been judged to be totalled by the insurance company, all the way through the process from there on, it has to be identified as a car that has been totalled by the insurance company. What usually happens is, you have a car that is totalled, it goes from the insurers to the salvage yard, the salvage yard either repairs and rebuilds the car or they sell it to somebody else who is in that particular business. Once it has been repaired or rebuilt, it can then go onto the used car lot and, without this particular piece of legislation, the consumer out there that we are here to protect, would be unable to know, he doesn't have any way of knowing that this particular car he is being offered on the lot has been a hundred percent totalled by the insurance company.

I think the whole purpose of the bill as Representatives here and of the public, it is up to us in good conscience to make sure that the consumer who is out there buying this particular vehicle has the knowledge that this car had been totalled by the insurance company, that it is a rebuilt car and not a new car with all the original parts.

The SPEAKER: The Chair recognizes the Representative from Farmington, Representative Bailey.

Representative BAILEY: Mr. Speaker, Ladies and Gentlemen of the House: I support the Majority Report for several reasons. It is important that vehicles being totalled by the insurance company be identified to the ultimate consumer after being rebuilt. These vehicles have been described as "good as new" and I don't believe that for several reasons.

Most vehicles today are designed by computer, just about any road condition can be simulated during the design phase and that information is used to build the vehicle with proper support at stress points. Frames are not used in most vehicles today but unitized construction so each box, bend or curve provides the strength. When that strength is compromised in a crash situation, the basic design has been altered.

When the vehicle is repaired or rebuilt, the pulling, stretching, pounding, welding, and heating of the metal compromises the structure integrity of the vehicle to some degree. This extensive repair work also interferes with the various coatings that protects the parts from rusting or corroding. These conditions may not show up for two or three years down the road. The rebuilders do an excellent job because they have sophisticated equipment but it is very difficult for the average person to identify the vehicle as salvage or rebuilt because there may be metal fatigue that can't be seen by a visual inspection and that component may be critical to the steering, to the suspension or other safety-related parts.

It is also true that a new car could have some flaws, some cracked metal, and the only way to check that is through certain penetrating dyes or black light or x-ray of that type of situation. If you have a problem with a car that has been manufactured, then you have the warranty and you have every recourse back to the particular manufacturer.

In the case of a salvage vehicle, (at the present time) the owner may not know that the vehicle is salvaged and goes back to the dealer when he or she finds out that this is a salvaged vehicle and that is when the problem starts because the dealer may not know.



I believe it is more responsible to identify a salvaged vehicle to the owner and any subsequent owner and then there is no question. That person who bought the vehicle knows exactly what they have so that should take care of any potential lawsuit and it is easier to track.

I hope you will support the Majority Report.

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

Committee Amendment "A" (H-928) was read by the Clerk.

Representative Boutilier of Lewiston offered House Amendment "A" (H-956) to Committee Amendment "A" (H-928) and moved its adoption.

House Amendment "A" (H-956) to Committee Amendment "A" (H-928) was read by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Lewiston, Representative Boutilier.

Representative BOUTILIER: Mr. Speaker, Ladies and Gentlemen of the House: We have just passed an amendment the first time through the House, which in my mind is going to bring us closer to having proper identification of vehicles in terms of the title so when consumers do buy vehicles which are salvaged, it is going to put a greater onus upon insurance companies and upon individuals to notify individuals who are buying that vehicle that it has in fact been in an accident. I have chosen not to fight that issue.

What I have before you today is an amendment which goes a step further in terms of consumer protection and the safety of the vehicle and that is to create in this state reinspection stations. Reinspection stations (which are used by other states) takes a vehicle of which we have about 5,000 per year in the State of Maine and which have been determined to be totalled loss vehicles. These vehicles have been in major car accidents and then bought by a salvage pool and subsequently purchased by a used car dealership or by a salvager who then repairs and rebuilds that vehicle to the point where it can run on the road. That might mean repairing the front end, it might be repairing the sides of the car, the rear end, it might mean in the case of a unibody construction, restraightening that unibody or redefining that unibody. What happens in that case, however, is that the title remains branded with a phrase called "salvaged vehicle" and that vehicle for the life of that vehicle is branded with "salvaged vehicle." No matter who repairs that vehicle, no matter how good it is or how poor it is or how safe or unsafe that vehicle is, it is always given that same branding.

What I am asking is that reinspection stations be created, a type of super reinspection station whereby these vehicles, after they have been rebuilt, would have to meet a criteria established by the state police in terms of safety, in terms of the ability to prevent theft because certain types of vehicles that are built sometimes are easy to break into and therefore they would have to meet a criteria that would put them in the same criteria as a regular used car. Therefore, the loss of value would not occur as much and in fact the vehicle would be safer for the individual that is purchasing that vehicle. For instance, if a salvage yard out-of-state approaches a used car dealership or a salvage pool in the State of Maine and says they have a vehicle that has been in a major accident and they use the phrase, "we have a

clean title" which means that title has never stated on it that that vehicle was a total loss and thereby becomes a salvaged vehicle. By passing this amendment that we just passed, we changed that. It would mandate that they must have a salvaged designation on that title. What I am saying is that that is fine but let's go the next step. If a person purchases that vehicle and wants to rebuild it in the State of Maine, they would then have to pay a fee to go to a reinspection station, get that car certified that it is in fact safer, that it has been rebuilt to certain specifications and thereby get a title which would rename or say, "used rebuilt." It would increase the value of that car, it would tell the consumer that they have met the safety criteria that is above what is done for a salvaged vehicle. It would put better cars on the road for those consumers who buy those types of vehicles which tend to be less expensive than a normal used vehicle and would begin to set up a process by which we say, if you are going to sell this type of vehicle and spend money to rebuild it and meet the criteria for this type of inspection, it gives the consumer that awareness that we think is important. It would show that it has been in an accident and that it has been rebuilt to a level that is consistent with the safety we want to happen.

I drafted the bill in such a way that it is revenue neutral and it pays for itself over time. It creates these stations throughout the state, which would be done by private individuals, private businesses which would have the appropriate equipment, the x-ray, the black light, the unibody straightening equipment — they would need all of that to get this criteria. It would be monitored and overseen by the state police by rules and regulations they promulgate and would begin in 1993. I think it is a good move forward, I think it is a good supplement to the bill we just passed and I would urge this House to adopt it.

I would request a roll call.

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

Representative MACOMBER: Mr. Speaker, I move indefinite postponement of House Amendment "A" (H-956) to Committee Amendment "A" (H-928).

Mr. Speaker, Ladies and Gentlemen of the House: I have only had the amendment on my desk for an hour or so but I think I have heard along the way what some of the things it would do. I hope you would look at it quickly if you could and look at some of the things that it demands. It says that the Chief of the State Police may license up to 50 inspection stations, geographically distributed throughout the state — I guess my question is, do we have 50 places distributed throughout the state that would have all these things like the black light, the lasers and everything else that is necessary to do this particular inspection?

It says "In order to qualify for an official inspection station, they must have all the additional equipment, facility and training requirements." You go on and it means also that they have to have a \$50 fee and I have my doubts as to whether we would be able to find that number of people. If you go on to Page 3, it means that we have to provide funds for two new state troopers. If we are going to have two new state troopers, I think we have things that are much more important for them to be doing than to be

out there doing inspection stations.

It says that \$127,000 will be coming out of the Public Safety Fund. At the very bottom on revenues, it says "that this increase will be derived from collections of 2,500 inspections and 125 anticipated inspections." Remember that word "anticipated revenue."

The bill that you have before you, the Majority Report, without this particular amendment, does virtually the exact thing we are talking about. It says to that consumer that when you go to a used car lot and you buy a car, you have the right to know that that car has been 100 percent totalled by an insurance company at one time or another. I think that is only fair that the public has that right to know.

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

Representative GWADOSKY: Mr. Speaker, Ladies and Gentlemen of the House: I, like many of you, have just had a chance to look at this. I heard that there was something coming on this and I applaud the efforts of the Representative from Lewiston, Representative Boutilier with this amendment because I think he is attempting to take a new look at a problem that I think we all want to solve. I applaud the efforts of the House Chair and Representative Bailey and their comments and concerns regarding consumers and, frankly, I agree with them, that in any circumstance in whatever we do, I would certainly hope that we would find ourselves in a situation where we are able to provide consumers with the information to specifically say whether or not a car has been in rebuilt or totalled in salvage. I think that is important information for any consumer to know.

I have talked to a couple of salvage people in my district in the last day or so attempting to get their opinions on this because I knew something was coming but I hadn't had a chance to really see it yet. I wondered what they would think about this somewhat of a revolutionary idea of having to go through a reinspection process and still list these cars as being rebuilt even after that point so that there is no confusion that these cars have been totalled and are rebuilt. The fact that many of my garages have said, if you went through this process and did go through reinspection, you might be able to actually add value back to the cars later on so that eventually you can be selling these cars for a lot more down the road. Insurers would benefit more, consumers would benefit more and I am not sure whether this does it or not.

If somebody would be nice enough to table this for a day, I would like to talk to my salvage companies and see if they think this might help them. That may not be the case but, in any event, my bottom line is to make sure those consumers like have been referenced here are going to get the protection they need. This is a new, novel idea adding a reinspection to the entire process, something that I might want to embrace, but I would like to spend a day thinking about it and touch base with some of the garages in my area. So, if someone would be nice enough to table this, perhaps we all could take another look at this and see if it is something worthy of our consideration.

On motion of Representative Handy of Lewiston, tabled pending the motion of Representative Macomber

of South Portland that House Amendment "A" (H-956) to Committee Amendment "A" (H-928) be indefinitely postponed and specially assigned for Tuesday, February 25, 1992.

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

Bill "An Act to Prevent Certain Restraint of Trade Practices" (H.P. 1291) (L.D. 1866)  
 TABLED - February 18, 1992 by Representative GRAHAM of Houlton.  
 PENDING - Adoption of Committee Amendment "A" (H-919)

On motion of Representative Sheltra of Biddeford, retabled pending adoption of Committee Amendment "A" (H-919) and specially assigned for Tuesday, February 25, 1992.

On motion of Representative Anthony of South Portland, the House reconsidered its action whereby Bill "An Act to Establish a Supervised Community Confinement Program for Certain Prisoners of the Department of Corrections" (S.P. 916) (L.D. 2353) was referred to the Committee on the Education in non-concurrence.

On further motion of the same Representative, was referred to the Committee Joint Select Committee on Corrections in concurrence.

On motion of Representative Anthony of South Portland, the House reconsidered its action whereby Bill "An Act Relating to the Arthur R. Gould School" (H.P. 1695) (L.D. 2375) was referred to the Joint Select Committee on Corrections.

On further motion of the same Representative, was referred to the Committee on Education, ordered printed and sent up for concurrence.

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

**BILL HELD**

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)

- In House, Passed to be Enacted on February 18, 1992. HELD at the request of Representative ANTHONY of South Portland.

On motion of Representative Anthony of South Portland, the House reconsidered its action whereby L.D. 1775 was passed to be enacted.

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

Representative GURNEY: Mr. Speaker, Men and Women of the House: I hope you will oppose

reconsideration as we have already debated this issue extensively.

Representative Tracy of Rome requested a roll call on reconsideration.

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

Representative ANTHONY: Mr. Speaker, Ladies and Gentlemen of the House: I asked for this reconsideration because I believe this is too important a bill to let go in the way it was.

This bill which circumscribes the liability of ice rink arena operators, I believe, sets bad precedence. I know that we set the precedence years ago in the area of the ski industry and I understand that. The ski industry had a difficult time and needed the sort of legislation that this represents, namely, legislation that suggests you assume the risk when you get on the ski slopes. I understand that we did that with roller rinks last session and I regret that. If there was a way that I could add an amendment to undo that to this bill, I honestly would but it, obviously, would not be germane. So, I am left with at least preventing the further spread of this because I can just see it coming to many, many industries. In my experience, in our experience in the Judiciary Committee, there are a lot of industries that would like to be exempted from liability or have their liability circumscribed.

The liability of an operator of an ice-skating rink, it seems to me, should be that set under the common law rules. The common law rules suggest that if you operate it properly the way most people do, then there is no problem. If you operate it negligently, then you are subject to a lawsuit.

As a practical matter, what happens is anybody operating anything like this goes out and buys liability insurance. Certainly if you were operating an ice arena, you would go buy liability insurance. What we found in the Judiciary Committee when dealing with the actuaries for these companies is, when you ask them if we pass this sort of legislation, will it affect the rates? The answer we get uniformly is no.

What you are really doing is you are hurting the public, restricting their access to recover for any damages without any comparable help to the industry involved. Unbalanced, it doesn't make sense. Specifically in this case, what I look at is, what about the possibility of an ice arena operator allowing groups of rowdy people on the ice that they know when they come they are somewhat under the weather, they have had too much to drink and that they have a reputation for being rowdy, they have been there before and were kind of rowdy and you are in fact injured by one of those rowdy people? If you look at the bill itself, and I realize that most of you don't have it because it was a holdover bill, it says "that insofar as the dangers inherent in ice-skating are obvious by participating in ice-skating, a person accepts those dangers. Those dangers include, but are not limited to, injuries that result from collisions with other skaters." Thus, if you have a collision with other skaters, you have no possibility, regardless of the situation, to ever bring a lawsuit against the operator of the rink. I don't think that is reasonable if the operator has in fact been negligent in the way they operated the rink.

I realize that I am a lawyer and people can write this off that it is a lawyer speaking but I don't do

this sort of law myself. I have no particular advantage passing this, I am trying to look out for the public good here. If I really felt that the industry was in trouble and I asked what happened at the public hearing and ice rink operators did not say that they ever had any trouble. In fact nobody in the committee that I spoke to ever remembered any experience of ice rink arenas being subject to lawsuits so it's not like there is a problem that we are trying to address with this.

I think what happened is that the ice rink arena saw a good thing, they thought maybe in the long run it would affect their rates but our experience is that it won't. I don't think it makes good public policy to be messing with the common law unless there is a clear problem with an industry in trouble. This is not such a situation, so I hope you that you will reconsider enactment and vote against enactment of this legislation.

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At this point, the Speaker appointed the Representative from East Millinocket, Representative Michaud, to act as Speaker pro tem.

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The House was called to order by the Speaker pro tem.

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

Representative RICHARDS: Mr. Speaker, Ladies and Gentlemen of the House: I hope that you don't think that I am a lawyer getting up like other lawyers have gotten up on this bill and that that means it is a lawyers bill or whatever. The fact of it is, as a lawyer, just like any other profession in this body, we bring a certain talent and hopefully we are here to collectively share those and trust each other. I don't represent a plaintiff nor have I ever represented a plaintiff in an ice-skating rink accident. I don't represent an ice-skating rink.

I will make this as brief as I possibly can but I also feel that it is a very important bill. Before we pass something as rash as I feel this is, I feel that part of the process is that each committee has a certain type of bill that comes to their committee, the committee of jurisdiction, and in the four years that I have been here, we have had all bills that dealt with immunity. Part of the process we go through is looking at what precipitated the bill, what type of cases are out there, what the actuaries say, what it will do to insurance rates — basically, we give it a very thorough working over. Unfortunately, we have been left to this process here in the House that has been a lengthy process, too lengthy to basically have a work session here on the floor and understanding what this bill does and doesn't do. Unfortunately, I wasn't able to fully answer the Representative from Portland's question, Representative Richardson, that he asked me the other day about the common law duties. After reading this gobbled language in Section 625 of this bill, and I say gobbled because it takes many readings and believe me many lawyers will interpret it differently, he referred to common law duties —

well, the common law duties in here only refer to those common law duties dealing with this one portion of the bill and that deals with structures on the ice-skating rink. So you inherit no other common law duties which are negligence. In other words, I constructed the rink negligently and did all kinds of things dealing with structures or I put an item there that warned of a sink hole or whatever and I do it properly. If I do it negligently, then I would be liable.

This bill is more importantly about personal injury and it is immunity against personal injury. I have heard people say that we have done it for ski resorts so why shouldn't we do it for ice-skating facilities? Well, the difference is that you don't have three, five, six and seven-year olds typically going off the expert slopes. If they did, they would be qualified (hopefully they would be supervised) and obviously somebody down below cannot supervise every single slope and every activity. However, when you have a beginners slope that is as wide as this room and is a short distance, there is a lot of control because you have a lot of people on there horsing around and all those other types of things that can cause injury to beginners, this is usually stopped. If it is not stopped, then they could be negligent.

The fact of it is that this bill here deals with control, control of an ice-skating rink. We have that ability in a typical reality situation that we can control that type of activity. So, what we are saying is that we don't care if we can control it or not, we want immunity. I can tell you what we are doing here today is we are making the insurance companies happy because they are saying that we are going to lower your rates but I can tell you, based on what my colleague Representative Anthony has said, that in the course of an immunity bill, none of the insurance companies have fessed up to the fact to say, yes, if you pass this immunity bill, it will not allow the person recovery, but your rates will not go down.

I hope you will move to reconsider this so we can go on to kill this bill.

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

Representative CATHCART: Mr. Speaker, Men and Women of the House: I am speaking tonight, not as a lawyer, but as a very poor skater. I, unfortunately, grew up in the south where we didn't have ice to skate on so I never tried to learn until I had children of my own and lived in Maine.

When I read the duties of the skater in this bill, it is very frightening to me. It says that I as a perpetual beginning skater, not only has to be aware of my own skill in skating, but I have to watch out for all the other skaters too. It also says that if I am the operator of the ice-skating rink, my only duties are to post the duties of skaters and inherent dangers of skaters, to maintain the equipment in a reasonably safe condition and maintain the signs, symbols and posted notices. It doesn't say anywhere that the operator has a duty to keep reckless, unsafe skaters from injuring me when I am out there trying to learn to skate. It doesn't give them any control at all, any responsibility for controlling what goes on at that rink and this frightens me.

I urge you to reconsider enacting this bill.

The SPEAKER PRO TEM: 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 PRO TEM: The pending motion before the House is the motion of the Representative from South Portland, Representative Anthony, that the House reconsider its action whereby L.D. 1775 was passed to be enacted.

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

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

The SPEAKER PRO TEM: The Chair recognizes the Representative from Athens, Representative Rotondi.

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

The SPEAKER PRO TEM: The pending motion before the House is the motion of the Representative from South Portland, Representative Anthony, that the House reconsider its action whereby L.D. 1775 was passed to be enacted. Those in favor will vote yes; those opposed will vote no.

## ROLL CALL NO. 310

YEA - Aikman, Anthony, Ault, Bell, Butland, Cathcart, Chonko, Clark, M.; Coles, Cote, DiPietro, Duplessis, Erwin, Farnsworth, Foss, Garland, Gean, Goodridge, Handy, Heeschen, Hichens, Hogle, Joseph, Kerr, Ketover, Ketterer, Kilkelly, Kontos, Larrivee, Lawrence, Lemke, Lipman, Luther, Macomber, Manning, McHenry, Michaud, Mitchell, E.; Mitchell, J.; Morrison, O'Dea, Oliver, Ott, Paradis, P.; Pendexter, Pendleton, Pfeiffer, Pineau, Powers, Rand, Reed, G.; Richards, Rydell, Saint Onge, Simonds, Skoglund, Treat, Wentworth.

NAY - Aliberti, Anderson, Bailey, H.; Bailey, R.; Barth, Bennett, Boutilier, Bowers, Cahill, M.; Carroll, D.; Carroll, J.; Clark, H.; Constantine, Crowley, Daggett, Duffy, Farnum, Farren, Gould, R. A.; Gray, Greenlaw, Gurney, Gwadosky, Hale, Hanley, Hastings, Heino, Hichborn, Holt, Jacques, Jalbert, Kutasi, Lebowitz, Libby, Look, Lord, MacBride, Marsano, Marsh, Martin, H.; Merrill, Murphy, Nadeau, Nash, Nutting, O'Gara, Paradis, J.; Paul, Pines, Plourde, Poulin, Pouliot, Reed, W.; Richardson, Ricker, Ruhlin, Salisbury, Savage, Sheltra, Simpson, Small, Spear, Stevens, A.; Stevenson, Swazey, Tamaro, Tracy, Tupper, Waterman, Whitcomb.

ABSENT - Adams, Carleton, Cashman, Donnelly, Dore, Dutremble, L.; Graham, Hepburn, Hussey, Mahany, McKeen, Melendy, Michael, Norton, Parent, Strout, Townsend, Vigue, The Speaker.

PAIRED - Mayo, Rotondi, Stevens, P.; Tardy.  
Yes, 58; No, 70; Absent, 19; Paired, 4;  
Excused, 0.

58 having voted in the affirmative and 70 in the negative with 19 being absent and 4 having paired, the motion to reconsider did not prevail.

The Chair laid before the House the following matter: Bill "An Act to Grant Immunity for Directors of Rural Electrification Cooperatives" (S.P. 915) (L.D. 2352) (Came from the Senate, referred to the Committee on Judiciary) which was tabled earlier in the day and later today assigned pending reference.

Subsequently, was referred to the Committee on Judiciary in concurrence.

Representative Marsano of Belfast moved that the House reconsider its action whereby the House voted to recede and concur on Bill "An Act to Amend the Secret Voting Provision Governing School Administrative District Budget Proceedings" (H.P. 1440) (L.D. 2052) on which the Minority "Ought Not to Pass" Report of the Committee on Education was read and accepted in the House on February 11, 1992; came from the Senate with the Majority "Ought to Pass" Report of the Committee on Education read and accepted and the Bill passed to be engrossed as amended by Senate Amendment "A" (S-548) in non-concurrence.

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

Representative MARSANO: Mr. Speaker, Ladies and Gentlemen of the House: This matter came up very early in today's session and was a matter that was debated at some length the other day. As many members of the House may remember, the Representative from Fairfield, Representative Gwadosky, had a similar amendment to that which was put on in the other body. It is the matter which calls for 10 percent for the secret ballot in school district budget meetings.

The present amendment would simply strip that out and I have to admit that I am not sure exactly what it would do. It is different from the bill in that the bill would have required a majority vote; this would strip out the requirement for a 10 percent vote which might mean that the body would either be able to have a vote to determine what percentage of voters would be necessary to obtain a secret ballot vote or might require, in every instance, the majority vote as the original bill intended.

Since that matter was debated with such intensity before, I thought that the matter ought to be subject to a roll call vote when the motion to recede and concur was placed before the House. Unfortunately, I was unable to get the Speaker's attention in time to do that. I would now ask that we have a motion to reconsider and that when the vote is taken, it be taken by the yeas and nays.

I would ask that so that the motion to recede and concur can then be subject to some discussion if there is intent or interest on the part of those people who felt so strongly the last time this matter was before the House.

The SPEAKER PRO TEM: 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 PRO TEM: The pending question before the House is the motion of the Representative from Belfast, Representative Marsano, that the House reconsider its action whereby the House voted to recede and concur on L.D. 2052. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 311

YEA - Aikman, Aliberti, Anderson, Anthony, Ault, Bailey, H.; Bailey, R.; Barth, Bell, Bennett, Boutilier, Bowers, Butland, Cahill, M.; Carroll, J.; Chonko, Clark, H.; Clark, M.; Coles, Constantine, Cote, Crowley, Daggett, DiPietro, Donnelly, Duffy, Duplessis, Erwin, Farnsworth, Farnum, Farren, Foss, Garland, Goodridge, Gould, R. A.; Gray, Greenlaw, Gwadosky, Hale, Hanley, Hastings, Heeschen, Heino, Hichens, Hogleund, Holt, Jacques, Jalbert, Ketover, Ketterer, Kilkelly, Kontos, Kutasi, Larrivee, Lawrence, Lebowitz, Libby, Lipman, Look, Lord, Luther, MacBride, Mahany, Manning, Marsano, Marsh, Martin, H.; Mayo, McHenry, Melendy, Merrill, Mitchell, J.; Morrison, Murphy, Nash, Nutting, O'Gara, Oliver, Ott, Pendexter, Pendleton, Pfeiffer, Pineau, Pines, Plourde, Poulin, Pouliot, Powers, Rand, Reed, G.; Reed, W.; Richards, Richardson, Ricker, Rotondi, Ruhlin, Rydell, Saint Onge, Salisbury, Savage, Sheltra, Simonds, Skoglund, Small, Spear, Stevens, A.; Stevenson, Strout, Swazey, Tammaro, Tracy, Treat, Tupper, Wentworth, Whitcomb.

NAY - Carroll, D.; Cathcart, Gean, Gurney, Handy, Joseph, Kerr, Mitchell, E.; Nadeau, O'Dea, Paul, Waterman.

ABSENT - Adams, Carleton, Cashman, Dore, Dutremble, L.; Graham, Hepburn, Hichborn, Hussey, Lemke, Macomber, McKeen, Michael, Michaud, Norton, Paradis, J.; Paradis, P.; Parent, Simpson, Stevens, P.; Tardy, Townsend, Vigue, The Speaker.

Yes, 115; No, 12; Absent, 24; Paired, 0; Excused, 0.

115 having voted in the affirmative and 12 in the negative with 24 being absent, the motion to reconsider did prevail.

The SPEAKER PRO TEM: The pending motion before the House is recede and concur.

The Chair recognizes the Representative from Berwick, Representative Murphy.

Representative MURPHY: Mr. Speaker, Ladies and Gentlemen of the House: I would hope that you would not vote to recede and concur so we can go on to adhere to our motion of the other day.

This bill is not a bill about 50 percent or 10 percent — this bill is actually about the rights of everybody in this country to a secret ballot. It is a right to be able to vote without being intimidated.

The other day it was insinuated that those of us who voted for the 10 percent to hold back against L.D. 2052 that somehow we were against teachers — I don't think there is anybody in this legislature who are against teachers. There certainly is no one who has any more respect for teachers than I do. I always have and I probably always will. I have always thought if we gave the teachers back the right to educate, we would have a much better education system. When we took the rights away from them, that's when we got in trouble.

This is on the budget and we all know that when we have a school administrative district, in most communities it is usually the largest employer in the

district of three towns. Therefore, when we have a budget meeting and we have an open forum, we should have the right (with the 10 percent vote) if we want a secret ballot. People who are there feel intimidated because they say they are afraid, whether it is real or perceived, that this may be taken out on their children the next day. Other people who work there say the same thing. They say, "When we have to raise our hands, we have to go with the budget." I would agree because if I was a teacher or I was a custodian or whatever I happened to be in that school system, I would be right there in the front row voting for my pay raise just like everybody else and I respect them for that. But, the people who are paying the bills, the taxpayers, feel that there is no point of going because there is so many more of that industry being employed in those towns that they have nothing to say. Even if they discuss it with some of the other employees, they say they cannot vote by raising my hand, we have to have a secret ballot.

What this is doing is it is taking the right of the minority away from them to even speak, to be able to speak without being intimidated. I don't believe that the constitution of this country or this state ever intended for the minority not to have the right of a secret ballot. However, I think this bill when it was put in in 1983 by Representative Ridley of Shapleigh, and this is the reason that he entered this bill in this legislature, was at 10 percent for the reasons I am giving you tonight so that everybody who wants to vote and vote with secret ballot has that right. Some districts may choose not to, that is entirely up to them, but let 10 percent of those people there and voting have a right to vote a secret ballot which the constitution of this country gives us so everybody can have a right to vote in secrecy.

I hope you will not support the motion to recede and concur so we can adhere to our former action.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Fairfield, Representative Gwadnosky.

Representative GWADOSKY: Mr. Speaker, Ladies and Gentlemen of the House: Speaking as the Representative from Fairfield, certainly not as the Majority Leader, on this issue because this is an issue that each of us should feel free to vote our own consciences. I apologize for the confusion about getting this bill back to a position of receding and concurring. I wasn't aware that the Representative from Belfast was unable to get the Speaker's eye on that motion but I was more than willing to vote to reconsider and was pleased to vote to reconsider because I didn't want people to be in a position not to be able to vote for this, up or down, whether you think it is a good idea or a bad idea. Frankly, reasonable people can disagree on this particular issue.

I want to spend just a moment, I know it is late, giving you the rationale of my support on behalf of my constituents for this particular measure as amended. I had hoped to amend this bill last week when the bill went to the other body on a vote of 80 to 62 against this bill, I talked to members of the other body who were willing to put the identical amendment back on to put it in this form.

There has been a great deal of discussion about the 10 percent rule. As you might remember from the debate last week, in your school budget meeting now, there happens to be a 10 percent threshold and

anytime people want to have a secret ballot, if 10 percent of the members present vote to have a secret ballot, the moderator would have a secret ballot.

For a town budget meeting, you don't have that same requirement. There is no statutory provision for a town budget meeting that says you have to have a 10 percent requirement. Technically, if one person at a town budget meeting wanted to have a secret ballot, the moderator could choose to order that.

There was a lot of discussion last week about whether or not the employees of the school district should be allowed to vote and, frankly, we had the same debate in my town at the last three school budget meetings. There was a tremendous debate as to whether or not these school employees should be allowed to vote on the school budget in their district. They were reminded time and time again that these school employees were citizens of my community, they were taxpayers of my community, and they also had children in the school in many instances in that community and certainly they have the right to vote on the school budget before them at that time.

Secondly was the issue of intimidation, that somehow it is not right to put people in an intimidating situation of voting against a budget. Each district is probably different. I can think of specific instances in my district — my next door neighbor happens to be a kindergarten teacher and I remember when we went to the school budget meetings and her mother who is also an editor for the Waterville Morning Sentinel was the most vocal critic of the school budget every single year. She is very, very articulate and my neighbor is usually under the seat by the time the school budget meeting is over with. She is not intimidated, never has been intimidated by the fact that even a member of her family happens to be an employee of the school district.

Look at the tragic circumstances, at least I call them tragic, in Gardiner where you had an extremely large crowd who turned down and made drastic cuts in the school budget. I say tragic only because there was a situation where you had students who were attempting to justify why their budget shouldn't be cut and those Representatives here from Gardiner will tell you that they were shouted down. They were booed down to the extent that they were not even allowed to make their case. That certainly doesn't sound like intimidation to me by individuals who wanted to hear or didn't want to know how they were being voted upon.

In my instance, the request to sponsor legislation didn't come from school employees, it didn't come from faculty, it came from parents. We have a school budget meeting, we have four towns, and in the last three years as the budgets are getting tighter and tighter and tighter, the attendance has grown dramatically at our school budget meetings, 300, 400 and 500 people started attending these school budget meetings. What has happened is that we have a Concerned Citizens group who have been very vocal about their concerns about cutting the budget. They have some good ideas. Some aren't so good. I agree with them sometimes; sometimes I don't. They are a small group and each and every year, they have begun a process of asking for secret ballots, not on just one issue, but on every motion through the process. As I said, we have four separate communities in our school district and what happens

is it takes at least an hour to vote on each motion because we have to go through this register in each town, check off the names, get a ballot, go around and get it checked off, and go through and count them. The concern of young parents who asked me to submit legislation was that they felt that they were being intimidated. They felt that they were being disenfranchised from the process. They were there with their young kids and when you are there with young kids with 500 people, it is a long night. With tears in their eyes, after two hours, had to leave. They couldn't vote anymore because a small group of people were dictating the rules. You know that a person who dictates the rules often gets to finalize the end product. The person who sets the table gets to cut the pie. We had day care there and I watched the parents — when you have day care there for 25 or 30 people and there is 500 people there with their kids and they are carrying their young kids, one, two five, six, and seven-year olds in their arms around and around this building and they say, "Why can't we just vote, why does a small group of people continue to tell us what we can do, doesn't the majority rule count for anything?" I said, "What would you like me to do?" We sat down, had a meeting and they said, "It seems to us that it would be reasonable if a majority of the people here wanted to have a secret ballot, we could have a secret ballot. But in this instance, they are continuing to drag this process out for hours and hours." These people had to leave without getting a chance to vote on a budget that was really important to them.

So, I submitted the legislation and had the public hearing. I had somebody from the committee talk to me right after the public hearing, after the workshop, and they said the vote was like 12 to 1. A couple of days later, it was a party line vote, as I remember, close to a party line vote. It certainly was a party line vote when the issue came up in the House. I remember talking to a Representative from the committee and I said, "Boy, I was surprised that that ever became a party issue." This person said, "Well, it wasn't originally but it became that way." Certainly the fact that my name was on it probably helped that, maybe, maybe not, I don't know if that is the case or not, but I hope that is not the case because I think the issue deserves consideration.

The amendment that I was going to put on that bill and the amendment that is now on the bill deals with the 10 percent. It takes off the 10 percent and now has no threshold. It treats school budget meetings the same way we currently treat, statutorily in law, town budget meetings. So, if one person wanted to have a secret ballot, I guess the moderator could call that. The point is, whatever happened to local control? It is right here. We are not talking about home rule, we are going to allow each community in the State of Maine to make a determination as to what is the standard they will use when it comes to voting for their school budget. It might be 1 percent, it might be 5 percent, it might be 10 percent, it might even be 50 percent, but that will be up to each community to make that decision and up to the moderator working with that community to make that determination. It treats school budget meetings the same way we currently treat town budget meetings and I think that is fair, I think that is consistent, I think it is really what we ought to be doing.

I have confidence in the ability of my people in my towns to make that choice and I would hope that

you would have as much confidence in your constituencies back home to make that decision as to what is an appropriate percentage when it comes to having a secret ballot. If a town is really bound and determined to have a secret ballot every year, there is nothing to prohibit them currently under state law from going to an Australian ballot method. Two towns in my area, just this last year, changed their ordinance to allow that, so instead of having a school budget meeting, they voted an all day referendum and people in each town vote and they count the votes up at the end of the day all by private ballot. There is nothing to preclude that from happening now. If a town really wants to go in that direction, they should. But, for some towns, they like the budget meetings. They like the school budget meetings because they can talk about the budget, they can talk about what is in the budget, they can get input from different people, they can hear the answers to their questions from the school board members and, from a traditional point of view, a lot of communities are going to want to continue to have a traditional school budget meeting. If that is the case, that's fine.

I put this bill in at the request of my constituents, I think I have fulfilled my obligation to them, but beyond that, I think it makes sense because by eliminating now that 10 percent threshold, we are now saying that we are going to allow each community in this state to make the determination. It is home rule at its best and I think it makes sense.

I would encourage you to recede and concur with the other body and pass this bill on to be engrossed.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Corinth, Representative Strout.

Representative STROUT: Mr. Speaker, I would like to pose a question through the Chair to the Representative from Fairfield, Representative Gwadosky.

My question is, I want to be sure on his amendment, are you saying that the school district when they meet on their budget can vote whether they have a secret ballot or not then or are you going to have the law so that the district will go out to referendum and each town in that district will vote to go this method? That is a concern of mine and I haven't had a chance to read the amendment.

The SPEAKER PRO TEM: The Representative from Corinth, Representative Strout, has posed a question through the Chair to Representative Gwadosky of Fairfield who may respond if he so desires.

The Chair recognizes that Representative.

Representative GWADOSKY: Mr. Speaker, Ladies and Gentlemen of the House: I would be happy to respond to the question. Under this amendment, it would not go automatically to an Australian ballot or secret ballot. Those rules and procedures would be determined by the moderator at each meeting in each community as to what they saw to be best for their community.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Corinth, Representative Strout.

Representative STROUT: Mr. Speaker, Men and Women of the House: The other night when this issue came up, I didn't get up and speak on it but now I am going to tell you that I handle it from both ends on this issue. I handle it from the municipal end and a good many times the moderator that handles my town meeting back home will let one person call for a

secret ballot.

The answer I see to your question is, if you are having problems with that process, you had better start your meetings a little earlier because I think we should let democracy prevail. Everybody should have a chance to have a secret ballot.

On the other side, I have been a moderator for school budget meetings for 15 years. I haven't had that opportunity to do that, to allow one person to do this. From what I heard the gentleman saying tonight in his amendment, this would do it. I haven't had any problems for the last umpteen years being the moderator of a school budget meeting the way it used to be. With the new process, if we get 500 people out and it takes all night, so be it. I would like to get 500 people to come to a school budget meeting.

I heard the gentleman from Thomaston saying the other night that he gets a big turnout. The last few years, we haven't had a large turnout. We might get 50 or 60 and it only takes about 5 or 6 to ask for a secret ballot and that wouldn't bother me. If I could get 500 there this year, and as the law is, it would take only 50 to have a secret ballot and I think that is great. I will encourage it and encourage the superintendent to start the meetings at two o'clock in the afternoon rather than seven thirty.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Wayne, Representative Ault.

Representative AULT: Mr. Speaker, Men and Women of the House: This is not a party issue for me. I continue to object to any effort to take away a citizen's right to a secret ballot. That pertains to 10 percent of the people present at a budget meeting, if they request it, I believe they should be afforded that right.

Last week we voted 80 to 62 against this bill and I encourage you to continue to vote against this bill by voting against the motion to recede and concur.

Mr. Speaker, when the vote is taken, I request the yeas and nays.

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

Representative MARSANO: Mr. Speaker, Ladies and Gentlemen of the House: I have moderated school budget meetings as so many other here have for probably 20-odd years and increasingly I have found the complexities of which the Representative from Fairfield speaks. I have a difficulty with this bill because I believe that the Representative is on the right track but I am not sure that this is the right solution even though it is on the right track.

I do want to correct one thing that was said. Those districts that have accepted the right to have a ballot vote on the school district budget still have to come to a budget meeting, a school district budget meeting, the town form of government in the event that that vote is in the negative. That is where we always end up, we always send ours out since we have had that procedure. We have never had it approved by the voters, it always comes back to the district budget meeting because we don't have time to do otherwise.

I do have a great sensitivity toward the people that the Representative from Waterboro, Representative Lord, talked about the other day and to those people whose plight Representative Murphy articulated so well.

My understanding is a little bit different from the Representative from Fairfield's — when I have

ruled, I have never felt that one person has the right to call for a secret ballot, although a person has a right to make a motion that the vote be taken by a secret ballot, which would then call for a majority. I don't know if this bill passed, which would strip out the 10 percent, whether the meeting itself could fix the amount of votes by percentage which would be needed in order to get a secret ballot. That, it would seem to me, to be fair. But somehow, the 10 percent still seems fair in some ways as Representative Ault has said. I think this is a critical question that involves a lot of thought by members of this body as to what is going to be best for the people. I will be anxious to see us arrive at the right decision but at this point, I still am in a quandry as to what that is.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Lewiston, Representative Boutilier.

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

I voted against this provision the last time and I have been a little bit persuaded by the debate so far but I have a question. If I understood correctly, would the moderator unilaterally be able to, without any vote occurring, set a parameter or a threshold for having a secret ballot used for the rest of that meeting dealing with the school budget?

The SPEAKER PRO TEM: The Representative from Lewiston, Representative Boutilier, has posed a question through the Chair to anyone who may respond if they so desire.

The Chair recognizes the Representative from Thomaston, Representative Mayo.

Representative MAYO: Mr. Speaker, Ladies and Gentlemen of the House: In answer to the Representative's question, there is no statutory provision that dictates how moderators would handle that question for a town meeting. There is for a school budget meeting, it is a uniqueness in the law. It would be up, as I have discussed with a fellow moderator from a neighboring community, to an interpretation by the moderator if there was no statutory requirement. Many moderators will order a secret ballot with one request. In fact, the Representative from St. George, Representative Skoglund, does that. That has been his practice for a number of years that he in fact has ordered a secret ballot with one request.

This change that Representative Gwadosky has sponsored would in fact allow that to occur as well at school budget meetings if that were the wish of the people present. This is local control, folks, plain and simple. We are dictating with the state's statutes that it has to be 10 percent in order to get a secret ballot. Let's say there was only nine and a half percent that wanted a secret ballot — is that fair? Is that more fair than if there were eleven? I think the whole thing should be taken off the books. I don't think we have any business dictating rules and procedures for school budget meetings at the state level.

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

Representative LORD: Mr. Speaker, My Learned Colleagues: I hated to get up on this but I think I must. I will go through the procedure that we do in SAD #57. We have a secret ballot and we have a number of items on that ballot that are voted individually. Last time around, I think there were



about 13 or 14 items. About two or three years ago, I was the moderator at the special meeting after three or four of the items were voted down when we had the Australian ballot. The first thing we did after I got up there, I asked what kind of a ballot they wanted and the motion was made for a secret ballot and I polled the house and it was voted on. I think any moderator in his right mind wouldn't want to take on the decision of one voter's request to have a secret ballot, especially if he or she wanted to be moderator again.

I really think what a lot of the towns should be doing is doing what we are doing. I don't know whether they have one item on their ballot to accept the whole budget per se, but I think if you had a line item budget and had the opportunity to vote on each line item, then if there was any disagreement on some of the budget matters, then you would vote it down and then you go into a town meeting type of a meeting and do your business. I will say this, we had a crowd, we had our gymnasium full and we voted, I think, four times on a secret ballot and it took some time but I didn't see too many people leaving either.

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

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

As I understand this, you could still have 50 percent of the people wanting a secret ballot but it would still be up to the moderator whether you have a secret ballot or not? Is that correct? It sounds like moderator control, not local control if that is the case.

The SPEAKER PRO TEM: The Representative from Mexico, Representative Luther, has posed a question through the Chair to anyone who may respond if they so desire.

The Chair recognizes the Representative from Thomaston, Representative Mayo.

Representative MAYO: Mr. Speaker, Men and Women of the House: I thank the Representative from Mexico for helping me further clarify what I said before. If I implied that, I did not intend to.

The rules and procedures for conducting school budget meetings and town meetings are set by the body, decided by those in attendance — all I suggested was that it has been the practice of some people who moderate budget meetings to order a secret ballot with one request if no one objects, like we operate here, a lot of times town meetings can go forward under a system of consent. If someone asked for a secret ballot, the moderator orders the secret ballot and if no one says boo, there will be a secret ballot. It would ultimately be decided by a majority of those people who are present at the budget meeting.

All I am saying is that it is not appropriate for us to dictate what the threshold is, that should be left up to those people who are there. They should be able to conduct their budget meetings the way they want to, not the way that this legislature wants to. I understand that the Representative from Berwick has strong feelings about how she wants to conduct her school budget meetings and they should be allowed to do that, their way. My constituents and I in my school district should be allowed to conduct our meeting the way we want to without you guys telling us how to do it.

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

Representative MUPPHY: Mr. Speaker, Ladies and Gentlemen of the House: We all know that the town budget meetings are 50 plus one, you have to be one over. That's exactly what Representative Gwadosky's and Representative Mayo's bill says. If we vote the amendment on this bill tonight, you are putting it right back to exactly 50 plus one. We all know that. Let's not kid ourselves.

I have already been intimidated but I am going to keep on going anyway. This is not a vote about school budget meetings, it is not a vote about taking teachers' rights away from them to vote, every teacher who is a resident of our district has the right to vote, every worker up there has the right to vote, their families have a right to vote — I wouldn't take anyone's right to vote away from them. We are not a district who ever denied our schools anything but my constituents back home feel as though this is taking their right of a secret ballot away from them. It is not the right to vote, it the right of a secret ballot. That's is what they are so up in arms about. Believe me, they are up in arms, I've never seen anything like it. If we vote today to take that right for a secret ballot away, we all know what the moderator's will say because they have to say it, is that the majority rules. You are taking the right of the minority to speak and to speak in private. That is what you are doing. I don't think the democracy of this country wants to take the right of the minority away from them to vote and vote as they feel they should.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Lewiston, Representative Handy.

Representative HANDY: Mr. Speaker, Ladies and Gentlemen of the House: I will make this very brief. The Representative from Berwick is clearly misstating what the purpose of the bill is as it has been amended by the other body. It puts into the hands of the people the power with the people. I know the Representative from Berwick often talks about local control issues — there is no greater local control than this. The people at the local level will make their rules, there is no 50 percent provision, there is no 10 percent provision in there, it is in the people's hands at that meeting and it is parallel on the town meeting form, plain and simple.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Corinth, Representative Strout.

Representative STROUT: Mr. Speaker, I would pose a question to the gentleman from Thomaston. I heard him make mention that, if I heard him correctly and the gentlelady from Berwick brought it up, the moderator would determine the secret ballot if in fact 50 percent of those people there voted for it. I want to be clear on that. Is this amendment going to allow me as a moderator to call a secret ballot at any time or do I have to have the vote at that budget meeting of at least 50 percent of those voters?

The SPEAKER PRO TEM: The Representative from Corinth, Representative Strout, has posed a question through the Chair to the Representative from Thomaston, Representative Mayo, who may respond if he so desires.

The Chair recognizes that Representative.

Representative MAYO: Mr. Speaker, Ladies and Gentlemen of the House: I never realized that this bill was going to become as complicated as it has when I asked Representative Gwadosky to allow me to cosponsor it.

I will try to answer the question. I think it is

a good question and I will try to answer it the best I can.

Representative Strout, it really is up to what the people in that room will allow. As I said before, Representative Skoglund has moderated the town meetings in his hometown as long as I have been alive I think and in my understanding in discussing this issue with him is that, whenever anybody asks for a secret ballot, he orders it immediately with one request. He is allowed to do that as long as the body allows him to do it. If the body said no, if the body appealed the ruling of the chair, he would then have to submit that question to the body for approval. That is the procedure, that runs the business of this House, it runs the business of the town meetings and it ought to be the procedure to run the business of a school budget meeting. I see I may be being corrected now by my former teacher, Representative Skoglund.

The SPEAKER PRO TEM: The Chair recognizes the Representative from St. George, Representative Skoglund.

Representative SKOGLUND: Mr. Speaker, Ladies and Gentlemen of the House: My good colleague from Thomaston has finally brought me to my feet. I must explain why I have been so choiced of the right to a secret ballot. I was teaching in Thomaston 20 years ago and was attending the school district meeting in the very building where the Representative from Thomaston now moderates our annual school district budget meetings. As I said, I was a teacher and I was sitting down near the front of the gymnasium and when a vote was called for, it was by a show of hands. I raised my hand in opposition, either to the school budget or some item on the school budget. I didn't know until afterwards that my mother and I were the only two people in the hall that voted against the budget. Apparently this caught the attention of the superintendent and he actually wrote to the MTA to expose me as a disloyal member of the profession. I know it sounds ridiculous but it actually did happen. The MTA circulated in their news letter a little notice of the incident, my name was omitted from it, but it was clear who it referred to, and the MTA suggested that every teacher in the state should support the school budget. There is intimidation of voters. Don't assume that the teacher is always voting for the budget.

So, I think it is very important that we follow Representative Murphy's light. We do need a guarantee against the tyranny of the majority. We can't leave this up to the discretion, either of an individual meeting or to an individual moderator. The right to a secret ballot should be safeguarded by this 10 percent and I urge you to follow Representative Murphy's light on this.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Corinth, Representative Strout.

Representative STROUT: Mr. Speaker, Ladies and Gentlemen of the House: I've got it clear now and I want tell you that the gentleman from Thomaston has told you just the way I thought it was.

I am going to give you an example, I had 50 people that come out to my school budget meeting this year. Last year, if 5 or more asked for a secret ballot, I would have called it. Under this amendment, it is going to take 26 people, we are going to have to have 25 plus one, that is exactly what it is going to be in order for me to call a secret ballot. There is no question about it.

If you want to give the moderator, I don't care whether it is town meeting or school board meeting, the option to call a secret ballot anytime, I think that is great, but this does not do it. This is going to make it harder because you will have people come in on their school budget meeting that have special interests and if 26 of them vote against it, you won't have a secret ballot.

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

Representative GWADOSKY: Mr. Speaker, Ladies and Gentlemen of the House: I apologize for getting up twice. If you had told me that I was going to speak twice on this bill, I would have been amazed. For a moment, I thought it was our transportation bill. If Representative Strout gets up again, I am going to look at this bill again because I think there may be some salt sheds in here that I am unaware of.

I can tell you about intimidation. I remember going to a town budget meeting and voting for three police cars in a particular year when it happened to very controversial. Evidently, the majority of the people there wanted one. I was in the minority of people who voted for three police cars because I thought we needed them because the people in the rural areas had made a convincing case to me. I had been in the legislature for only four years at that time and I was assaulted by members of the town, citizens and neighbors who said, "Who are you to vote that way? What do you think you are doing? You are trying to intimidate the process. How could you dare to vote for three police cruisers, you know we only need one." I said, "Look, I've only got one vote like everybody else." It really put into perspective the fact that maybe people do get intimidated sometimes. In that case, they thought the absolute reverse.

I can think of few people in this House that I enjoy more than Representative Don Strout and his arguments can be very convincing. I can disagree with him and enjoy him as much as I am right now because as Representative Mayo described it is absolutely accurate. We are not opening up anything here, we are allowing each town to decide where a moderator can ask for a secret ballot on one vote or two votes, whatever he chooses. If he is then questioned by that, then you open it up to the body, that is democracy.

It seems to me what we are talking about here is a fundamental principle of democracy. You allow people to make the decisions. How many times have you gone door-to-door to your constituents and have them say, "Will you stop telling us what to do in Augusta? Will you stop telling us what to do in Augusta, stop the mandates, allow us to do what we know is best, home rule." This is home rule, nothing more, nothing less. People can make more of this than they want to and, frankly, this may pass, this may fail but life will go on, this does not create any new jobs but it doesn't cost money. So, from my perspective, a 50/50 perspective, we ought to at least consider from that point of view. I think we have spent more than enough time debating this and I appreciate the interest in this. I think it is a good bill, it is absolutely consistent with how we treat town budget meetings and I think it is the right way to go. It allows home control, it allows local control and if you are interested in local control, you will support this bill.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Stockton Springs, Representative Crowley.

Representative CROWLEY: Mr. Speaker, Ladies and Gentlemen of the House: I spoke to this last week and got clobbered so I think I might as well take another shot at it. I should have been clobbered last week because I think you were right. Tonight I think you are wrong. I believe in local control and if you vote for this bill, you will be voting for local control. If you vote against it, you will be voting to have the legislature dictate what the vote will be, pure and simple. I think they have got it right this time and I think we ought to have it so we are not dictating what they are going to do in their school board meetings nor their town meetings. So, let's leave this thing as it is with local control.

The SPEAKER PRO TEM: 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 PRO TEM: The pending question before the House is the motion to recede and concur. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 312

YEA - Aliberti, Boutilier, Cahill, M.; Carroll, D.; Cathcart, Clark, H.; Constantine, Cote, Crowley, Daggett, Duffy, Gean, Gould, R. A.; Gray, Gurney, Gwadlosky, Handy, Hastings, Hogle, Holt, Joseph, Ketover, Ketterer, Kontos, Larrivee, Mahany, Manning, Marsh, Martin, H.; Mayo, Melendy, Mitchell, E.; Mitchell, J.; Morrison, Nadeau, Nutting, O'Dea, O'Gara, Oliver, Paradis, J.; Paul, Pfeiffer, Pineau, Poulin, Pouliot, Richards, Ricker, Saint Onge, Simonds, Swazey, Tammaro, Tracy.

NAY - Adams, Aikman, Anderson, Anthony, Ault, Bailey, R.; Barth, Bell, Bennett, Bowers, Butland, Carroll, J.; Chonko, Clark, M.; Coles, DiPietro, Donnelly, Duplessis, Erwin, Farnsworth, Farnum, Farren, Foss, Garland, Goodridge, Greenlaw, Hale, Heeschen, Heino, Hichborn, Hichens, Kerr, Kilkelly, Kutasi, Lawrence, Lebowitz, Lemke, Libby, Lipman, Look, Lord, Luther, MacBride, Marsano, McHenry, Merrill, Murphy, Nash, Ott, Pendexter, Pendleton, Pines, Plourde, Powers, Rand, Reed, G.; Reed, W.; Rotondi, Ruhlin, Salisbury, Savage, Sheltra, Simpson, Skoglund, Small, Spear, Stevens, A.; Stevenson, Strout, Treat, Tupper, Waterman, Wentworth, Whitcomb.

ABSENT - Bailey, H.; Carleton, Cashman, Dore, Dutremble, L.; Graham, Hanley, Hepburn, Hussey, Jacques, Jalbert, Macomber, McKeen, Michael, Michaud, Norton, Paradis, P.; Parent, Richardson, Rydell, Stevens, P.; Tardy, Townsend, Vigue, The Speaker.

Yes, 52; No, 74; Absent, 25; Paired, 0; Excused, 0.

52 having voted in the affirmative and 74 in the negative with 25 being absent, the motion to recede and concur did not prevail.

Subsequently, the House voted to Adhere.

The following item appearing on Supplement No. 3

was taken up out of order by unanimous consent:

SENATE PAPER

The following Joint Order: (S.P. 926)

ORDERED, the House concurring, that 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, and all its accompanying papers, be recalled from the legislative files to the Senate.

Came from the Senate, read and passed.

Was read.

A two-thirds vote of the House being necessary, a total was taken. 85 having voted in the affirmative and 29 in the negative, S.P. 926 was passed in concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

(At Ease)

The House was called to order by the Speaker pro tem.

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

SENATE PAPER

Recalled from Legislative Files pursuant to Joint Order S.P. 926

Non-Concurrent Matter

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)

In Senate, "Ought Not to Pass" Report of the Committee on Aging, Retirement and Veterans placed in the Legislative Files pursuant to Joint Rule 15 on February 13, 1992.

In House, "Ought Not to Pass" Report of the Committee on Aging, Retirement and Veterans placed in the Legislative Files pursuant to Joint Rule 15 on February 18, 1992.

Recalled from the Legislative Files pursuant to Joint Order S.P. 926.

Came from the Senate with the Bill and accompanying papers recommitted to the Committee on Aging, Retirement and Veterans in non-concurrence.

Was read.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Dover-Foxcroft, Representative Merrill.

Representative MERRILL: Mr. Speaker, Ladies and Gentlemen of the House: We unanimously opposed this bill and I would just like to know why it is back here now. Is there anyone who can answer that?

The SPEAKER PRO TEM: The Representative from Dover-Foxcroft, Representative Merrill, has posed a question through the Chair to anyone who may respond if they so desire.

The Chair recognizes the Representative from Arundel, Representative Wentworth.

Representative WENTWORTH: Mr. Speaker, Men and Women of the House: We are asking to have this recalled from the files because we have an issue we have to deal with concerning a change in federal rules, IRS regulations actually, and the committee has authority via a bill that was passed in December to actually produce another committee bill to deal with this issue. It was felt that it would be cheaper to use this bill as a vehicle since it deals with the same issue and in one shot solve the problem rather than having to print another additional bill to deal with that issue. So, it is merely being recalled to use as a vehicle and the language that is in it will all be reconsidered along with the greater issue.

Subsequently, the House voted to recede and concur.

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On motion of Representative Michaud of East Millinocket,

Adjourned at 6:54 until Tuesday, February 25, 1992, at four o'clock in the afternoon pursuant to Joint Order (S.P. 925) in memory of John Jay Willard, Sr., of Bethel.

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