

# 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  
16th Legislative Day  
Tuesday, February 25, 1992

SAVAGE of Union  
GRAY of Sedgwick  
WATERMAN of Buxton  
KILKELLY of Wiscasset

The Speaker resumed the Chair.  
The House met according to adjournment and was called to order by the Speaker.  
Prayer by Pastor William Meyer, Winthrop Center Friends Church.  
Pledge of Allegiance.  
The Journal of Thursday, February 20, 1992, was read and accepted.

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

Signed:  
Senator: BUSTIN of Kennebec  
Representatives: HEESCHEN of Wilton  
JOSEPH of Waterville  
LARRIVEE of Gorham

**SENATE PAPERS**

The following Communication:

Maine State Senate  
Augusta, Maine 04333

February 20, 1992

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

Came from the Senate with the Majority **"Ought to Pass"** as amended Report read and accepted and the Resolution passed to be engrossed as amended by Committee Amendment "B" (S-527) as amended by Senate Amendment "A" (S-535) thereto and Senate Amendment "B" (S-555).

Reports were read.

On motion of Representative Joseph of Waterville, tabled pending acceptance of either report and specially assigned for Thursday, February 27, 1992.

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 Housing and Economic Development, Ford S. Reiche of Cumberland Center for appointment to the Maine State Housing Authority.

Ford S. Reiche is replacing Peter Merrill.

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

Was read and ordered placed on file.

**Divided Report**

Majority Report of the Committee on Legal Affairs reporting **"Ought Not to Pass"** on Bill "An Act to Protect Children from Illegal Tobacco Sales" (S.P. 506) (L.D. 1344)

Signed:  
Senators: KANY of Kennebec  
MILLS of Oxford  
SUMMERS of Cumberland  
Representatives: BOWERS of Sherman  
STEVENS of Sabattus  
TUPPER of Orrington  
POULIN of Oakland  
JALBERT of Lisbon  
DAGGETT of Augusta  
HICHENS of Eliot  
PLOURDE of Biddeford

**Divided Report**

**Tabled and Assigned**

Majority Report of the Committee on State and Local Government reporting **"Ought to Pass"** as amended by Committee Amendment "B" (S-527) on RESOLUTION, Proposing an Amendment to the Constitution of Maine to Provide State Funding of any Mandate Imposed on Municipalities (S.P. 42) (L.D. 66)

Minority Report of the same Committee reporting **"Ought to Pass"** as amended by Committee Amendment "A" (S-554) on same Bill.

Signed:  
Senators: BERUBE of Androscoggin  
EMERSON of Penobscot  
Representatives: NASH of Camden  
LOOK of Jonesboro  
KERR of Old Orchard Beach

Signed:  
Representatives: LAWRENCE of Kittery  
RICHARDSON of Portland

Came from the Senate with the Majority **"Ought Not to Pass"** Report read and accepted.

Reports were read.

Representative Lawrence of Kittery moved that the House accept the Minority "Ought to Pass" Report.  
The SPEAKER: The Chair recognizes the

Representative from Portland, Representative Richardson.

Representative RICHARDSON: Mr. Speaker, Men and Women of the House: I request the yeas and nays.

This bill which I did not sponsor but which came to the committee I serve on is addressing and attempting to address the issue of children and smoking. I will not go into an extended discussion of it but I want to point out what the bill does and does not do. I want to give the basic logic for why this is an appropriate piece of legislation to pass.

We know that smoking occurs in adults amongst those who learned it when they were young. When you are past the age of 21, the likelihood of beginning to smoke is simply not there. If you start to smoke when you are a young child, the likelihood of continuing to smoke and being a smoker is there and that difference is why it is important to look at the issue of health and smoking in young people and that is what this bill addresses.

The bill does basically three things. Maine is one of three states in the union, the other two being tobacco-producing states that does not have any mechanism of developing a sanction against those stores that sell cigarettes to young people. The two tobacco states and Maine have no license, no tax certificates, no mechanism of when it is learned that a store is selling cigarettes to young people so it can be pulled and therefore the sale of those cigarettes to anybody can be stopped. There is no sanction in Maine, short of a major intervention in the criminal law. So, the first thing this bill does is pass the bare bones simplest of a licensing mechanism regarding stores that allows the bureau to remove licenses upon the finding of the sale of cigarettes to young people. The cost and the difficulty of that amounts to five minutes and \$5 for almost all of the merchandisers of cigarettes in the State of Maine. For large stores, we are talking about \$25 but for most of the places in which cigarettes are sold in the State of Maine, we are talking about \$5 and five minutes and one form once a year, to get a license that will be posted and that if there is a sale made to young people can, at the discretion of an administrative court, be removed. That's all, and it gives a powerful tool and a powerful reason for shopkeepers or a store owner to point to a license and say, if I sell to young people, I lose the opportunity to sell cigarettes to everyone. That is what this bill does.

Another piece of the bill is that it eliminates the comingling of cigarettes with other commodities in vending machines. I think I just have to say that when to pose for you the reality that vending machines with cigarettes are now supposed to be under the control of a shopkeeper or a purveyor of cigarettes but the point of vending machines is that they can operate by themselves. I am sure that all of us know of sites or locations where vending machines are easily accessible to young people. This would provide a greater instrument of dealing with it because it eliminates the comingling of those commodities.

Secondly, those vending machines would have a \$5 license on them as well, easily pulled and the vending machine is shut down if a young person can walk in an pull a lever and get cigarettes from it.

There is a third piece which I want to share with you about this legislation, we did not take the route of going like New Hampshire and Iowa to the making of

it being illegal for young people to possess cigarettes. Present law now provides that you can't sell to young people and provides for sanctions against furnishing to young people but most states in the union have not yet looked at that criminalization as it might appear in terms of possession. We didn't choose to go that route. What we chose to do is what the State of Vermont passed, which is a provision in the bill that says, if a young person misrepresents his or her age, therefore buys cigarettes because they misrepresented their age, they could be subject to a warning, subject to ten hours of community service, which will clearly be in an environment such as the Lung Association, which would provide educational programs about the health affects of smoking for young people, and also the possibility of repeated offenses of up to a \$50 fine.

There is not a lot of enforcement in this bill. There is enough money through those license fees to have, in addition to the administration of the licenses, two additional enforcement officers and that is not a lot. There is no question in my conversation with police officers that it is not going to be a major priority but where there is a flagrant violation in the sale of cigarettes to young people, we can have a major impact by passing this bill.

Let me now point to the two major studies that were presented to us. A pair of towns in Illinois enacted an ordinance that basically put this into effect. They cut the places that sold cigarettes to young people from 75 percent to 5 percent. A follow-up study indicated that there was a cut in half of young people smoking under the age of 16. Of course the habit is going to be much more easily and completely put into the health world of a person throughout their life.

I didn't speak when this issue came up earlier on the issue of smoking in restaurants. Both of my parents died of smoking-related illnesses. I was allergic to smoke and was ill virtually every time we got in the family car and we could never figure out why. I have been told that I have the lungs of a smoker because my parents were both heavy smokers and I have the health problems of it even though I have never smoked. It is kind of an emotional issue for me and every time I go into a restaurant and it is a small restaurant (and I am empathetic to small restaurants) and I sit next to a smoker, my meal is limited. I still didn't speak on the issue because it was my own personal preference that was involved.

Here we have a clear opportunity to deal with genuine health concerns that are going to affect future generations. We can do it with the most simplest of mechanisms that have a result in other environments.

We have taken this bill out of the punitive environment that appears with the Iowa/New Hampshire circumstances. We have brought it to the most simple kind of administrative level that will enable those people who basically engage in the real work of behavioral modification and education on smoking and health issues — do their work through the administrative court. It is the simplest ways of proceeding and I urge you to join the Minority "Ought to Pass" and basically to strike a blow for the health of future generations in the State of Maine.

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

Representative GRAHAM: Mr. Speaker, Men and

Women of the House: I would like to address the opposite side of the issue from the good Representative to my right. A little bit of history is in order I think.

In the 114th Legislature, the Business Legislation Committee considered this bill, considered it to be too restrictive on business owners and too much of a burden. Part of what we did at that time was put out a requirement, those signs you now see in businesses, that remind people that it is illegal to sell tobacco products to minors be posted. Unfortunately, we have not seen a commensurate increase on the enforcement end of the laws that already exist. There are already sanctions against businesses for selling to minors but they are not enforced. They are not enforced because it is a crime of such a low standing that the law enforcement officers don't wish to become involved, they have more important things to do.

Secondly, it is not enforced because people still wink at kids smoking. People say, "I did that when I was a kid, it is just something kids do and a phase kids go through" and on and on and on. I don't agree with that, I have never been a smoker. I have never liked the stuff. But, I have been a business owner and if you require me to have another license, I can afford \$5 and I can afford five minutes a year even though it is an aggravation to me and my family, but when I have to have a licensed person selling tobacco at my cash register and someone quits, I am in a bad position until I can get through the process and the number of days of processing it takes state government to get my future employee relicensed.

The next thing I would like to address is something that makes me equally emotional with Representative Richardson. That is the aspect of this bill that puts the entire burden on storeowners, as if storeowners were the ones creating the problem. You know, right now, a kid can stand on a street corner, smoking on a cigarette, cops can drive by and they can't touch them because it is not illegal for that child to possess tobacco.

You will remember we had a floor fight on reference of this bill whether it went to Business Legislation or Legal Affairs at the beginning of this session. I remember one of the arguments was, this is a tobacco issue, it is just like alcohol, Legal Affairs should have this bill. If tobacco is like alcohol, then possession should be illegal just as it is for alcohol. I don't see the committee doing that. I see the committee saying, we are going to put the entire onus on business owners.

The vending machine example supports my contention that present law, which exists, is not enforced. We all know of vending machines that are wide open and not under the control of adults. That might be a valid point within the bill if they had come out and said, no more tobacco sales from vending machines. That could have been one of the best things we could have done to prevent kids from smoking.

I urge all of you to reject the "Ought to Pass" Report, as well-intentioned but ill-conceived, so we can go on to accept the Majority "Ought Not to Pass" Report on this bill.

The SPEAKER: The Chair recognizes the Representative from Sabattus, Representative Stevens.

Representative STEVENS: Mr. Speaker, Men and Women of the House: This piece of legislation does have its merit as far as trying to stop children from

smoking but I don't believe putting another \$5 license on a business when they have 15 licenses now would be the solution to it.

In Business Legislation two years ago, we did pass legislation that the vending machines should be supervised at all times and if not, the fine was \$100 to \$500. You can go into a lot of restaurants, clubs, industrial plants, even some of the universities and find these vending machines under the stairs where nobody will watch them. There is one right here in Augusta that is visible from the street where children going by can stop, it is not even controlled at all. I don't know of anyone that has been fined on this piece of legislation since we put it into existence two years ago. So, I don't think that we need this piece of legislation and I hope you vote against it.

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

Representative JALBERT: Mr. Speaker, Ladies and Gentlemen of the House: I don't think there is a single person in this chamber here that doesn't want to keep tobacco from children but that is not what this bill will do. All this bill will do is try to raise more money by tacking a license on each and every storeowner, Mom and Pop stores, in an attempt to stop it.

I will tell you exactly what this bill finally does, read the second paragraph of the Statement of Fact -- "This bill places enforcement authority in the Bureau of Liquor Enforcement which will become the Bureau of Liquor and Tobacco Enforcement." This means that you are building up another bureaucracy. What we have been trying to do for the last year and a half is downsize the government, not build up anymore bureaucracy. Under this set up, this would become a big bureaucratic mess. The Bureau of Liquor and Tobacco Enforcement would then have to hire some new agents, like liquor inspectors we have now. Do they intend to put a tobacco enforcement agent in every Mom and Pop store to make sure they don't sell tobacco products to children? The next thing they do will have to go into the home and prevent the parents from smoking so that the children don't get the tobacco. You go into the schools, the children are not allowed to smoke on the grounds around the school but there are many schools that have a smoking room for the staff, are we going in there?

Fortunately, they made a mistake in New Hampshire and this year I guess there is a bill in the State of New Hampshire to repeal this bill because what the bill in New Hampshire did -- and I am glad the good Representative from Portland brought it out, will make it illegal for any children to possess tobacco products which means they could have raids in the school yards or on the street corners when any bunch of kids are congregating and haul them off for having tobacco.

You have got to go back into the home -- none of my children smoked and they still don't. I used to smoke three packs a day -- the most foolish habit I ever started but I don't anymore. It starts in the home. You can have all the regulations you want to but if any young person wants tobacco, they will find it.

I would ask that you vote down the Minority "Ought to Pass" and vote for the Majority "Ought Not to Pass" Report.

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

Representative DAGGETT: Mr. Speaker, Men and Women of the House: I don't think there are any of us here today that would do anything to encourage young people to smoke. However, I hope you will join me in voting against this for the following reasons. My reasons for opposing this are two, one it is a question of state resources. Every time we put resources in one place, we are taking them away from some other place. The other reason is that enforcement has never proven to be particularly effective. This bill's strength is on enforcement.

It would be wonderful if we could come up with a legislative solution to everyone's problem but unfortunately history tells us that that simply is not the case. There are a number of affirmative actions that the people who are in favor of this bill could take and will take in the event that this bill does not pass. It is my hope that they will do those things.

I would like to tell you right now about a project that is going on in a community, I believe in Franklin County, it is in the Farmington area. This project started at the local level when some health professionals realized in the process of cholesterol screening at the high school level, the number of kids that smoked. In response to that, they set about with a strong community awareness program and I was told by somebody in the Bureau of Health that they feel that they are going to get some great numbers from that program and some good response as far as preventing smoking and slowing down smoking abuse. I would suggest to you that this program has had success without any additional legislation. It has been the kind of program that started at the community level. It emphasized education and involvement of people in the community, peer involvement and those are the kinds of moves that cause success, not the kind of move that is in this legislation. That kind of effort will be continuing over our state because we have been fortunate enough to get a \$4.6 million federal grant that will be administered over the next six or seven years and will be based on that program that is currently running and is extremely successful in Farmington. It will provide that program or programs similar to that around the state and it can be done and will be done without this legislation.

I encourage you to vote against this so that we can accept the "Ought Not to Pass" Report.

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

Representative DIPIETRO: Mr. Speaker, Ladies and Gentlemen of the House: Before we vote on this bill, I would just like to give you a brief history. As most of you know, I leave here every night and I drive back to South Portland and I try to go back to work in my place of business. My concern with this bill is a couple of reasons. Number one, presently in the State of Maine, we have 33 wholesale tobacco distributors which are presently licensed between \$10 and \$25. If this order is passed, those licenses will go to \$5,000.

My other concern is that presently they talk about a \$5 charge this year but who is to say that next year the charge won't go to \$100 or \$200.

I feel that a bill like this is very important but I feel what is most important is that we have to educate the kids in the schools and in the homes, that is the place where this bill should be. Let's

educate them. Let's tell them it is bad for them to smoke. Let's tell them it is not good for them. But, I don't think you should punish the grocer because he isn't the person who is smoking the cigarettes, it's the kids.

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

Representative MANNING: Mr. Speaker, Ladies and Gentlemen of the House: I am sorry to keep this debate going but when it comes to tobacco, I can't let it go by.

For the last three weeks, my committee has been dealing with the Department of Human Services and one of the issues that we dealt with was the increase in the cost of the Medicaid budget. One of those increases was dealing with nursing homes.

My good friend from Houlton — I remember his first term down here — came to me and said, you know the elderly in this state are really having a problem and we ought to be trying to deal with that. I hate to point out to my good friend from Houlton but one of the issues that the elderly are having a problem with is because they have bad health. Probably one of the reasons they have bad health is they started smoking at an early age and are now having a problem.

We can't have it both ways, we can't sit here and say that we all agree that smoking is bad and on the other hand, the Appropriations Committee is sitting downstairs wondering how they are going to increase costs for the elderly. We know, and if you don't know, then you are blind to this, that a good percentage of the reason why people are in hospitals today and end up in nursing homes is because of smoking. It is the number one killer in this country.

We either, as I said to the Appropriations Committee the other day, pay now or pay later. It is the Midas Muffler philosophy. What really irritates me is that I have lobbyists who come into my committee room who are supporting the substance abuse abusers and yet are on the other side of the issue and probably are sitting up in the balcony gaining money from R.J. Reynolds and the tobacco institutes and Philip Morris and everybody else. If we don't start to take a hard look at what we are doing, the cost is going to continue.

Just look around and think about the friends and relatives that you have had who have ended up in that hospital because of one thing, because they smoked. It is a very difficult addiction to break, I admit that, it is very hard. I have some real close friends in this body who do smoke and I understand the addiction. But, if we can stop the addiction before those individuals start, then I think we are saving the budget for many years to come. Down the road, there are going to be additional dollars put in that budget simply because somebody ends up on Medicaid, ends up with lung cancer, ends up in a nursing home or ends up in a hospital. This is a small, small issue but that small issue could pay back many millions of dollars down the road.

I know where this bill is going but if we don't start recognizing the bad things that come about when people smoke, especially young children, then we are just closing our eyes to future health care costs. That is all we heard. Both the Republicans and Democrats on the Washington level as well as this level have talked about health care costs. Well, ladies and gentlemen, this is the start of preventative maintenance — health care costs, cutting it down. Please, take a hard look at this

before you just absolutely say it is unenforceable. Five dollars is not unenforceable.

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

Representative HICHENS: Mr. Speaker and Members of the House: In my past years as a Representative and as a Senator, I have supported bill after bill which prohibits smoking in restaurants, hospitals and other places. When this bill first came before us this year, I was very strongly in favor of it but it got emasculated. All kinds of amendments were suggested, we had lobbyists from both sides who pressured us. On one of the amendments that was brought up as far as the vending machines, I brought it to the attention of one of the lobbyists that I found several vending machines which were out of the vision of the owners in motels or something like that and many of them were changed and put into the lobby so people could observe these young people who were coming in and buying their cigarettes.

We kept on emasculating this bill until it is not anywhere near the same bill which was presented to us. If I thought it was going to do any good and would prevent smoking by our young people, I certainly would be in favor of it. I can brag, I think, that I have 24 grandchildren and 16 of them would be affected by this bill, the rest of them are over 21 years old or over 18 years old. I am very much concerned about their smoking but, as one of the Representative's said, it starts in the home and then it goes to the school. When these young people have opportunity to see others smoking, their peer pressure is so great that they keep on doing it. This is not the answer to our problems and I hope you will support the "Ought Not to Pass" Report.

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

Representative RICHARDSON: Mr. Speaker, Men and Women of the House: Four quick points. The point was made about million dollar grants for educational purposes — the days of those are gone. This is a \$5 solution for most environments, not the million dollar grant world, we know that is finished.

Secondly, this gives ease of enforcement that protects the 99 percent of shopkeepers and sellers and purveyors of cigarettes who want to do it legally and want a way to protect them.

Third, this doesn't create a huge bureaucracy, it brings two individuals in it which points out the difficulty of enforcement that our besieged police departments have now. That criminal court world is untouched. This is an administrative environment and there are two individuals that can deal with it.

Finally, I would say that we have an opportunity here to change behavior in a certain sector of the community that affects children to change behavior. We can hope, as is usually the case, that once the behavior is changed, that later on, the heart follows behind and the education and the buttress in the home follows. Experience has proven in a number of areas that if you can set up a mechanism that will influence the behavior, that I am sure we would all ultimately like to see, that the home environment will follow.

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

Representative MURPHY: Mr. Speaker, Ladies and Gentlemen of the House: I find it amazing here tonight that for a state who loves to license

everybody that we have never licensed people who sell tobacco. I don't know how many states have not licensed the sellers of tobacco, I can only speak for one state that I owned a business in. For the 22 years that I was there, I had to have a tobacco license. I had to have a tobacco license just for the privilege of selling that tobacco. I had to have a tobacco license because they came in and checked my cigarettes to make sure that I had the New Hampshire state tax on them. If I didn't, they could pull that license. Whatever I did against the laws of that state, they had a license to pull. I think that this state should have that same right because you may not think that there are people out there selling cigarettes without our state tax stamp on them but I bet there is because there are truck loads of them being hijacked and those cigarettes usually end up at the storekeepers. Maine has no license to know who is selling cigarettes in this state, they could be sold anywhere. They have no license to pull.

I have heard of a few problems tonight about what a bureaucracy it would create and I completely disagree. I don't believe there would be any big bureaucracy over it. If it had to do with hiring help, you can always put an amendment to say 30 days after you hire a person they have to be licensed to sell cigarettes. We do that with other things.

I just hope that you will support the Minority "Ought to Pass" Report tonight because I think it is a beginning. I think it is a beginning in maybe helping to control the selling of tobacco to our kids in this state.

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

Representative ANTHONY: Mr. Speaker, Ladies and Gentlemen of the House: Tobacco is a drug. Sales of tobacco to minors is the illegal sale of drugs and we have to get serious about it. We have put millions of dollars into other illegal sale of drugs and, though I don't particularly like licensing mechanisms, it is a way to raise money so we can enforce this particular illegal sale of drugs which is going on around us and causing far more harm in terms of death than other sorts of illegal sales of drugs, according to the statistics. That is why I will be supporting the bill. I think it is hypocritical not to be doing an effective job at stopping this particular form of sales of drugs.

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

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

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

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

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

The SPEAKER: The pending question before the

House is the motion of the Representative from Kittery, Representative Lawrence, that the House accept the Minority "Ought to Pass" Report. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 313

YEA - Anthony, Bennett, Carleton, Clark, M.; Coles, Farnsworth, Goodridge, Gurney, Handy, Hastings, Heeschen, Hepburn, Holt, Kilkelly, Lawrence, Lemke, Manning, Marsh, McKeen, Mitchell, J.; Murphy, Nutting, O'Dea, Oliver, Pendexter, Pendleton, Pfeiffer, Powers, Richards, Richardson, Simonds, Simpson, Stevens, P.; Treat, Wentworth.

NAY - Adams, Aikman, Aliberti, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Bell, Boutilier, Bowers, Butland, Cahill, M.; Carroll, D.; Carroll, J.; Cathcart, Chonko, Clark, H.; Constantine, Cote, Crowley, Daggett, DiPietro, Donnelly, Dore, Duffy, Duplessis, Dutremble, L.; Erwin, Farnum, Farren, Foss, Garland, Gean, Gould, R. A.; Graham, Gray, Greenlaw, Gwadosky, Hale, Hanley, Heino, Hichborn, Hichens, Hogle, Hussey, Jacques, Jalbert, Joseph, Kerr, Ketover, Ketterer, Kontos, Kutasi, Larrivee, Lebowitz, Libby, Lipman, Look, Lord, Luther, MacBride, Macomber, Mahany, Marsano, Martin, H.; McHenry, Merrill, Michael, Michaud, Mitchell, E.; Morrison, Nash, Norton, O'Gara, Ott, Paradis, J.; Paradis, P.; Parent, Paul, Pineau, Plourde, Poulin, Pouliot, Rand, Reed, G.; Reed, W.; Ricker, Rotondi, Ruhlin, Rydell, Saint Onge, Salisbury, Savage, Sheltra, Skoglund, Small, Spear, Stevens, A.; Stevenson, Strout, Swazey, Tamaro, Tardy, Townsend, Tracy, Tupper, Vigue, Waterman, Whitcomb.

ABSENT - Cashman, Nadeau, Pines, The Speaker.

PAIRED - Mayo, Melendy.

Yes, 35; No, 110; Absent, 4; Paired, 2; Excused, 0.

35 having voted in the affirmative and 110 in the negative with 4 being absent and 2 having paired, the motion did not prevail.

Subsequently, the Majority "Ought Not to Pass" Report was accepted in concurrence.

**Non-Concurrent Matter**

Bill "An Act Relating to Returned Check Charges" (H.P. 1505) (L.D. 2119) on which the Minority "Ought to Pass" as amended Report of the Committee on Banking and Insurance was read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (H-904) in the House on February 18, 1992.

Came from the Senate with the Majority "Ought Not to Pass" Report of the Committee on Banking and Insurance read and accepted in non-concurrence.

The House voted to recede and concur.

**Non-Concurrent Matter**

Bill "An Act to Amend and Improve the Laws Relating to Education" (S.P. 469) (L.D. 1252) which was passed to be engrossed as amended by House Amendment "B" (H-918) in the House on February 13,

1992.

Came from the Senate passed to be engrossed as amended by House Amendment "B" (H-918) and Senate Amendment "A" (S-552) in non-concurrence.

The House voted to recede and concur.

**Non-Concurrent Matter**

Bill "An Act to Ensure Complete Recovery for Injuries to Children" (H.P. 1551) (L.D. 2189) on which the Majority "Ought to Pass" as amended Report of the Committee on Banking and Insurance was read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (H-906) in the House on February 18, 1992.

Came from the Senate with the Minority "Ought Not to Pass" Report of the Committee on Banking and Insurance read and accepted in non-concurrence.

On motion of Representative Marsano of Belfast, the House voted to Adhere.

**COMMUNICATIONS**

The following Communication: (S.P. 923)

115TH MAINE LEGISLATURE

February 14, 1992

Senator N. Paul Gauvreau  
Rep. Patrick E. Paradis  
Chairpersons  
Joint Standing Committee on Judiciary  
115th Legislature  
Augusta, Maine 04333

Dear Chairs:

Please be advised that Governor John R. McKernan, Jr. has nominated Paul L. Rudman of Bangor for appointment as Justice of the Maine Supreme Judicial Court.

Pursuant to the Constitution, Article V, Part I, Section 8, this nomination will require review by the Joint Standing Committee on Judiciary 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 Judiciary.

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



The following Communication: (S.P. 924)

115TH MAINE LEGISLATURE

February 15, 1992

Senator N. Paul Gauvreau  
Rep. Patrick E. Paradis  
Chairpersons  
Joint Standing Committee on Judiciary  
115th Legislature  
Augusta, Maine 04333

Dear Chairs:

Please be advised that Governor John R. McKernan, Jr. has nominated the Honorable Daniel Wathen of Augusta for appointment as Chief Justice of the Maine Supreme Judicial Court.

Pursuant to the Constitution, Article V, Part I, Section 8, this nomination will require review by the Joint Standing Committee on Judiciary 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 Judiciary.

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

The following Communication:

115TH MAINE LEGISLATURE

February 4, 1992

Honorable Vincent L. McKusick  
Chief Justice  
Maine Supreme Judicial Court  
142 Federal Street  
P. O. Box 4910  
Portland, ME 04112

Dear Chief Justice McKusick:

We are pleased to extend an invitation to you to address a joint convention of the 115th Legislature on Thursday, February 27, 1992 at 11:00 a.m.

We understand that this date is especially appropriate as it marks the 14th anniversary of your first address to the Legislature as Maine's Chief Justice which was during the Second Regular Session of the 108th Legislature.

We look forward to seeing you on the 27th as you

deliver your final "State of the Judiciary" address to the Maine Legislature.

Sincerely,

s/Charles P. Pray                      s/John L. Martin  
President of the Senate              Speaker of the House

Was read and ordered placed on file.

The following Communication:

STATE OF MAINE  
SUPREME JUDICIAL COURT  
142 FEDERAL STREET  
PORTLAND, MAINE 04112

February 6, 1992

Hon. Charles P. Pray                      Hon. John L. Martin  
President of the Senate              Speaker of the House  
State House                              State House  
Augusta, ME 04333                      Augusta, ME 04333

Dear Mr. President and Mr. Speaker:

I received your invitation of February 4 with the greatest pleasure. I will be on hand to give my annual, and in this case final, "State of the Judiciary" address to the Joint Convention of the 115th Legislature on Thursday, February 27, 1992, at 11:00 a.m.

That date is indeed especially appropriate in that it marks the 14th anniversary of my first appearance before a Joint Convention of the Legislature. It is also particularly meaningful to me personally because it will be my last such appearance. You have both been in attendance at all of my legislative addresses, and I like to believe that the opportunity that you and your colleagues have given me has been helpful in enhancing mutual understanding between the Judicial and Legislative Branches.

Thank you very much indeed for the courtesy of your invitation for February 27.

With all best wishes,

Sincerely,

s/Vincent L. McKusick

Was read and ordered placed on file.

**PETITIONS, BILLS AND RESOLVES  
REQUIRING REFERENCE**

The following Bills and Resolve 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:

**Judiciary**

Bill "An Act to Eliminate Mandatory Minimum Sentences" (H.P. 1698) (L.D. 2378) (Presented by Representative ANTHONY of South Portland) (Cosponsored by Representative KETTERER of Madison, Representative RICHARDS of Hampden and Senator GAUVREAU of Androscoggin) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.)

(The Committee on Reference of Bills had suggested the Joint Select Committee on Corrections.)

On motion of Representative Anthony of South Portland, was referred to the Committee on Judiciary, ordered printed and sent up for concurrence.

Labor

Bill "An Act to Establish the Nontraditional Occupation Act for Women" (H.P. 1701) (L.D. 2381) (Presented by Representative RAND of Portland) (Cosponsored by Senator ESTY of Cumberland, Representative RUHLIN of Brewer and Representative KILKELLY of Wiscasset) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.)

Ordered Printed.  
Sent up for Concurrence.

State and Local Government

Bill "An Act to Create a Somerset County Budget Committee" (H.P. 1702) (L.D. 2382) (Presented by Representative ROTONDI of Athens) (Cosponsored by Representative TARDY of Palmyra, Representative GWADOSKY of Fairfield and Senator WEBSTER of Franklin) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.)

Ordered Printed.  
Sent up for Concurrence.

Taxation

Bill "An Act to Amend and Clarify the Law Enabling State Tax Increment Financing" (H.P. 1697) (L.D. 2377) (Presented by Representative KERR of Old Orchard Beach) (Cosponsored by Representative CASHMAN of Old Town, President PRAY of Penobscot and Speaker MARTIN of Eagle Lake) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.)

Ordered Printed.  
Sent up for Concurrence.

Transportation

Resolve, to Stop the Full Expansion of Route 201 Pending the Completion of a Regional Traffic Study (EMERGENCY) (H.P. 1700) (L.D. 2380) (Presented by Representative FARNSWORTH of Hallowell) (Cosponsored by Senator BUSTIN of Kennebec, Representative TREAT of Gardiner and Senator McCORMICK of Kennebec) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.)

Ordered Printed.  
Sent up for Concurrence.

ORDERS

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

ORDERED, that Representative Susan E. Dore of Auburn be excused February 13, 18 and 20 for personal reasons.

AND BE IT FURTHER ORDERED, that Representative Peter Hastings of Fryeburg be excused February 18 for personal reasons.

AND BE IT FURTHER ORDERED, that Representative Marc J. Vigue of Winslow be excused February 18 and 20 for personal reasons.

Was read and passed.

REPORTS OF COMMITTEES

Unanimous Ought Not to Pass

Representative HOGLUND from the Committee on Energy and Natural Resources on Bill "An Act to Amend the Definition of 'Freshwater Wetlands' for Purposes of Development Laws" (H.P. 1615) (L.D. 2276) reporting "Ought Not to Pass"

Representative PARADIS from the Committee on Judiciary on Bill "An Act to Clarify the Obligations of Emergency Medical Personnel" (H.P. 1418) (L.D. 2030) reporting "Ought Not to Pass"

Representative MANNING from the Committee on Human Resources on Bill "An Act to Fund the Crisis and Counseling Center's Residential Care Unit" (EMERGENCY) (H.P. 1523) (L.D. 2152) reporting "Ought Not to Pass"

Representative MANNING from the Committee on Human Resources on Bill "An Act to Restore Home Health and Community Care Funding" (H.P. 1525) (L.D. 2154) reporting "Ought Not to Pass"

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 MACOMBER from the Committee on

**Transportation** on Bill "An Act to Clarify Permit Provisions for General Commodity Vehicles with a Maximum Gross Weight of 100,000 Pounds" (H.P. 1527) (L.D. 2156) reporting **"Ought to Pass"** as amended by Committee Amendment "A" (H-952)

Report was read and accepted, the bill read once. Committee Amendment "A" (H-952) was read by the Clerk and adopted and the bill assigned for second reading Thursday, February 27, 1992.

**Divided Report**

Nine members of the Committee on **Aging, Retirement and Veterans** on Bill "An Act to Establish the Maine Volunteer Firefighters Retirement System" (EMERGENCY) (H.P. 926) (L.D. 1323) report in Report "A" that the same **"Ought Not to Pass"**

Signed:

Senator: WEBSTER of Franklin

Representatives: JALBERT of Lisbon  
HANDY of Lewiston  
AULT of Wayne  
WENTWORTH of Arundel  
MERRILL of Dover-Foxcroft  
STEVENSON of Unity  
DUTREMBLE of Biddeford  
MICHAEL of Auburn

Three members of the same Committee on same Bill report in Report "B" that the same **"Ought to Pass"** as amended by Committee Amendment "A" (H-935)

Signed:

Senators: MCCORMICK of Kennebec  
CLARK of Cumberland

Representative: O'DEA of Orono

One member of the same Committee on same Bill reports in Report "C" that the same **"Ought to Pass"**

Signed:

Representative: HEINO of Boothbay

Reports were read.

On motion of Representative Jalbert of Lisbon, Report "A" "Ought Not to Pass" was accepted. Sent up for concurrence.

**Divided Report**

Majority Report of the Committee on **Legal Affairs** reporting **"Ought to Pass"** as amended by Committee Amendment "A" (H-936) on Bill "An Act to Permit the State Lottery Commission to Approve Promotions Involving the Use of Lottery Tickets" (H.P. 1434) (L.D. 2046)

Signed:

Senators: KANY of Kennebec  
MILLS of Oxford  
SUMMERS of Cumberland

Representatives: POULIN of Oakland  
DAGGETT of Augusta  
LAWRENCE of Kittery  
BOWERS of Sherman  
PLOURDE of Biddeford  
TUPPER of Orrington

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

Signed:

Representatives: STEVENS of Sabattus  
JALBERT of Lisbon  
RICHARDSON of Portland  
HICHENS of Eliot

Reports were read.

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

Committee Amendment "A" (H-936) was read by the Clerk and adopted and the bill assigned for second reading Thursday, February 27, 1992.

**Divided Report**

Majority Report of the Committee on **Judiciary** reporting **"Ought to Pass"** as amended by Committee Amendment "A" (H-945) on Bill "An Act to Facilitate Criminal Enforcement of the Environmental Laws" (H.P. 1129) (L.D. 1654)

Signed:

Senator: GAUVREAU of Androscoggin

Representatives: CATHCART of Orono  
ANTHONY of South Portland  
FARNSWORTH of Hallowell  
PARADIS of Augusta  
KETTERER of Madison  
COTE of Auburn

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

Signed:

Senators: HOLLOWAY of Lincoln  
BERUBE of Androscoggin

Representatives: RICHARDS of Hampden  
HANLEY of Paris  
STEVENS of Bangor  
OTT of York

Reports were read.

The SPEAKER: The Chair recognizes the Representative from Augusta, Representative Paradis.  
Representative PARADIS: Mr. Speaker, I move that

the House accept the Majority "Ought to Pass" Report.

Mr. Speaker, Ladies and Gentlemen of the House: L.D. 1654 is presently before us as Committee Amendment "A." The original bill was sponsored by the Representative from Gardiner, Representative Treat and cosponsored by the Representative from Waterville, Representative Jacques and the Senator from Androscoggin, Senator Gauvreau, and the Representative from West Gardiner, Representative Marsh.

After considerable time this session, the committee has reported out as a Majority Report Committee Amendment "A" which is now the bill before us. The Committee Amendment requires an intentional and knowing violation of the law. After a number of work sessions, we feel that we have made substantial changes to the original bill and the result is a tightly drafted bill which criminally sanctions only certain environmental violations which are committed intentionally and knowingly in violation of the law or applicable rules and permits. In other words, the violator must intentionally violate the law or know that he or she is in violation of the law in order to be prosecuted for this environmental crime.

We are not making new crimes, it is already against the law to be doing what they are doing but it is only a Class E misdemeanor. What we are doing is raising it from Class E misdemeanor to a Class C felony.

The federal government already has far more stringent laws, criminal laws, on the books, some of them with fines up to \$250,000 for some of the same violations in the federal criminal code. We in the state have far lesser charges, most of them are Class E misdemeanors.

Maine's current environmental criminal penalties are lagging behind, practically for the identical violations and criminal provisions in those states with active environmental programs. For instance, Massachusetts, New Jersey, New York and Ohio, to name but a few, have this type of legislation which we are requesting this body to adopt this evening. The state's criminal environmental penalties for all but a few hazardous waste crimes are out of line with sanctions imposed for serious white collar crimes under our criminal code. Environmental crimes are classified at the state's lowest level Class E misdemeanor and are subject only to six months in jail for violation, the same amount of jail time for theft of property valued at anywhere from a dollar to \$500. When was the last time you knew of someone going to jail for violating a Class E misdemeanor on an environmental crime? I can't tell you this evening as I don't know of any.

While our environmental laws do provide for civil as opposed to criminal financial penalties, businesses may absorb such penalties as a cost of doing business, pass the cost along to customers or consumers or discharge the penalties in bankruptcy. You know that happens more often than we are willing to admit, that a business knowingly and intentionally violate our environmental laws. Even though the court may impose certain fines, they just feel that, well, we will carry that into bankruptcy and dissolve this corporation and start over again. For this reason, such penalties do not provide an adequate deterrent for intentional and knowing violations which may cause a risk or harm to the public and the environment and undermine our regulatory system.

This bill attempts to deter blatant environmental

crimes by increasing the classification to a Class C crime, the lowest level felony under Maine law. There are higher ones, obviously. Class B and Class A are the highest other than for murder in this state. Misdemeanors are Class D and Class E crimes.

Violations of Maine's air pollution, water pollution, special wastes, for instance asbestos, industrial sludge, chemicals and specific solid wastes and hazardous laws, that is what we are asking for this afternoon. This is an Attorney General's bill, it comes from the AG's office because they are asking us because we do not have the teeth that we need in 1992 in looking into the 1990's and into the 21st Century to cope with the type of knowing and intentional violations of our environmental laws.

If we watch television and we all do and we read the papers and we read journals, we are seeing more and more of stories of the 1980's where land becomes very expensive out-of-state. In Rhode Island, they are out of land for landfills. It is cheaper for companies in eastern Massachusetts to come to Maine and dump their waste here than it is for them to have to go all the way out the Mass Pike to the Berkshire's. Vermont has tough environmental legislation. Southern New Hampshire has practically doubled in population in 20 years from the 1960 census to the 1990 census. They are looking at Maine as a vast land of economic opportunities to bring their hazardous waste here, to make unholy alliances with those who are looking for a fast buck to bring their sludge, their asbestos, their chemicals and dump it here in this state. I think we need this legislation if we are to remain a clean and vigorous environmental state. We have a reputation, it has taken some tough votes by prior legislatures but if we don't take this vote tonight, five or six years from now, another legislature is going to have to ask this body to take a stand and they are going to bring back horror stories of 1992 and 1993 and 1994 that could have been prevented had we passed this type of legislation. We don't need horror stories, we need legislation that looks ahead and says that knowing an intentional violation of our laws is a major criminal penalty, is a Class C violation, we will take you to Superior Court, we will subpoena your records and we will show to the jury that you had no respect for our environment and the environment of our children and grandchildren.

I urge you to adopt the Majority Report.

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

Representative OTT: Mr. Speaker, Ladies and Gentlemen of the House: When I first heard this bill, it seemed to me that it was a public reaction to the outrage that some have experienced where people from out-of-state were found to be doing this so-called midnight dumping or other people from out-of-state and for that matter even those instate who may have been intentionally violating our environmental laws. While I think it is well-intended, I don't think that this type of legislation and specifically elevating certain violations of Class C felonies, is appropriate for this legislature to be enacting at this time.

My comments will be broad but I think that is the very essence of this bill which I object to, that it creates such a broad category of violations and then, in the same breath, elevates them to a Class C felony, I think is going too far, too fast.

With information that I had available to me and

from the testimony given at the Committee hearing, it was pointed out that people like farmers, camp owners, homeowners and many of those who were in the industrial community could be accused unwittingly of violating one of our supposedly Class C provisions of the environmental laws. Yet, there were people who were attempting to do their best to comply with good environmental practices and it seemed to me that, if you are going to accuse someone or some company or its officials of a Class C felony, that it should not be so broad that you might snare someone who is, as I say, unwittingly engaged in a practice which even though it may have been an intentional act would not be considered by them to be in violation of an environmental law.

The argument that I had heard in committee was that, yes there may be absurd situations where we would not want to prosecute one who may have committed one of these proposed Class C offenses and that we would rely on the prosecutor to exercise his or her discretion to weed out those particular cases that weren't supposed to be classed as a serious or an objectionable or offensive Class C violation. I say to you, however, that is not the function we as legislators should be passing on to the District Attorney or Attorney General's branches of government. We as legislators should set the policy that we expect our citizens and those who visit this state to follow.

I saw a television program about a week or two ago that I think pointed up the fact that there can be legislation that goes too far, too fast. I only caught the end of it but it was a talk show where two of the guests, one of which was a Mexican-American out on the West Coast who happened to have been involved in an unfortunate circumstance where his grandson was killed when he had come into possession of a weapon that the grandfathered had unwittingly stored up in his bedroom and the young man had discharged the weapon and resulted in his death. Because of a certain California law, the grandfather was going to be prosecuted as a felon. While it was suggested that no jury would convict, it nevertheless left him with a trying circumstance of going through that emotional experience. The other guest happened to be one who was a convicted felon, an inmate in the State of Texas who, because of a law that was enacted in Texas, it was meant to protect those over 65 years of age from being mugged in a park and their purse stolen faced a life sentence because of a conviction for allegedly stealing their purse and the victim having been over the age of 65 years. It seemed when I listened to that program an absurdity that those people who won going to be prosecuted and the other was in fact convicted and serving a life term in the State of Texas for such an offense.

I look at this legislation in the same vein. While, like Representative Paradis thinks our environment is important and thinks we have to have some strong laws to tell our people what we expect of them, I still feel that saying certain offenses are going to be felonies goes too far.

I also say that because in my recollection of the committee hearings, it seemed to me that we had already on the books certain provisions for fines, certain provisions for prosecutions under misdemeanors, and if I recall the testimony correctly, and I could stand corrected, it seemed to me that the Department of the Attorney General was not utilizing the maximum penalties that were allowed

under those fine provisions nor was the Department requesting the maximum sentence that was available for Class A or D misdemeanors. For those reasons, I think that this bill should be defeated and I urge you to vote against the motion to pass.

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

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

Would this mean that if my sewer treatment plant has an overflow in a rainstorm and we pollute the bay that we will be fined?

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

The Chair recognizes the Representative from Augusta, Representative Paradis.

Representative PARADIS: Mr. Speaker, Ladies and Gentlemen of the House: To answer the question of the Representative from South Portland, the standard that is established in the bill is "knowingly and intentionally." I have heard the good Representative from York use the word "unwittingly." That is a different standard, that isn't in the bill. Knowingly and intentionally violating the law -- the answer is no because that is not a knowing and intentional violation. We are talking about people who make a living destroying what we have in this state and make darn good money doing it. That is the standard we are establishing of culpability here for a Class C felony, knowingly and intentionally violating the law.

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

Representative DIPIETRO: Mr. Speaker, Men and Women of the House: I think the good Representative did not understand the question. If my sewer treatment plant (meaning the city of South Portland) on a rainy day cannot take care of the waste, the runoff water coming into the plant, and we decided to discharge it into Fall River, are we in violation? We know it, we are willingly doing it because we can't control it, that is my question.

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

The Chair recognizes the Representative from York, Representative Ott.

Representative OTT: Mr. Speaker, Ladies and Gentlemen of the House: The answer to that is yes. It is an intentional act, it is knowingly and I think that the response to that by those who would be proponents to pass this legislation would be that that is one of those situations where the District Attorney's Office or the Attorney General's Office would not prosecute.

As I suggested before, I don't think that that type of prosecutorial discretion is what we should be doing with this legislation. I think that is handing away the discretion that we should be exercising as responsible legislators to another department in this government.

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

Representative ANTHONY: Mr. Speaker, Ladies and

Gentlemen of the House: I believe the answer to that question is no and I would not be supporting this bill if I didn't think it was no because that would not be a knowing violation of a permit. Presently the City of South Portland, like many municipal governments, functions with pollution control devices that do have combined sewer overflows in case of bad storms and those are understood at the outset that they function that way. The city is licensed to operate in that fashion so I do not believe that that is a knowing violation. In fact, the committee was very careful to take out the word "recklessly" and I noticed that my good friend, Representative Ott, referred to unwittingly. I think an unwitting violation could possibly be charged as a reckless violation but that would not be a felony under this. We carefully took that out, it is only for an intentional or a knowing act.

I wanted to say, however, why it is that I am supporting this bill. Initially, I was very much against it. I don't believe in increasing penalties very often, we have pretty severe laws in many areas and I wouldn't have supported this except for a phone call I got. It was a phone call from a selectman of a small town up near Bucksport and I confess I can't remember the name of the town right now. He told me about a problem in his town. It seemed that they were removing some hazardous waste and they hired an out-of-state company from Delaware. They came up here and it took one load of this hazardous waste to an allowed dumpsite and dumped it. They took a second load there and then on the third load, in order to cut costs and save time, it started to dump it into the water. It was clearly knowing, it was clearly a violation and they were doing it only to save money. Because it was an out-of-state company, there was no way you could charge them with anything other than a misdemeanor and thus no way to extradite. Extradition laws in this state only relate to felonies so there was no way to force that company to come into Maine courts to be held accountable for that act.

As far as I am concerned, the only reason to be increasing the penalty from a misdemeanor to a felony, and very carefully I might add, is so that an out-of-state company cannot do that without being forced to be called into account for it. That is the reason for this bill and that is the reason I support it.

I would urge support of the Majority "Ought to Pass" Report.

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

Representative RICHARDS: Mr. Speaker, Ladies and Gentlemen of the House: I request a Division.

Representative DiPietro asked a question and I guess he would be lucky if the Representative from Portland, Representative Anthony, was the AG. He would not be lucky if I was the AG because I can tell you that, based on this piece of legislation, I might prosecute or I might prosecute the facility. I will tell you what I would look at in determining whether I would or not. I would look at the facility, I would look at the way it is constructed, I would look at whether it needs federal guidelines for construction, I would look at, based on the cost of fixing a particular repair, should you have known the fact that that discharge could have happened with the rainstorm. You might have known of something that could cost a half a million dollars, and you knew

that was a problem, did not fix it and, therefore, a discharge went into that river or body of water. You knowingly and intentionally violated this law because you omitted doing something from preventing this from happening so I would look hard and fast at prosecuting you on that particular bill. So, I think there is a difference of opinion whether you would prosecute or not, it is not a clear yes or no, so I would say you might be.

You know, we worked on a lot of complex bills in our committee over the last two years. We had 240 bills last year, we had 76 this year and I am reminded just by today that we have done a very good job, I think, in putting out bills "Ought Not to Pass" or "Ought to Pass" and those that needed to be worked, we worked. We had a bill today dealing with foreclosures that required one word but we almost killed that bill because we didn't really have the spirit to really look for that one word but we did find that one word and we passed the bill. That was a simple bill. We took a bill dealing with environmental crimes and essentially tried to incorporate it in a state that has one of the most sophisticated environmental laws than any other state and we tried to say that making it a crime to take care of a problem was a good idea. It is a good idea.

I would be here supporting this bill today had it had the collective thought necessary to make a good bill. Part of the problems that Representative Ott has already stated is that we didn't cover all the bases. We took care of the problem by saying we haven't taken care of the problem, we will allow it for discretion for somebody whether they will choose to prosecute or not. Well, this bill does things that in discretion, for whatever reason, somebody says they are going to prosecute because you knew that on your dairy farm that that leachate went over to that stream, you polluted that stream and you knowingly and intentionally knew that. I don't care about the expense of ditching or whatever you have to do to control that, the fact of it is that you polluted that stream and I am going to convict you of a felony or perhaps I am going to ask, based on the seriousness of the crime, for five years to go to jail.

In dealing with complex laws like this, I think what we have incorporated within our committee and we have done very well with it is that you perceive the problem of the instant. The problem of the instant was a situation where you had somebody out-of-state that did a terrible act in dumping pollutants. However, the Attorney General's Office could have obtained federal jurisdiction or rather he could have referred it to the U.S. Attorney's Office for them to take jurisdiction to prosecute the case. That was the only case that we heard of. I guess there were some other cases but the fact of it is, as we all know, our DEP is very vigorous in enforcing violations and whatever. After you perceive the problem of the instant, then you provide a remedy. The end result is that you have accomplished this on a very simple level. We could not accomplish this on a very simple level with such a complex bill.

This again goes back to a statement that was said a long time ago dealing with crimes and penalties that you should apply and that statement was "Penalties to crime rest in obedience, conformity." What that meant was it was a one-way street and it wasn't that the body of people said that this is what we want to do, it came from above and said,

"obedience, conformity." You know, that is almost like lobotomizing society but in reality and we all know that today, what you have to do is to have provide change in the mind, in the mindset of our business communities and in the mindset of people.

In response to that argument, Madison, the one who wrote the Federalist Papers made a very important statement. He had a theory on factions, factions on people who come together with different ideas and how you deal with factions. His statement was "Pluralism." Diversity input, pluralism, that is the first statement for democracy, that is how you get input within our system. "If we continue to oppress business by mandating that they accommodate a system without any alternatives to counter their forced accommodation, we will breach the very spirit of success." We are facing that within our business community right now because they can't tell from one year after the other how the ballgame is going to change with the environmental laws.

I would hope that you would vote against this piece of legislation.

The SPEAKER: The Chair recognizes the Representative from Palmyra, Representative Tardy.

Representative TARDY: Mr. Speaker, Men and Women of the House: I hope you don't think for one minute that anybody is going to use Committee Amendment "A" to prosecute that farmer whose leachate is running into that stream. They are not going to do that. What they are going to do is they are going to use this as a vehicle to up the stakes of a game they call "The Consent Decree Game." The way you play that with that farmer is you flip a coin. If it is a head, it costs you \$10,000; if it is a tail, it costs you \$25,000, but if you sign this Consent Decree, give us \$5,000, we won't bother looking at it.

I am going to vote no.

The SPEAKER: The Chair recognizes the Representative from West Gardiner, Representative Marsh.

Representative MARSH: Mr. Speaker, Men and Women of the House: I was glad to finally see a farmer stand up because I really didn't want to be debating lawyers but I really didn't like what he had to say.

I would like to start out by clearing the air a little bit on this. There is probably as much bad information about this bill as any bill that I am familiar with. I want the Record to clearly show that, if you look at the sponsors, that I am not the token Republican. I feel very strongly about this matter, I urge its passage, I think it is long overdue and is something which falls in line with other environmental laws or statutes that we passed here in Maine.

I guess I would have to give an award to the lobbyists for more bad information about this than anything I have dealt with. When a constituent of mine, a senior citizen, called me up and said she hoped I was going to vote against that bill that would put her grandson in jail for raking the beach, I thought they had kind of gone to a new low.

With that, I have some testimony that I want to read but first of all, when I got delving into this, I went to the Attorney General's Office and I said, "Convince me there is a problem." By my own mistake, this wasn't distributed through the House but I would be glad to show it to anyone here. The Attorney General's Office has provided me with seven instances where the names and dates have been left out to protect the persons involved but these are some of

the reasons they feel that there is a need for such legislation. One is not dissimilar to one that Representative Anthony talked about. Reading from the communication from the Attorney General's Office dated February 22nd, it says, "An out-of-state trucker who hauls solid waste can no longer dispose at facilities which he is accustomed to using in upstate New York and Massachusetts. Instead of paying the higher disposal fees at a legitimate landfill, he pays a shady individual at a rest stop on Route 95 to lead him to an unlicensed site in southern Maine where he dumps two trailer trucks full of waste from out-of-state." I would submit that that is a significant problem.

The next thing is something that we have dealt with long and hard in the Energy and Natural Resources Committee this year and I am sure we will get a lot of debate on it here and that has to do with septage hauling. "A septage hauler has paid a civil penalty under a civil consent agreement for illegal disposal of septic. After he has signed the consent agreement and has paid the penalty, he continues his pattern of illegal disposal, this time choosing a stream which flows into a drinking water supply." Again, I figured this was a significant problem.

The debate thus far hasn't dealt with what I feel is the real crux of the problem, penalty. In the instance that I just read about, I am sure that these Consent Decrees have just become a cost of doing business.

The bill would make sure that the law recognizes the seriousness of intentional and knowing environmental violations, which potentially harms Maine's people and its environment. It would raise from a misdemeanor to the lowest level of felony classification the intentional and knowing violation of our air and water pollution laws and the intentional and knowing violations of our dumping of solid waste in excess of 100 pounds or 500 cubic feet and the intentional and knowing violations dealing with the regulation handling of special waste.

It would be pretty farfetched and an act of God if the sewerage treatment plant in South Portland has a spill as a result of a big storm to be able to enforce this against them. I contend that it would be pretty farfetched to send the young fellow from New York raking his grandmother's beach to jail under this.

This bill also limits for the first time all criminal violations under the environmental laws to intentional or knowing violations as law. As a general rule under Maine's criminal code, ignorance of the law is no defense. This bill changes that rule. Under this bill, a person could be prosecuted only if the state could show that the person intended to violate the law. In other words, ignorance of the law would be a defense, thus the state would have to show that a violator had been warned on previous occasions that his conduct violated the law or the violator had previously been subject to a civil consent agreement as was mentioned with the septic hauler.

The federal government already has recognized that knowingly disregarding environmental crimes can be classified as a felony. For example, the Clear Act Amendment in 1990 raised a knowing violation of air pollution laws from a misdemeanor to a felony. The Clean Water Act also provides for felony sanctions when it can be proved that the violator had

knowingly committed the crime. It is time for Maine to update its laws so that we are consistent with parallel federal provisions.

A felony conviction and a jail sentence cannot be absorbed, and this is where I come back to penalties, by a corporation as a cost of doing business passed along to the consumer or disregarded in a bankruptcy case. By enacting this bill, we will deter those individuals which now flaunt the laws that we have enacted to protect our environment here in Maine. Maine has always been a leader in environmental laws and I hope that we continue to with the eventual passage of this law.

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

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

If you have a plant that is sending emissions into the air that don't meet the requirements of the Department of Environmental Protection and if that plant is sited for violations and is in the process of trying to control that problem, has to provide some new equipment which takes time and money to get, and yet if the plant continues its operation, would the owner of that plant be spending some time in jail or sited for violation? I have had communication on this subject a number of times in the past and I think it is an important question.

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

The Chair recognizes the Representative from Hampden, Representative Richards.

Representative RICHARDS: Mr. Speaker, Ladies and Gentlemen of the House: The answer to that question would be potentially yes and potentially no. I guess it really depends on what efforts the individual has done to take care of the problem. Sometimes that is a cost factor. Sometimes that cost factor is not going to be a consideration of whether I prosecute you or not. That, I guess, is where the problem lies. Many things in industry today, I guess the word is called excedent, they exceed what is done but they do that perhaps to create a greater harm, either to business or long-term the environment to perhaps fix or repair something so in the course of doing that, you would be knowingly and intentionally violating the law. Those words "knowingly and intentionally" — it is not as easy as knowingly and intentionally striking somebody and committing assault. I mean, this is a complex area to deal with in environmental laws in this state that we have them.

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

Representative TREAT: Mr. Speaker, Men and Women of the House: I am the prime sponsor of this piece of legislation and I would like to take this opportunity now to maybe clarify some confusion that seems to be out there about what this bill intends to do and how it might be able to be interpreted basically in what it covers, what it doesn't cover and, hopefully, clear up some of the confusion here.

In response to the question that was raised by the Representative from Presque Isle, Representative MacBride, the situation you have outlined concerning having to install new equipment is precisely the kind of situation covered right now in Consent Decrees. That is laid out, a company comes to DEP and they

say, "Look, in order to stop this pollution, we need to install a piece of equipment" and a schedule is worked out. That is not what this bill is intended to deal with.

This bill is intended to deal with violations which are very blatant, knowing and intentional violations that involve significant provisions of the law and all that is very carefully spelled out.

A few different points here — first of all, in response to some of the concerns of the Representative from York, Representative Ott, stating that this bill goes too fast, too far — that's simply not the case. The State of Maine, although we like to think of ourselves as in the forefront of the environmental movement, does not have laws on criminal penalties that compare with many other states that face similar kinds of environmental problems. It is very true also that our laws are quite behind the federal penalties for the same violations.

Right now, the only kind of penalty that you can get under our criminal laws for a violation of any type, and that could be taking a barrel of hazardous waste, walking over to a stream, turning that barrel upside down and dumping all the contents out into that stream, knowing that what you were doing was illegal, knowing that what you were doing was upstream from somebody's drinking water — that would be dealt with the same way as if someone went into the local 7-Eleven and steals a magazine from a rack. Up to \$500 dollars worth of shoplifting is treated exactly the same way as a hazardous waste violation of that magnitude.

If we are going to take seriously our criminal penalties, then they ought to be penalties that make some sense. It is the experience of the Attorney General's Office that when they come in and all they have is this misdemeanor, the lowest level misdemeanor that we have, the lowest penalty under all of our criminal statutes, they can't get convictions for it. You know how it works, we basically have a plea bargaining system where people come in and bargain it down and that's some way to get some kind of a penalty. It is not a deterrent because people know that the worst that can happen to them is the same thing that would happen if they went into a store and stole a magazine off the shelf. Either we are going to take these laws seriously or we are not.

This does not, as has been suggested by several of the speakers here today, create new violations. That statement was made by several people saying that this creates a whole new range of violations — it does not. Nothing will be a violation under this amendment that is currently not a violation now. What it does is it says that, of those violations, some of these rate being considered felonies. The bill basically chooses the lowest level of felony that is possible to have which is a Class C felony. It only chooses that level for certain violations. For example, hazardous waste violations, solid waste over 500 pounds only, air and water pollution violations but again "only a significant provisions that are on permits and are in the laws." It is not intended to deal with anything — for example, the Representative from York, Representative Ott said, "unwitting violations." The law, right now, would allow prosecutions for "unwitting violations" because it has absolutely no state of mind specified in the law. What this provision will do is it will actually



make it harder to prosecute in a sense by saying that you have to have a knowing violation or an intentional violation and those mean very specific things in the law. These are not words that are just thrown around by someone who happens to think, well, we will just stick this word in, they mean something very specific under federal and state laws, under our cases, and our judges know what they mean and so do the prosecutors.

Also, there have been some statements here today which seem to be the rallying cry right now for anything that we want to kill is we say, "This is a terrible bill because it is going to put businesses out of business, we can't do there here in the State of Maine because we need jobs." Well, of course we need jobs and I think there is no one here that would disagree with that. This is not a bill that has anything to do with preventing jobs from being created nor does it stop any jobs existing that we have now nor does it impose additional costs on business. These laws are the same laws that we have right now. It does not create any new regulations that anyone has to comply with. It just says that if you do violate those regulations and you do so, knowing that what you are doing is illegal and it happens to be one of the few things that are lifted here such as hazardous waste and those kinds of things that have been bumped up into penalties, could be a felony. I think that is a very different kind of thing. There are companies and individuals out there right now and some of these midnight dumpers are an example. They are basically making a profit at the expense of other businesses that have put in that equipment and are trying to comply with Maine's laws. You get look at this as a pro-business piece of legislation that basically says that the people getting away with murder can't and it doesn't, as I said, add any additional regulations onto those businesses.

Statements have also been made here tonight that this is a bill that will put all these additional potential violations on farmers, land use, things like that. There are a number of things that are not even included in this bill. It doesn't touch the current level of penalty for land use violations. They are not even addressed, they are at the same level they are right now, which is a misdemeanor. Any kind of forestry violation — cutting down the wrong trees, that is not covered.

The committee went to great length to deal with the kinds of concerns that came to it from the Chamber of Commerce, from individuals involved in different activities. The bill is substantially changed from what it was when it came to the committee as it had been originally drafted by the Attorney General's Office.

Going back to saying that this is going too far, too fast, we don't know what we are doing, we ought to wait on this — I recently went to a three day seminar on what is happening legally in terms of environmental protection around the country and listened to a presentation from the environmental prosecutor of the State of New Jersey. The State of New Jersey, which admittedly has much more serious problems than we have in Maine, has actually set up a whole office just to deal with environmental criminal prosecutions. That office has thirty-four criminal investigators just focusing on criminal investigations of environmental crimes. They also have 10 attorneys and their laws already reflect the

kinds of changes that are here, although they include more things. I think we are potentially in a situation where, not only are we having problems with instate, but people have a real incentive to come to places like Maine that treat heinous crimes dealing with hazardous waste, for example, the same as a misdemeanor shoplifting offense. When they know that back in New Jersey, they will probably have a higher penalty to begin with because we are only at a Class C in this proposal plus they have these 34 investigators to go out and nail them. Where would you violate the law? I would suggest that the State of New Jersey is the place that is going to end up with a lot of these violations.

In fact, when you look at the memo that the Attorney General's Office provided to the Representative from West Gardiner, Representative Marsh and myself, about what kind of things are investigated criminally in this state, quite a few of them have been out-of-state midnight dumper kinds of activities, not all of them because not everyone in the State of Maine is perfect. We want to be able to address those particularly bad crimes that are happening now. To me, it is just a question, as I pointed out in the beginning of my statement, either we are going to have criminal penalties or we are not. If we are going to take it seriously, then we ought to have some of them be a felony and not a misdemeanor and that is really what it comes down to.

The SPEAKER: The Chair recognizes the Representative from Jonesboro, Representative Look.

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

My question is, if a state department or agency buries refuge material, will that be dealt with through this legislation and if so, how would it be handled?

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

The Chair recognizes the Representative from Gardiner, Representative Treat.

Representative TREAT: Mr. Speaker, Men and Women of the House: I don't think that the law makes distinctions between who is committing the crime so, if there was an intentional violation of a significant provision and it was one of those items that came under the changed penalties, then it wouldn't make a difference whether it was an individual or a corporation or a town. Again, I think what people are concerned about is this so-called unwitting violation which isn't at all what this bill would address. Those people are not going to be bothered by this in any way at all. This is really to go after people who knowingly, intentionally and blatantly refuse to follow the law. That is what it is for.

The SPEAKER: The Chair recognizes the Representative from Falmouth, Representative Reed.

Representative REED: Mr. Speaker, I would like to pose a series of questions through the Chair.

The first question has to do with Page 4. There are references to Section 568 and Section 1364, the violations of which would impose penalties and I would request that someone tell me what those might be.

Also on Page 4 there are a number of references to the phrase "intent to deceive" and I reluctantly ask some of my colleagues from the bar to explain that to me.

My last question is on Page 2, Sections F through N, "site violations." Some of them have significant penalties, \$50,000 and \$25,000, criminal violations of rule-making and I am wondering if there are any other instances that any member is aware of where this body has delegated rule-making authority to impose criminal penalties of that magnitude?

The SPEAKER: The Representative from Falmouth, Representative Reed, has posed a series of questions through the Chair to anyone who may respond if they so desire.

The Chair recognizes the Representative from Gardiner, Representative Treat.

Representative TREAT: Mr. Speaker, Men and Women of the House: I am going to choose to answer the second of the three questions because that is the one I caught and if you want to repeat the other two, we can try to address those in turn.

The second of the three questions was, what does "intent to deceive" mean? This is an example of how this law was carefully crafted to make it more difficult to prosecute so that fewer people could be prosecuted under this change in the standards. The concern is that Maine law (right now) depends basically 100 percent on self-reporting by businesses and others about whether they have violated the law. They have to fill out forms saying whether there is pollution from their plants. What this says is that, if you fail to file those reports with the state, and there are a number of other things that come under this "intent to deceive," it only matters in terms of being a criminal violation if you intended to deceive the state by not providing that information so that the state would be under the impression that you were following along the law. If, for example, you simply forgot to mail in the form, that would not be a violation. A violation of only specific things where you intentionally went out of your way to make sure that people getting the wrong impression, that you were complying with the law or you have installed a piece of equipment, that maybe you didn't install, and that kind of thing.

The SPEAKER: The Chair recognizes the Representative from Falmouth, Representative Reed.

Representative REED: Mr. Speaker, I would like to rephrase questions one and three. I will try to do them more slowly and lucidly.

First, could someone tell me what Sections 568, Sub 3 and 1364, Sub 3 as referenced in Committee "A" deal with?

The other question is, are there other instances that members are aware of where this body has delegated to rule-making authority that would impose criminal penalties up to \$50,000?

The SPEAKER: The Representative from Falmouth, Representative Reed, has posed a series of questions through the Chair to anyone who may respond if they so desire.

The Chair recognizes the Representative from Hampden, Representative Richards.

Representative RICHARDS: Mr. Speaker, Ladies and Gentlemen of the House: In an attempt to answer some of the questions — in reference to 17a, Section 4a, 1301 on Page 4, not to exceed \$10,000 — the fine for a Class C felony is \$5,000 so that is saying notwithstanding that, we can impose \$10,000.

I will take another shot at it because I guess I didn't get the right section. Perhaps Representative Treat can pick up where I have missed. With respect to violation of rules and license permits and

approval and so forth, currently dealing with the laws of falsifying records in our criminal statutes, you can be convicted....sorry I have the wrong section.

Perhaps we do need more time to be able to answer some of these questions.

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

Representative FARNSWORTH: Mr. Speaker, Men and Women of the House: I am not sure entirely if I understand the question but I guess I wanted to say that my understanding is, because I haven't been able to find what you are referring to in the bill, but to the extent that it is right now, a violation of a rule that is referred to in the bill, what we are doing is changing the penalty for it. It is already criminal behavior to violate a rule.

Secondly, I thought that one of the reasons that sometimes I think people are hesitant to consider this kind of legislation is because we don't realize, since most of us are law abiding, how many people are intentionally violating these kinds of laws. One of the examples that was used by the Attorney General's Office to explain to us why the penalties need to be increased (that I thought was pretty persuasive) was, right now, they gave us an example of somebody who had ten years of falsifying records to conceal violations in discharges from a municipal sewage treatment facility, an individual employee who for ten years falsified the records. That person got 21 days.

There was another example given to us of somebody who had attempted to bribe an asbestos removal contractor from reporting the asbestos contamination of a non-work area at a local YMCA. That person got five days. I think most of us don't think about people doing these kinds of things. In addition to the midnight dumpers who are doing this kind of violating for money, there are people out there who are violating our laws intentionally and knowingly and I personally feel that the committee has done the work that is needed to do to protect people who are not blatantly and knowingly violating our laws.

I urge you to support the Majority Report.

The SPEAKER: The Chair recognizes the Representative from Orono, Representative O'Dea.

Representative O'DEA: Mr. Speaker, Men and Women of the House: I had a series of questions and all but one has been answered so I request permission to pose that question.

Why shouldn't it be a felony to drive a trailer truckload full of toxic waste into the State of Maine and dump it illegally on the side of a road?

The SPEAKER: The Representative from Orono, Representative O'Dea, has posed a question through the Chair to anyone who may respond if they so desire.

The Chair recognizes the Representative from Hampden, Representative Richards.

Representative RICHARDS: Mr. Speaker, Ladies and Gentlemen of the House: The answer to that is, yes you would be prosecuted and probably very harshly under the federal law. That involves interstate commerce so you would probably be looking at jail time if it was done with intentional disregard that was blatant and so forth.

The SPEAKER: The Chair recognizes the Representative from Orono, Representative O'Dea.

Representative O'DEA: Mr. Speaker, I have one

follow up question.

Then why shouldn't it be a felony for a business or a company in the State of Maine to do the same thing, to truck it from one end of the state to the other and dump it someplace within the state's borders?

The SPEAKER: The Representative from Orono, Representative O'Dea, has posed an additional question through the Chair to anyone who may respond if they so desire.

The Chair recognizes the Representative from Hampden, Representative Richards.

Representative RICHARDS: Mr. Speaker, Ladies and Gentlemen of the House: Representative O'Dea, if this law were to address only that particular instance, I would be here supporting this bill today.

My whole argument with this bill is the fact that we have basically taken away any allegiance in the state for a lot of the diversity of input that this bill does not have. It is too soon, too quick because the thought and energy that needs to go into this bill did not go into this bill. So, we are taking kind of a broad swipe to say, let's do it now, we will worry about other things later. We will come in with amendments next year or the year after that to take care of the problems which we really didn't intentionally want to do but sorry, we will change the law now. I don't want to be in a position of doing that. I don't think that's how we make good laws.

Representative Martin of Eagle Lake requested a roll call.

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

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

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

ROLL CALL NO. 314

YEA - Adams, Anthony, Ault, Butland, Cahill, M.; Carleton, Carroll, D.; Cathcart, Chonko, Clark, M.; Coles, Constantine, Crowley, Daggett, Dore, Erwin, Farnsworth, Gean, Goodridge, Gurney, Hale, Handy, Hastings, Heesch, Hichborn, Hogle, Holt, Jacques, Joseph, Ketover, Ketterer, Kilkelly, Kontos, Larrivee, Lawrence, Lemke, Lipman, Luther, Mahany, Manning, Marsh, Mayo, McHenry, McKeen, Michael, Michaud, Mitchell, E.; Mitchell, J.; Nadeau, Norton, Nutting, O'Dea, Oliver, Paradis, J.; Paradis, P.; Paul, Pfeiffer, Pineau, Powers, Rand, Richardson, Ruhl, Rydell, Saint Onge, Simonds, Simpson, Skoglund, Swazey, Treat, Tupper, Wentworth, The Speaker.

NAY - Aikman, Aliberti, Anderson, Bailey, H.; Bailey, R.; Barth, Bell, Bennett, Boutlier, Bowers, Carroll, J.; Clark, H.; Cote, DiPietro, Donnelly, Duffy, Duplessis, Dutremble, L.; Farnum, Farren, Foss, Garland, Gould, R. A.; Graham, Gray, Greenlaw, Hanley, Heino, Hepburn, Hichens, Hussey, Jalbert, Kerr, Kutasi, Lebowitz, Libby, Look, Lord, MacBride,

Macomber, Marsano, Martin, H.; Merrill, Morrison, Murphy, Nash, O'Gara, Ott, Parent, Pendexter, Pendleton, Pines, Plourde, Poulin, Pouliot, Reed, G.; Reed, W.; Richards, Ricker, Rotondi, Salisbury, Savage, Sheltra, Small, Spear, Stevens, A.; Stevens, P.; Stevenson, Strout, Tammaro, Tardy, Townsend, Tracy, Vigue, Waterman, Whitcomb.

ABSENT - Cashman, Gwadosky, Melendy.  
Yes, 72; No, 76; Absent, 3; Paired, 0;  
Excused, 0.

72 having voted in the affirmative and 76 in the negative with 3 being absent, the motion did not prevail.

Subsequently, the Minority "Ought Not to Pass" Report was accepted. Sent up for concurrence.

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

REPORTS OF COMMITTEES

Divided Report

Majority Report of the Committee on Judiciary reporting "Ought to Pass" as amended by Committee Amendment "A" (H-966) on Bill "An Act to Amend the Maine Health Security Act" (H.P. 1093) (L.D. 1593)

Signed:  
Senator: GAUVREAU of Androscoggin  
Representatives: PARADIS of Augusta  
ANTHONY of South Portland  
CATHCART of Orono  
HANLEY of Paris  
RICHARDS of Hampden  
OTT of York  
FARNSWORTH of Hallowell  
COTE of Auburn  
KETTERER of Madison  
STEVENS of Bangor

Minority Report of the same Committee reporting "Ought to Pass" as amended by Committee Amendment "B" (H-967) on same Bill.

Signed:  
Senators: HOLLOWAY of Lincoln  
BERUBE of Androscoggin

Reports were read.

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

Committee Amendment "A" (H-966) was read by the Clerk and adopted and the bill assigned for second reading Thursday, February 27, 1992.

Divided Report

Majority Report of the Committee on Appropriations and Financial Affairs reporting "Ought to Pass" - pursuant to Joint Order H. P.

1636 on Bill "An Act Making Supplemental Appropriations for Fiscal Year 1991-92" (EMERGENCY) (H.P. 1699) (L.D. 2379)

Signed:

Senators: BRANNIGAN of Cumberland  
PEARSON of Penobscot

Representatives: CARROLL of Gray  
RYDELL of Brunswick  
POULIOT of Lewiston  
PARADIS of Frenchville  
MICHAUD of East Millinocket  
HICHBORN of Howland  
CHONKO of Topsham

Minority Report of the same Committee reporting "Ought to Pass" as amended by Committee Amendment "A" (H-970) - pursuant to Joint Order H. P. 1636 on same Bill.

Signed:

Senator: FOSTER of Hancock  
Representatives: FOSS of Yarmouth  
REED of Falmouth  
MacBRIDE of Presque Isle

Reports were read.

Representative Chonko of Topsham moved that the House accept the Majority "Ought to Pass" Report.

The SPEAKER: The Chair recognizes the Representative from Yarmouth, Representative Foss.

Representative FOSS: Mr. Speaker, Ladies and Gentlemen of the House: I hope you will reject the Majority Report so we could go on to accept the Minority Report.

The minority members of Appropriations agree with most of the budget bill. However, we disagree with one portion of the Majority Report concerning how to fill a hole created when there was a failure to find any cuts in the health insurance plan for state employees.

The bill before you, right now, cuts \$300,000 from AFDC, \$300,000 from Medicaid and \$300,000 from the ICF account for a total of \$900,000, not because there is any structural change to account for these cuts, but simply because the majority needed \$900,000 to fill a budget hole.

The \$24 million dollar emergency budget includes unanticipated costs like overtime, workers' compensation benefits, programs for the Consent Decree and an increased enrollment in welfare programs due to the economy. One of the proposals that we considered in the committee as a way to cut spending this year to fund a portion of those emergency needs was a suspension of merit pay increases for state employees as of April 1st. That action would save \$750,000 in the last three months of this fiscal year and well over \$3 million during the next fiscal year, assuming that it is continued. Some of us on the committee strongly supported this proposal because we believe it is wrong to be giving salary increases to state employees while other citizens are being laid off in both the private and public sectors. The majority of the committee, however, refused to suspend those raises. Instead,

they arbitrarily cut \$900,000 from those accounts in the Department of Human Services to fill the gap, despite the fact that these funds will be needed to pay bills in those accounts which serve our most at-risk citizens.

You should also know that this \$900,000 cut in the General Fund means a loss of \$1.5 million in federal funds. There has been no structural changes in the programs to justify this cut. In fact, many of the same legislators who voted for the Human Services cuts have refused to make structural cuts in the welfare programs themselves. We believe it is unconscionable that the majority chose to avoid suspending pay increases for state employees by irresponsibly cutting Human Services programs. The state will be legally bound to pay those bills even if the money has been diverted elsewhere.

I understand that there is another amendment to give a "sweetheart deal" to Blue Cross/Blue Shield with provisions for a kickback this year to cover the hole. I am sure we will be debating that later.

When the Appropriations Committee traveled throughout this state to hear testimony from citizens, a common theme we heard was "that state government has not made enough of the tough cutting decisions that private businesses and municipal governments have made."

The City Manager of Rockland, Kathy Sleeper, for example, stated that municipal employees will have no pay increases for this entire year. It will also pick up any increases in the cost of their health insurance. People all over our state are losing their jobs and, in my opinion, it is insensitive and an insult to the taxpayers of this state for the legislature to condone the continuation of pay raises for state employees during this difficult economic period.

I would like to read from an article by Jack Channon in the Morning Sentinel. He quotes Economist magazine that puts Maine in the top 10 states that are living beyond our means. The state budget has not been reduced in the last three years. Any reduction has only been a reduction of the proposed increase. What we are talking about is an example of why we are not able to make those kinds of cuts.

The majority members of the Appropriations Committee will hide behind an AG's opinion to justify why state employees should continue to get pay raises between April 1st and June 30th. The Attorney General has stated that it is likely, not certain, that the suspension of merit increases could be a violation of the collective bargaining contract. However, the Governor's Counsel has argued that it not have a substantial impact on the total contract and is, therefore, legal. These prospective raises, that is future raises, are based on merit and are not guaranteed. Therefore, it seems appropriate for the legislature to make a strong statement that pay raises at this time are objectionable. If the Maine State Employees Union wants to sue the state for the pay raises, it certainly can go to court and make its case but we should remember that changes in the contract can be based on the budgetary problems of the state and, hopefully, the court will sustain the legislature's actions."

As you know, the State Employees Union has refused to go back to the bargaining table and reopen its contract to help the state find fair ways to address the budget shortfall over the past year. When a negotiated 7 percent raise came into effect

last July 1st and the state did not have the money to pay for the raise, state employees were required to take 17 furlough days without pay this year. These furlough days have created havoc in some departments and has disrupted services to citizens. Many state employees themselves have complained about the difficulties created by these furlough days in doing their jobs but the union leadership wanted the 7 percent raise to remain on the books so employees are still getting the same pay this year that they did last year with an additional 17 days off.

Also, when the union leaders were asked this December to negotiate to find reductions in the cost of health insurance for state employees, they refused to make any benefit cuts like increased deductibles or co-payments. All they finally agreed to was a one-time savings which does nothing to control the burgeoning costs in the health insurance areas.

We all know and it has been very dramatically shown in the last two days that the Maine State Employees Association is a powerful, political force in Augusta. The union lobbys very heavily in the hall of this building and often prevails. My question is and I asked the Chairs of my committee this morning, who is lobbying for all the citizens of this state who are losing their jobs or who are seeing their hours cut or who are not getting pay raises and who are paying a substantial portion of their health insurance costs? They do not have paid lobbyists and they cannot afford to pay anymore in taxes to support government spending.

The people of Maine are struggling financially now and it is wrong to give pay raises to state employees now. Hopefully, this legislature will agree that it is in the best interests of Maine people to reject the Majority Report and vote for the Minority Report. We should not be giving pay raises now, period, especially when the alternative presented by the majority calls for irresponsible cuts in Human Services programs.

I urge you to reject the Majority Report and I ask for a roll call.

The SPEAKER: The Chair recognizes the Representative from Topsham, Representative Chonko.

Representative CHONKO: Mr. Speaker, Ladies and Gentlemen of the House: There is a long history behind this section of the budget that has divided the Appropriations Committee. I have to go back to the cuts in number 6 budget, which we passed in December. At that point, the Administration had told us they wanted us to cut benefits in health care for state employees, a benefit which was negotiated by the state employees with the Executive Branch. The legislature, by law, is not allowed to negotiate contracts. Therefore, we rejected that part of it but we did make a deal with the state employees and the Executive Branch such as we had done when we took the pay increase money and told them to go back and negotiate how they would get that money. As you well know, the state employees took furlough days to get their \$7 million dollars.

In this case here on the health care, they were unable to agree to how they would fund it. It came back to the committee since we had already taken the \$3.2 million in the December budget so we had a hole to fill. We put together a supplemental committee of Appropriations, which was very hard, it came out with four options but unable to come to a solution. We are still not able to negotiate a contract.

From there, we ended up putting a budget together

after working for 12 hours, everybody was tired, the Majority Report needed to fill \$9 million dollars and they used three different areas in Human Services which has a total budget of \$126 plus million dollars in it to fill that gap, hoping that by the time this budget came to you tonight that we would have another solution, which will be presented in an amendment.

The Representative says that we are hiding behind the Attorney General's ruling. I don't know if it is hiding but that is our recourse, when we disagree with something, we ask for a ruling. The ruling says that it is unconstitutional.

The Representative from Yarmouth, Representative Foss, says we can let it go to court — our record in court is not very good, we have been there three times. On pay-push, we lost, we had to fill the hole. On the Maine Health Care Program, we lost, we had to fill the hole. We went again when we had a shutdown on whether or not we were going to pay the welfare checks and we lost again. This is the reason you have the two Reports before you tonight. I strongly believe that taking the merit increase is wrong, I am not here to negotiate contracts and I think that is up to the Executive Branch and the state employees.

I urge you to support the Majority "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 pending question before the House is the motion of the Representative from Topsham, Representative Chonko, that the House accept the Majority "Ought to Pass" Report. Those in favor will vote yes; those opposed will vote no.

## ROLL CALL NO. 315

YEA - Adams, Aliberti, Bell, Boutilier, Cahill, M.; Carroll, D.; Cathcart, Chonko, Clark, H.; Clark, M.; Coles, Constantine, Cote, Crowley, Daggett, DiPietro, Dore, Duffy, Dutremble, L.; Erwin, Farnsworth, Gean, Goodridge, Gould, R. A.; Graham, Gurney, Hale, Handy, Heeschen, Hichborn, Hoglund, Holt, Hussey, Jacques, Jalbert, Joseph, Kerr, Ketover, Ketterer, Kilkelly, Kontos, Larrivee, Lawrence, Lemke, Luther, Macomber, Mahany, Manning, Martin, H.; Mayo, McHenry, McKeen, Michael, Michaud, Mitchell, E.; Mitchell, J.; Morrison, Nadeau, Norton, Nutting, O'Dea, O'Gara, Oliver, Paradis, J.; Paradis, P.; Paul, Pfeiffer, Pineau, Plourde, Poulin, Pouliot, Powers, Rand, Richardson, Ricker, Rotondi, Ruhlin, Rydell, Saint Onge, Salisbury, Sheltra, Simonds, Simpson, Skoglund, Stevens, P.; Strout, Swazey, Tammaro, Tardy, Townsend, Tracy, Treat, Vigue, Waterman, Wentworth, The Speaker.

NAY - Aikman, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Bowers, Butland, Carleton, Carroll, J.; Donnelly, Duplessis, Farren, Foss, Garland, Gray, Greenlaw, Hanley, Hastings, Heino, Hepburn, Hichens, Kutasi, Lebowitz, Libby, Lipman, Look, Lord, MacBride, Marsano, Marsh, Merrill, Murphy, Nash, Ott, Parent, Pendexter, Pendleton, Pines, Reed, G.; Reed, W.; Richards, Savage, Small,

Spear, Stevens, A.; Stevenson, Tupper, Whitcomb.  
 ABSENT - Anthony, Cashman, Farnum, Gwadosky,  
 Melendy.  
 Yes, 96; No, 50; Absent, 5; Paired, 0;  
 Excused, 0.

96 having voted in the affirmative and 50 in the negative with 5 being absent, the Majority "Ought to Pass" Report was accepted, the bill read once.

Under suspension of the rules, the bill was read a second time.

Representative Carroll of Gray offered House Amendment "B" (H-981) and moved its adoption.

House Amendment "B" (H-981) was read by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Gray, Representative Carroll.

Representative CARROLL: Mr. Speaker, Ladies and Gentlemen of the House: I was the subcommittee chair on the Health Insurance issue that the Chair spoke to earlier. We worked very diligently trying to come up with a solution to a \$3.2 million dollar problem. We were able to identify the items of agreement, we were able to identify, at least at one point, a number of those items that everybody could agree on. We fell down at the tune of about \$750,000. We continued to offer solutions one evening downstairs to try to bridge the gap. Those all became unacceptable.

We now have before you an amendment which was characterized to you earlier as a "sweetheart deal." This "sweetheart deal" is simply an extension of a present contract with Blue Cross/Blue Shield of Maine, our current carrier, and sets up a minimum premium agreement, an insurance arrangement that major corporations all over this country have been going to because it does a couple of things. It is a better way to deal with insurance and it enhances a corporations cash flow. It will do the same thing for the State of Maine. It will allow us to go back and capture some money that Blue Cross/Blue Shield is now holding for us. It will enable us to move ahead with a program, it will enable us to balance the 1992 Supplemental Budget without touching those three major accounts in Human Services. At the same time, it puts us forward in upgrading our insurance, the same way major corporations do. I think it is a good step forward for the State of Maine, it balances our budget, it moves us in the right direction that major corporations are moving and, if we are suppose to run like business, I think this is a good step for the State of Maine to do.

I would urge your support of this amendment so we can pass this budget along and be moving on our way.

The SPEAKER: The Chair recognizes the Representative from Yarmouth, Representative Foss.

Representative FOSS: Mr. Speaker, Ladies and Gentlemen of the House: I hope you will oppose this amendment. We discussed this at length in committee, we rejected it then and we still reject it. This is not an extension of the current contract, it is a change to a minimum premium, which has recently been billed as a good business practice. What it does is change the current contract to have the state pick up the adverse experience cost next year. It could create a \$5 to \$7 million dollar hole in our budget. It is a "sweetheart deal" for Blue Cross/Blue Shield, it gives them a \$65 million dollar state contract for FY93 under the table without putting it out to competitive bid.

In Title 5, Section 1825a, it is very clear that purchases by the state shall be by competitive bidding. There are only very specific waivers given,

waivers given for expenditures of \$1,000 or less; expenditures authorized by the Governor as an emergency; sole source expenditures; procurement of petroleum products and a cooperative project between the state and the University of Maine.

In agreement for getting this extra contract, Blue Cross has agreed to kick back into this fiscal year a million dollars to cover the hole that we have been discussing. I would also argue that it is in violation of the Baldacci amendment which was added to the budget in December. I am going to read you that language. "Any person or corporation that participates in the formulation of a request for proposal for a state contract for goods and services is prohibited from bidding or contracting with the state for those goods or services." Ladies and gentlemen of the House, Frank McGinty of Blue Cross/Blue Shield has been actively involved in this proposal. He delivered this to members of the committee, he suggested that Blue Cross get the \$65 million dollar contract for FY93 and I think it is in direct violation of the Baldacci amendment. I urge you to oppose it and I ask for a roll call.

The SPEAKER: The Chair recognizes the Representative from Gray, Representative Carroll.

Representative CARROLL: Mr. Speaker, Ladies and Gentlemen of the House: I am somewhat taken back by the continued reference of "sweetheart deals." We have extended contracts in this state over and over and over again. Contract agreements have clauses in them which allow for the extension of that. We continue to do that anywhere from \$1,000 for 13 days to \$726,000 for 10 months and it goes on and on and on. There are 35 current contracts being extended.

These are extraordinary times. An RFP has not been entered into, it has not been drawn up. The current contract with the Blues expires June 30th, it is now the 25th day of February, it is almost, if not totally, impossible to develop an RFP and to put that out to bid for people to look at it and understand it. Then to come back and have it awarded prior to the close of this fiscal year and prior to the end of the Blue Cross current contract. This authorizes the Commissioner of Finance in Administration to extend that contract. It allows then, through that extension, for the labor/management team and health commission to look at insurance and health care benefits for FY93. We are then allowing an intelligent, long-term approach to dealing with the health care insurance issue. That is a simple, right, proper thing for this legislature to do in the long-term, financial interest of the State of Maine.

I would urge you to support this amendment.

The SPEAKER: The Chair recognizes the Representative from Falmouth, Representative Reed.

Representative REED: Mr. Speaker, Ladies and Gentlemen of the House: I had the opportunity to serve with Representative Carroll on this subcommittee that was referenced earlier and I want to tell you all that all of those meetings were conducted with dignity and I appreciate that. I complement Representative Carroll for it.

I do, however, feel compelled to oppose the amendment that he has offered on one ground only and I will refrain from characterizing the arrangement in any form whatsoever. What I am concerned about is the potential impact of the so-called minimum premium agreement. Among many things that I am not is an insurance agent but I do know that when I buy an insurance contract, I pay a premium, I know what that

is going to be upfront and my losses are then indemnified.

The danger, in my view, with these minimum premium arrangements is that we will still pay a premium, if you will, but we will be exposed to up to 10 percent more of our claims, which representatives from the Administration have told us could be \$5 to \$6 million in a given year. Now if any of you have dropped by the Appropriations Committee room any time in the past 14 months, you are aware that we are having some difficulty paying our bills as it is. To take an action which has a reasonable possibility of incurring an additional \$5 to \$6 million in bills seems to me imprudent and I hope you will reject it.

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 Brunswick, Representative Rydell.

Representative RYDELL: Mr. Speaker, Men and Women of the House: I, too, sat on this subcommittee and we had many long discussions about this particular arrangement. I think it is important to point out that the arrangement we have now, which is an insurance policy that requires us to pay \$900,000 in income tax to the federal government, which is another reason why large corporations no longer purchase ordinary insurance policies but have gone to self-insurance or minimum premium arrangements, but I do agree with the Representative from Falmouth, Representative Reed, that we would have to pay for claims above and beyond what was already calculated into our claims payments which we would make on a weekly basis to Blue Cross under a minimum premium arrangement. However, under our present contract, Blue Cross does not absorb those losses. When the contract is re-negotiated and the premium is being presented by Blue Cross to the state, they are adding in those adverse costs, those additional costs, from the previous contract. The difference is, under an insurance policy, your premium goes up; under a minimum premium type of arrangement, you do have to pay that as an additional assessment.

Putting out an RFP is also a costly process. The last time the state was going to do this was in relation to a new HMO/RFP. The State Employee Health Insurance Office came to the Appropriations Committee and asked for \$100,000 to develop and implement that RFP process. The last time they put out an RFP, they did it in January, they came back with a completed by April and said it would be impossible to implement by June, that it would have to extend the present contract and do it at a later date. So, we are in a situation where we will not be able to do anything except extend our current contract. The choice is whether we extend it as a regular insurance contract and pay additional costs or take this opportunity to do what every prudent business has done in our state and across the country and move to an arrangement whereby we hold our own reserves and whereby we use those funds that we would have been paying in federal taxes to offset other appropriations in our health insurance account.

I would urge you to accept this amendment.

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

Representative HASTINGS: Mr. Speaker, Men and Women of the House: I have been listening to this debate and if I heard it correctly, we are dealing with a \$65 million dollar contract which ends as of the 30th of June and we are, just by negotiation, extending that for another year with different terms. It appalls me that this state, under these economic troubled times, would ever enter into a contract for \$65 million dollars without putting it out to bid. There are all kinds of opportunities and I understand with insurance to have apples, oranges, peaches and every other type of plan but there are ways to do that and with these fluctuating economic times to simply say, let us bid by an agreement of \$65 million dollars worth of state money without it going out to others to look at, is about as far away from any prudent money management that I have ever heard.

I urge you not to support this amendment for that reason.

The SPEAKER: The pending question before the House is adoption of House Amendment "B" (H-981). Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 316

YEA - Adams, Aliberti, Ault, Bell, Boutilier, Cahill, M.; Carroll, D.; Cathcart, Chonko, Clark, H.; Clark, M.; Coles, Constantine, Cote, Crowley, Daggett, DiPietro, Dore, Duffy, Dutremble, L.; Erwin, Farnsworth, Gean, Goodridge, Gould, R. A.; Graham, Gurney, Hale, Handy, Heeschen, Hichborn, Hoglund, Holt, Jalbert, Joseph, Kerr, Ketover, Ketterer, Kilkelly, Kontos, Larrivee, Lawrence, Lemke, Luther, Macomber, Mahany, Manning, Martin, H.; Mayo, McHenry, McKeen, Michael, Michaud, Mitchell, E.; Mitchell, J.; Morrison, Nadeau, Norton, Nutting, O'Dea, O'Gara, Oliver, Paradis, J.; Paradis, P.; Paul, Pfeiffer, Pineau, Plourde, Poulin, Pouliot, Rand, Richardson, Ricker, Rotondi, Ruhlin, Rydell, Saint Onge, Sheltra, Simonds, Simpson, Skoglund, Stevens, P.; Swazey, Tamaro, Tardy, Townsend, Tracy, Treat, Vigue, Waterman, Wentworth, The Speaker.

NAY - Aikman, Anderson, Bailey, H.; Bailey, R.; Barth, Bennett, Bowers, Butland, Carleton, Carroll, J.; Donnelly, Duplessis, Farren, Foss, Garland, Gray, Greenlaw, Hanley, Hastings, Heino, Hepburn, Hichens, Hussey, Kutasi, Lebowitz, Libby, Lipman, Look, Lord, MacBride, Marsano, Marsh, Merrill, Murphy, Nash, Ott, Parent, Pendexter, Pendleton, Pines, Powers, Reed, G.; Reed, W.; Richards, Salisbury, Savage, Small, Spear, Stevens, A.; Stevenson, Strout, Tupper, Whitcomb.

ABSENT - Anthony, Cashman, Farnum, Gwadosky, Jacques, Melendy.

Yes, 92; No, 53; Absent, 6; Paired, 0; Excused, 0.

92 having voted in the affirmative and 53 in the negative with 6 being absent, House Amendment "B" was adopted.

The bill was passed to be engrossed as amended by House Amendment "B" (H-981) and sent up for concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

HOGLUND of Portland  
MITCHELL of Freeport  
POWERS of Coplin Plantation

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

**REPORTS OF COMMITTEES**

**Divided Report**

**Tabled and Assigned**

Majority Report of the Committee on **Energy and Natural Resources** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (H-957) on Bill "An Act to Amend the Subdivision Laws within the Jurisdiction of the Maine Land Use Regulation Commission" (H.P. 1514) (L.D. 2126)

Signed:

Senators: LUDWIG of Aroostook  
TITCOMB of Cumberland  
BALDACCI of Penobscot

Representatives: LORD of Waterboro  
ANDERSON of Woodland  
HOGLUND of Portland  
MARSH of West Gardiner  
JACQUES of Waterville  
GOULD of Greenville

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

Signed:

Representatives: MITCHELL of Freeport  
COLES of Harpswell  
SIMPSON of Casco  
POWERS of Coplin Plantation

Reports were read.

Representative Jacques of Waterville moved that the House accept the Majority "Ought to Pass" Report. On further motion of the same Representative, tabled pending his motion that the House accept the Majority "Ought to Pass" Report and specially assigned for Thursday, February 27, 1992.

**Divided Report**

Majority Report of the Committee on **Energy and Natural Resources** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (H-962) on Bill "An Act to Discourage Illegal Dumping of Waste" (H.P. 1560) (L.D. 2198)

Signed:

Senators: TITCOMB of Cumberland  
LUDWIG of Aroostook

Representatives: LORD of Waterboro  
JACQUES of Waterville  
MARSH of West Gardiner  
COLES of Harpswell  
SIMPSON of Casco

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

Signed:

Representatives: ANDERSON of Woodland  
GOULD of Greenville

Reports were read.

Representative Jacques of Waterville moved that the House accept the Majority "Ought to Pass" Report.

The SPEAKER: The Chair recognizes the Representative from Woodland, Representative Anderson. Representative ANDERSON: Mr. Speaker, Men and Women of the House: I hope you will reject the "Ought to Pass" Report and accept the Minority "Ought Not to Pass" Report for this reason, I think this is a bad bill, not intentionally by the sponsor, but I think you are guilty to proven innocent by this bill.

This bill would set up a mechanism where, if I borrowed Representative Nutting's pickup truck, took it to my place and used it and either my hired man or son used it while it was there, stopped by the brook, at his lunch and left his trash there, denied doing it, Representative Nutting would wind up paying the fine. The fine could possibly run as high as \$10,000. This is why I think this is a bad bill.

The SPEAKER: The Chair recognizes the Representative from Greenville, Representative Gould.

Representative GOULD: Mr. Speaker, Ladies and Gentlemen of the House: I will be very brief. Representative Anderson said basically everything that I needed to say and I just urge you to reject this Majority "Ought to Pass" Report. This is one of those bills that has very good intentions but I feel that it just goes against jurisprudence.

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

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

As I read the defense under this, it indicates that if somebody other than the owner is convicted of this dumping and operating the vehicle, my question is, may I as the owner of the vehicle be convicted of somebody dumping using my truck if nobody else is convicted for that crime?

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

The Chair recognizes the Representative from Woodland, Representative Anderson.

Representative ANDERSON: Mr. Speaker, Ladies and Gentlemen of the House: The answer is yes.

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

Representative CLARK: Mr. Speaker, Men and Women of the House: This is certainly not a bill that I tend to stand up to support but I am the prime sponsor of this bill. This bill deals with an issue that was brought to my attention by a constituent and that is that there was consistent dumping of hazardous waste on the banks of the Androscoggin River. When my constituent called the police, the police repeatedly told him that they could not respond to this problem unless he could positively



identify the driver of the vehicle, in spite of the fact that he had a license number.

This bill does exactly what we did with school buses, that is, it assumed that if your vehicle passes a stopped school bus, that you are the driver unless you can prove otherwise. This bill makes the same assumption about the dumping of hazardous waste. It is not nearly as complicated as the one we just dealt with. I am sorry they both came up on the same day, but I do urge your support of the Majority Report.

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

Representative HASTINGS: Mr. Speaker, Ladies and Gentlemen of the House: This bill is contrary to the school bus bill in that this bill allows one (it would appear) to be convicted as the owner so long as somebody identifies your vehicle from which there was an illegal dumping. The only defense is if somebody else is convicted.

In the school bus situation, I could go into court and say that it was my car perhaps but I am not sure who was driving it at the time and, therefore, in a sense I proved that I was not the driver, I did not know who was the driver and it did not require a conviction of another person as a defense.

This one says that somebody has to be convicted for me to get off. Now if I go on a trip to Augusta from Fryeburg and my truck sits in the garage and my son or my nephew or somebody takes the truck and does something illegal and I really don't know anything about it, what they are asking me to do is to go out and try to find out who did it. Even then it is hearsay to me because I am in Augusta, I didn't even give permission to take the truck so it is not like the school bus bill, this is something much more far-reaching. In fact, the difficulty I see with it is that because that is the only defense, that is a conviction of another person, I am not sure it would even be a valid law.

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

Representative HØGLUND: Mr. Speaker, Men and Women of the House: I believe Representative Hastings that that says if your car is stolen, that is totally different. I think we addressed that very carefully. It says, if a person is dumping illegally in the same spot or continues, such as in Representative Clark's position, that people can see a license plate and you are asked who uses your vehicle, you ought to be responsible when they are dumping illegal waste into a river or a drinking place to identify the person you lent the car to.

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

66 having voted in the affirmative and 56 in the negative, the Majority "Ought to Pass" Report was accepted, the bill read once.

Committee Amendment "A" (H-962) was read by the Clerk and adopted and the Bill assigned for second reading Thursday, February 27, 1992.

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

**REPORTS OF COMMITTEES**

**Divided Report**

**Tabled and Assigned**

Majority Report of the Committee on Judiciary reporting "Ought to Pass" as amended by Committee Amendment "A" (H-963) on Bill "An Act Requiring the Provision of Information to Victims of Gross Sexual Assault" (H.P. 359) (L.D. 513)

Signed:

Senators: BERUBE of Androscoggin  
GAUVREAU of Androscoggin  
HOLLOWAY of Lincoln

Representatives: RICHARDS of Hampden  
CATHCART of Orono  
FARNSWORTH of Hallowell  
COTE of Auburn  
PARADIS of Augusta  
KETTERER of Madison  
HANLEY of Paris  
STEVENS of Bangor

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

Signed:

Representatives: ANTHONY of South Portland  
OTT of York

Reports were read.

Representative Paradis of Augusta moved that the House accept the Majority "Ought to Pass" Report.

On further motion of the same Representative, tabled pending his motion that the House accept the Majority "Ought to Pass" Report and specially assigned for Thursday, February 27, 1992.

**Divided Report**

Majority Report of the Committee on Judiciary reporting "Ought to Pass" as amended by Committee Amendment "A" (H-965) on Bill "An Act Creating the Victims' Compensation Board" (H.P. 1265) (L.D. 1834)

Signed:

Senator: HOLLOWAY of Lincoln

Representatives: KETTERER of Madison  
RICHARDS of Hampden  
CATHCART of Orono  
OTT of York  
STEVENS of Bangor  
FARNSWORTH of Hallowell  
ANTHONY of South Portland  
HANLEY of Paris

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

Signed:

Senators: BERUBE of Androscoggin  
GAUVREAU of Androscoggin

Representatives: PARADIS of Augusta  
COTE of Auburn

Reports were read.

Representative Paradis of Augusta moved that the House accept the Minority "Ought Not to Pass" Report. The SPEAKER: The Chair recognizes the Representative from Hallowell, Representative Farnsworth.

Representative FARNSWORTH: Mr. Speaker, Men and Women of the House: I urge you not to accept the Minority "Ought Not to Pass" Report so that we can go on and accept the Majority "Ought to Pass" Report which I would like to amend if we get that far.

This bill is the result really of the work of a large number of people and I think it is the kind of bill that everyone here could feel good about supporting because it does not affect the General Fund and it does do something that we have really no other way to do this year. We have no other way to do this because we have no money but this bill would create a victim's compensation fund that would allow victims of crimes involving sexual assault, crimes against a person such as murder, kidnapping, criminal restraint, robbery or harm to an individual that results from operating under the influence with an excessive blood alcohol level.

We can't do anything for the victims of these crimes right now except for the little bit that is done when a judge is occasionally able to find a way to order restitution. This bill wouldn't stop that but this bill would allow us to say to the parents of a child who is murdered, we will be able to pay for your child's funeral expenses. Some of the testimony we had was some of the most moving that I have heard since I have been in that committee.

I just want to clarify for people (with reference to the funding) that this bill does not involve any General Fund money. There is a fiscal note at the moment but that can be taken care of. The federal funding that is referred to in some of the materials you have is a 40 percent reimbursable federal funding that is available for this sort of a fund. Maine is the only state in the United States that does not have this kind of a fund. What that means is, if somebody from Maine goes to any other state and is a victim of a crime there, they can take advantage of this sort of fund. But, if anybody else comes to this state and is the victim of a crime here, they can go home and take advantage of a fund like this but if Maine people are the victims of a crime in Maine, we offer them nothing.

So, I urge you to take advantage of the structure that this bill offers, to do something for victims who, right now, are simply left out of the picture. The way this bill accomplishes that is to put a surcharge on crimes, on the fines paid by criminals for misdemeanors that is in the amount of \$10 and for felonies it is an amount of \$25. In other states, they have found that this kind of a fine surcharge adds up and it does in fact pay for the program and it does in fact allow this sort of thing to operate at a suitable level.

I have given out two sheets of paper that are

printed on yellow paper, one of the criteria of this fund that is somewhat unusual is not for these types of funds but is that the victim can apply to this 3 person board that is set up by the bill for compensation, even if there hasn't been a conviction of a criminal. There has to have been a determination that there was a crime and you might ask, how would you know that if there is no conviction? The articles that are included on one of these sheets of paper gives you an example of the kinds of cases where you have crimes but you don't necessarily get convictions and that is because the crimes are against children. Other cases are, if there is a murder and we never find the person who committed the murder, you know there is a crime because you have a body. You know there is a crime if you are the family of that murdered person but they may never find who did it. This would allow us to do something for those people.

I urge you to vote against the current motion so we can proceed.

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

Representative PARADIS: Mr. Speaker, Ladies and Gentlemen of the House: Just very briefly because I know the hour is late and we are all tired.

The good Representative from Hallowell has stated some very good and sincere reasons to vote for the bill, to vote against my motion. This is not a bad bill. It isn't easy for me, as a signer of the Minority Report "Ought Not to Pass" to get up here and say you should not enact this legislation. It is a "feel good" bill. Each and everyone of you can vote for this bill and kind of feel good but I am not convinced for one moment that if you vote for this bill, we are going to be really aiding the victims of crime. I was hoping that I wouldn't have to make the motion "Ought Not to Pass." It should have been someone from the Appropriations Committee after the Special Session we had in December.

I don't know how, with a straight face, that we can vote to establish one more board with three members and an executive director, add another surcharge on penalties, have another dedicated fund, after what we did in December. If you want another category, we don't have to stop with victims of crime, we can do one for the elderly, one for the sick, one for children with special needs and we can find all kinds of reasons to establish some special funds that don't come out of the General Fund that adds surcharges, taxes, increased penalties, assessments — call it what you want, this is a tax increase. I don't care what the opposition says, it is the people of Maine that is going to be paying this increase. We don't have enough money to fund the courts now, we are adding another surcharge on the fines. We don't have enough bureaucracy now, we are going to enlarge it. I listened diligently to the arguments that were made in December, the Committee on Aging, abolished; the Commission on Women, abolished; now a victim's compensation board, where do we stop? If we start in February, where are we going to be in March with new boards and new commissions to undo what we did in December?

I don't believe that the victims are going to get that much money out of this because the minute we get a million dollars in that fund, and it is about \$800,000 a year that is going to be assessed, and I look at some of my friends on the Fisheries and Wildlife Committee, the minute there is \$800,000 or

\$1 million dollars, someone in Room 128 is going to look at that money and say, do we have to raise taxes here or do we just borrow a million dollars from this fund? We will pay it back in five years. Tell me that hasn't happened in the last three years. I have sat here and watched it happen about five different times. We borrowed from the Turnpike, we borrowed from the Fisheries and Wildlife Fund and we are still waiting to pay back some of that and we will do it by adding an assessment or an increase in penalty or another surcharge so that they can at least get their money back. We are not going to get it back from the General Fund. Once the General Fund borrows, it owns it. You have seen that happen.

A "feel good" bill, a wonderful election year bill for all of us to vote for and say we are doing something for the victims of crime. We do restitution now and in the National Journal on the Council of State Governments gives us recognition as being at the forefront of that. In their December, 1991 issue on Page 15, and I quote, "Restitution also helps satisfy a victim's need for justice by holding the offender accountable for the harm done. Maine requires prisoners to pay court ordered restitution before they are released on work programs." There seems to be a connection between somebody who has done something wrong, that is found guilty by the courts, a sentence is imposed, restitution is ordered and they pay the victim of that crime. Why take someone who has done something wrong, that is not connected to that crime pay for that offense? I don't see the connection.

This bill before you is a great improvement over the bill that was presented to us in January. It is a holdover bill that was printed in May at the end of the session and came to us for a hearing in January — they would have put a fine on all traffic infractions, so if you are going down the road and you get a \$50 fine, you are paying for someone whose house was broken into. If we find two marijuana cigarettes in a car, we can take that car. If you murder somebody, we can't even take their house. Why not? There's something wrong there, we are going to make somebody pay an extra \$25 or an extra \$20 when we ought to be taking that person's house. We have gone crazy in the last couple of years on drug fines and drug assessment and all this other stuff and yet on some of these major criminals out there, we put on a \$25 fee. Twenty-five dollars on murder. If you murder somebody, you get a \$25 increase. Big deal! What does that do to help out that family of the victim? There is a need for some sort of redress but I assure you this bill is not the redress of grievance.

I urge you to accept the Minority "Ought Not to Pass" Report.

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

Representative OTT: Mr. Speaker, Men and Women of the House: I think Representative Paradis is correct, this is a "feel good" bill. It does feel good from my perspective because it is not going to require the use of any state funds, from the General Fund or otherwise, to make this legislation work.

Representative Farnsworth has pointed out that 49 other states have enacted this law. I am just thinking about our motto which says, "That I direct or I lead." While I know that Mainers have a lot of independent spirit, I think this is one situation which might be wise of us to say that we will

follow. Of all the testimony that we heard, there was nobody that was, in any way, opposed to this legislation from the experienced level that the other Representatives from states that had come to testify before our committee. Some states have had this legislation in effect since 1975, if I recall correctly, and there has been nothing to indicate that it is not working. In some of those states that have this legislation, it is funded out of general revenues. Here we are proposing legislation that would be funded with a mechanism of a surcharge.

One point that I would further like to make is the fact that I believe, since 1985, we are missing out because we don't have this victim's compensation fund a 40 percent match from the federal government. I recognize that that may not always be available but the fact is that for the past 5 or 7 years, we have missed out on that so I think yes, it is a "feel good" bill and I would urge you to defeat the motion now pending so we can go on to pass the Majority Report.

The SPEAKER: The Chair recognizes the Representative from Madison, Representative Ketterer.

Representative KETTERER: Mr. Speaker, Ladies and Gentlemen of the House: I am going to ask you to accept the Majority Report by voting no on the present motion. As previously stated, the proposed legislation establishes a compensation fund and it does so in a sensitive and caring way. For some time, victims of crime have been left to whatever court ordered restitution may be indicated in a particular case and frequently they are unable to collect the restitution, and more frequently, no one is apprehended, no arrest is made and, consequently, there is no conviction.

The suggestion that the victim of a crime can be compensated by getting the court ordered restitution is true only in a limited circumstance where there is a defendant and there is a conviction. The statistics indicate that, in the vast majority of cases, there are no arrests and there are no convictions. This is particularly true of violent crimes.

Other important features of this bill have to do with the fact that it is related to bodily injury, kidnap, rape, sexual assault — these individuals deserve our attention whether or not the State of Maine is having a fiscal crisis. The lid on this compensation is \$5,000 per claimant and, in many instances, the amount of money paid would be far less than that. The surcharge of \$25 on a felony and \$10 on a misdemeanor is a small amount to pay. The original bill, as was pointed out by my colleague from Augusta, imposed a surcharge on infractions such as speeding, stop sign violations and other motor vehicle violations, they have been completely removed from this legislation. People in that category will not pay any money whatsoever, other than the court ordered fine in the event that they are found guilty.

We heard dramatic testimony before our committee from parents of deceased children who could not afford to bury their child, could not afford minimal expense in connection with the enormous grief that they had. We heard testimony from people who brought in the need for psychological treatment and no money to pay for it for victim's of sexual assault and other violent crimes. Those people have a right to get minimal compensation and that is all it is in many instances, minimal.

I would ask you, for all those reasons, to

consider voting no on the pending motion.

Representative Ott mentioned briefly that there is a 40 percent match fund by the federal government and I will tell you that the federal government formula is as complicated in this instance as it typically is but that the legislation is drafted to be in compliance with those federal requirement. For all those reasons, I ask you to vote on the pending motion.

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

Representative RICHARDS: Mr. Speaker, Ladies and Gentlemen of the House: I just want to address one issue that I think is important to address and that is the fact that the good Chairman from the Judiciary Committee raised the issue about the fact that there is no causal nexus between \$25 that you are assessing me for a crime that somebody else has committed. The competing argument to that was and is today is the fact that in society when the greatest cost that we have are the victims of crime because of people that violate our criminal laws so the argument is, who should bear the greatest expense? The society-at-large or the offender? Currently, society-at-large is bearing a greater part of that expense and I think this is minimal amount for those people who fall into that class of violating our laws to contribute to this fund and to be able to defray some of those costs to us.

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

A vote of the House was taken.

6 having voted in the affirmative and 74 in the negative, the motion to accept the Minority "Ought Not to Pass" Report was not accepted.

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

Committee Amendment "A" (H-965) was read by the Clerk.

Representative Farnsworth of Hallowell offered House Amendment "A" (H-984) to Committee Amendment "A" (H-965) and moved its adoption.

House Amendment "A" (H-984) to Committee Amendment "A" (H-965) was read by the Clerk.

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

Representative FARNSWORTH: Mr. Speaker, Men and Women of the House: I just wanted to explain that this simply allows the fund itself to cover the cost of reprogramming the courts' computers so that there will be no General Fund charge.

Subsequently, House Amendment "A" (H-984) to Committee Amendment "A" (H-965) was adopted.

Committee Amendment "A" (H-965) as amended by House Amendment "A" (H-894) thereto was adopted and the bill assigned for second reading Thursday, February 27, 1992.

**CONSENT CALENDAR**

**First Day**

In accordance with House Rule 49, the following

items appeared on the Consent Calendar for the First Day:

(S.P. 874) (L.D. 2235) Bill "An Act to Provide for the 1992 and 1993 Allocations of the State Ceiling on Private Activity Bonds" (EMERGENCY) Committee on **Housing and Economic Development** reporting "Ought to Pass"

(S.P. 518) (L.D. 1396) Bill "An Act to Establish the Maine Correctional Institution - Warren" **Joint Select Committee on Corrections** reporting "Ought to Pass" as amended by Committee Amendment "A" (S-549)

(H.P. 1606) (L.D. 2268) Bill "An Act Regarding the Time and Temperature Sign Located in Portland" Committee on **Transportation** reporting "Ought to Pass" as amended by Committee Amendment "A" (H-951)

(H.P. 1479) (L.D. 2091) Bill "An Act to Revise the Charter of the Boothbay Harbor Sewer District" (EMERGENCY) Committee on **Utilities** reporting "Ought to Pass" as amended by Committee Amendment "A" (H-953)

(H.P. 1563) (L.D. 2201) Bill "An Act to Strengthen Compliance with Land Use Laws in the Unorganized Territories" Committee on **Energy and Natural Resources** reporting "Ought to Pass" as amended by Committee Amendment "A" (H-954)

(H.P. 1455) (L.D. 2067) Bill "An Act to Simplify and Reduce the Cost of State Mapping Efforts" Committee on **Energy and Natural Resources** reporting "Ought to Pass" as amended by Committee Amendment "A" (H-955)

(H.P. 1559) (L.D. 2197) Bill "An Act to Improve Disclosures of Automated Teller Machine Transactions" Committee on **Banking and Insurance** reporting "Ought to Pass" as amended by Committee Amendment "A" (H-958)

(H.P. 1593) (L.D. 2247) Bill "An Act to Create the Waterboro Water District" (EMERGENCY) Committee on **Utilities** reporting "Ought to Pass" as amended by Committee Amendment "A" (H-959)

(H.P. 1552) (L.D. 2190) Bill "An Act to Define Conflict of Interest for Probate Judges" Committee on **Judiciary** reporting "Ought to Pass"

(H.P. 1491) (L.D. 2103) Bill "An Act to Amend the Laws Governing Emergency Medical Technicians" Committee on **Business Legislation** reporting "Ought to Pass" as amended by Committee Amendment "A" (H-961)

(H.P. 1287) (L.D. 1857) Bill "An Act Concerning Authorization to Consent to Powers of Attorney" Committee on **Judiciary** reporting "Ought to Pass" as amended by Committee Amendment "A" (H-964)

(H.P. 1541) (L.D. 2174) Bill "An Act to Protect School Students from Potential Harm" Committee on **Transportation** reporting "Ought to Pass" as amended by Committee Amendment "A" (H-968)

(H.P. 1471) (L.D. 2083) Bill "An Act Concerning the Stocking of Atlantic Salmon in Maine Rivers"

(EMERGENCY) Committee on Marine Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (H-969)

(H.P. 1532) (L.D. 2163) Bill "An Act to Amend the State's Oil Spill Prevention and Response Provisions" Committee on Energy and Natural Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (H-971)

(H.P. 1463) (L.D. 2075) Bill "An Act to Prohibit the Dismantling of Products That Contain Hazardous Material near Water Supplies" Committee on Energy and Natural Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (H-972)

(H.P. 1553) (L.D. 2191) Bill "An Act to Authorize the Construction of Two Veterans' Homes in Eastern and Western Maine" (EMERGENCY) Committee on Aging, Retirement and Veterans reporting "Ought to Pass" as amended by Committee Amendment "A" (H-973)

There being no objections, the above items were ordered to appear on the Consent Calendar of Thursday, February 27, 1992 under the listing of Second Day.

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**CONSENT CALENDAR**

**Second Day**

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

(H.P. 1565) (L.D. 2203) Bill "An Act to Amend the Laws Concerning Continuity of Health Insurance" (C. "A" H-937)

(H.P. 1493) (L.D. 2105) Bill "An Act Regarding Loans to Stockholders, Directors, Corporators or Officers of Financial Institutions" (C. "A" H-938)

(H.P. 1447) (L.D. 2059) Bill "An Act to Require Reporting of Daily Routine Releases of Radioactive Materials" (C. "A" H-939)

(H.P. 1417) (L.D. 2029) Bill "An Act to Amend the Maine High-Risk Insurance Organization Laws" (C. "A" H-940)

(H.P. 1504) (L.D. 2117) Bill "An Act to Repeal the Laws Creating the Mandated Benefits Advisory Commission" (C. "A" H-941)

(H.P. 1570) (L.D. 2212) Bill "An Act to Amend the Laws Governing the State Claims Commission" (C. "A" H-942)

(H.P. 1526) (L.D. 2155) Bill "An Act to Amend the Motor Vehicle Laws" (C. "A" H-943)

(H.P. 1450) (L.D. 2062) Bill "An Act to Allow Transfer of Commercial Moorings" (C. "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" (C. "A" H-947)

(H.P. 1462) (L.D. 2074) Bill "An Act to Amend the Financial Responsibility Laws" (C. "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) (C. "A" H-950)

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

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**PASSED TO BE ENGROSSED**

**As Amended**

Bill "An Act to Permit Pari-mutuel Pools" (H.P. 1549) (L.D. 2187) (C. "A" H-948)

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

Representative Tardy of Palmyra offered House Amendment "A" (H-978) and moved its adoption.

House Amendment "A" (H-978) was read by the Clerk and adopted.

The bill was passed to be engrossed as amended by Committee Amendment "A" (H-948) and House Amendment "A" (H-978) and sent up for concurrence.

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**PASSED TO BE ENACTED**

**Emergency Measure**

An Act to Facilitate Prompt Child Support Payments from the Department of Human Services (H.P. 1054) (L.D. 1543) (C. "A" H-892)

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. 102 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.

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**PASSED TO BE ENACTED**

**Emergency Measure**

An Act to Replace Criminal Penalties with Civil Penalties for Violations of Weights and Measures Laws (H.P. 1483) (L.D. 2095) (C. "A" H-893)

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

**PASSED TO BE ENACTED**

**Emergency Measure**

An Act to Clarify the Zoning Provisions Administered by the Maine Land Use Regulation Commission (H.P. 1589) (L.D. 2243)

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

**PASSED TO BE ENACTED**

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

An Act to Authorize Forest Rangers to Enforce the Rules and Laws Pertaining to the Bureau of Public Lands (S.P. 852) (L.D. 2165) (C. "A" S-538)

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

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.

**PASSED TO BE ENACTED**

An Act to Provide Equitable Insurance Reimbursement for Acupuncture Services Provided by Licensed Acupuncturists (H.P. 683) (L.D. 982) (C. "A" H-878)

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

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

Representative **GARLAND**: Mr. Speaker, Members of the House: In the spirit of the Olympics, the acupuncturists are going for the gold. They want it mandated that they be reimbursed at the same rate as physicians and chiropractors, they want this body's seal of approval.

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

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

Representative **MITCHELL**: Mr. Speaker, Men and Women of the House: Let me refresh your memory on the acupuncture bill. This bill was recommended for passage by the Mandated Benefits Advisory Commission. All it says is, if you have training to give acupuncture, you can be reimbursed for it.

We heard a very funny story in my committee about a young woman who was training to be an

acupuncturist. She was already an M.D. and had already gone through very strenuous training and was so excited when it came time to take her test so she could administer acupuncture. They laughed and said, "Don't you know as a doctor you could have been administering acupuncture all along." She said, "I don't know how." Isn't it ridiculous to say that someone who is trained in acupuncture can't be reimbursed for it? This does not say that your insurance policy has to cover acupuncture. It says, if it does, then you can reimburse a licensed person for that service.

I hope you will vote against the motion to indefinitely postpone.

The **SPEAKER**: The Chair will order a vote. The pending question before the House is the motion of the Representative from Bangor, Representative Garland, that L.D. 982 and all its accompanying papers be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

42 having voted in the affirmative and 76 in the negative, the motion did not prevail.

Subsequently, L.D. 982 was passed to be enacted, signed by the Speaker and sent to the Senate.

**PASSED TO BE ENACTED**

An Act to Provide Equitable Insurance Coverage for Mental Illness (H.P. 1064) (L.D. 1553) (C. "A" H-883)

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

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

Representative **GARLAND**: Mr. Speaker, Members of the House: This bill has good intentions but I fear its unintended results. I worry that this bill will force more people to drop coverage because of this additional expense. I know that I do not want to help inflate health insurance premiums so I move indefinite postponement of this bill and all its accompanying papers and request a roll call.

The **SPEAKER**: The Chair recognizes the Representative from Auburn, Representative Dore.

Representative **DORE**: Mr. Speaker, Men and Women of the House: I would like to respond to the gentleman's suggestion that we move indefinite postponement and I would like to talk for a moment about the bill and what we did with it.

He is fearful of the additional expense, he needs to understand, I think, what kind of legislator I am. I do not send things to the Appropriations Table that I do not have a way to pay for it. Last year I sent to the Appropriations Table \$6 million dollars with no request whatsoever in terms of how the money be spent. I said, "Spend it wisely." I think the Democrats and the Republicans on that committee will remember when I came in with that.

I have a few ideas on how to pay for this that don't involve any increases in taxes. I realize as a member of the Taxation Committee that when I stand up, everybody is afraid that I am going to increase taxes but I have a few ideas and I am fairly good, I think, at finding money so I don't think we ought to worry about the expense here. I also have some

serious doubts about the fiscal note as it stands and I think our Bureau of Insurance who has provided us with data for that fiscal note also has some serious doubts and they would like the opportunity to review the fiscal note over the next few months. I look at the fiscal note and think, well, they say in order to be a state employee, you have to be crazy and when I look at this fiscal note, it seems to indicate that about a third of the state employees are schizophrenic — possible, but I don't think it is very likely. So, I hope that we don't let expense get in the way of doing the right thing because if we are going to let expense get in the way of doing the right thing, let me give you a suggestion — feel free to go write an amendment that says, let's take illnesses that people cause themselves to have by their behavior and let's put caps on them so that we can remove the caps from physical illnesses that people get because they were born with these diseases. The insurance industry hasn't made that suggestion, you good Representative haven't made that suggestion, and I haven't made that suggestion because we are very compassionate about illnesses, even those illnesses that people cause themselves to have by their behavior. Well, these organic mental illnesses are not at all caused by behavior and I would suggest to you that they ought to be included like all other physical illnesses. If they weren't disease of the brain, they would have been.

I would urge you to vote against the motion, I am hoping that we can send this bill to the Table and I am certainly aware of the fact that if the fiscal note isn't substantially lowered, there isn't a prayer for it and I will do everything I can to find a mechanism to pay for it so it isn't a burden to the people of Maine.

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

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

The SPEAKER: The pending question before the House is the motion of the Representative from Bangor, Representative Garland, that L.D. 1553 and all its accompanying papers be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 317

YEA - Aikman, Bailey, H.; Bailey, R.; Barth, Bennett, Bowers, Carleton, Chonko, Donnelly, Foss, Garland, Greenlaw, Hanley, Hastings, Hepburn, Kutasi, Lebowitz, Libby, Look, Lord, MacBride, Marsano, Murphy, Pendexter, Reed, W.; Salisbury, Savage, Tupper, Whitcomb.

NAY - Adams, Aliberti, Anderson, Ault, Bell, Butland, Cahill, M.; Carroll, D.; Carroll, J.; Cathcart, Clark, H.; Clark, M.; Coles, Constantine, Cote, Crowley, Daggett, Dore, Duffy, Duplessis, Dutremble, L.; Erwin, Farnsworth, Farren, Gean, Goodridge, Gould, R. A.; Graham, Gray, Gurney, Hale, Handy, Heeschen, Heino, Hichborn, Hognlund, Holt, Hussey, Jacques, Jalbert, Joseph, Kerr, Ketover, Ketterer, Kilkelly, Kontos, Larrivee, Lawrence, Lemke, Lipman, Luther, Macomber, Mahany, Manning,

Marsh, Martin, H.; Mayo, McHenry, McKeen, Michael, Michaud, Mitchell, E.; Mitchell, J.; Morrison, Nadeau, Nash, Norton, Nutting, O'Dea, O'Gara, Oliver, Ott, Paradis, J.; Paradis, P.; Paul, Pendleton, Pfeiffer, Pineau, Pines, Plourde, Poulin, Pouliot, Powers, Rand, Reed, G.; Richards, Richardson, Ricker, Rotondi, Ruhlin, Rydell, Saint Onge, Sheltra, Simonds, Simpson, Small, Spear, Stevens, A.; Stevens, P.; Stevenson, Strout, Swazey, Tammaro, Townsend, Tracy, Treat, Vigue, Waterman, Wentworth, The Speaker.

ABSENT - Anthony, Boutilier, Cashman, DiPietro, Farnum, Gwadosky, Hichens, Melendy, Merrill, Parent, Skoglund, Tardy.

Yes, 29; No, 110; Absent, 12; Paired, 0; Excused, 0.

29 having voted in the affirmative and 110 in the negative with 12 being absent, the motion to indefinitely postpone did not prevail.

Subsequently, L.D. 1553 was passed to be enacted, signed by the Speaker and sent to the Senate.

PASSED TO BE ENACTED

An Act to Protect Telephone Customer Privacy (H.P. 1118) (L.D. 1643) (H. "A" H-912)

An Act to Clarify the Laws Related to Credit Cards (H.P. 1410) (L.D. 2022) (C. "A" H-895)

An Act to Achieve Parity between the Authority of Loan Officers of State-chartered Credit Unions and the Authority of Loan Officers of Federally Chartered Credit Unions (H.P. 1441) (L.D. 2053) (C. "A" H-896)

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.

ORDERS OF THE DAY

TABLED AND TODAY ASSIGNED

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

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) (Committee on Energy and Natural Resources suggested)

TABLED - February 20, 1992 by Representative JACQUES of Waterville.

PENDING - Reference.

On motion of Representative Jacques of Waterville, was referred to the Committee on Transportation, ordered printed and sent up for concurrence.

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

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 20, 1992 by Representative MAYO of Thomaston.  
 PENDING - Passage to be Engrossed.

On motion of Representative Nutting of Leeds, retabled pending passage to be engrossed and specially assigned for Thursday, February 27, 1992.

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

JOINT RESOLUTION SUPPORTING CREATION OF THE WOLFE NECK INSTITUTE (H.P. 1676)  
 TABLED - February 20, 1992 by Representative MELENDY of Rockland.  
 PENDING - Adoption.

On motion of Representative Mayo of Thomaston, retabled pending adoption and specially assigned for Thursday, February 27, 1992.

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

Bill "An Act to Amend the Motor Vehicle Salvage Laws" (H.P. 1500) (L.D. 2112)  
 TABLED - February 20, 1992 by Representative HANDY of Lewiston.  
 PENDING - Motion of Representative MACOMBER of South Portland to Indefinitely Postpone House Amendment "A" (H-956) to Committee Amendment "A" (H-928)

Subsequently, on motion of Representative Macomber of South Portland, House Amendment "A" (H-956) to Committee Amendment "A" (H-928) was indefinitely postponed.

Committee Amendment "A" (H-928) was adopted and the bill assigned for second reading Thursday, February 27, 1992.

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

Bill "An Act to Prevent Certain Restraint of Trade Practices" (H.P. 1291) (L.D. 1866)  
 TABLED - February 20, 1992 by Representative SHELTRA of Biddeford.  
 PENDING - Adoption of Committee Amendment "A" (H-919)

Representative Sheltra of Biddeford offered House Amendment "A" (H-975) to Committee Amendment "A" (H-919) and moved its adoption.

House Amendment "A" (H-975) to Committee Amendment "A" (H-919) was read by the Clerk and adopted.

Committee Amendment "A" (H-919) as amended by House Amendment "A" (H-975) thereto was adopted and the bill assigned for second reading Thursday, February 27, 1992.

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**BILL HELD**

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 (H.P. 1689)  
 - In House, Read and Adopted on February 20, 1992.  
 HELD at the request of Representative MARSANO of Belfast.

On motion of Representative Marsano of Belfast, the House reconsidered its action whereby Joint Resolution (H.P. 1689) was adopted.

The SPEAKER: The Chair recognizes the Representative from Waldo, Representative Whitcomb.

Representative WHITCOMB: Mr. Speaker, I appreciate the House's willingness to reconsider this action and the reason it was held by the Representative from Belfast was so I could address a couple of questions to the sponsor of the Joint Resolution.

It was adopted under the hammer the other night and I would like to know if the Resolution, as it is drafted talks to the issue of spending the so-called Peace Dividend, which has implications particularly in certain areas of the State of Maine - in that action of Congress, is there any guarantee or any discussion as to whether that Peace Dividend would be returned to Maine in any like amount of funds that would be likely taken from Maine from a substantial cutback in defense spending?

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

The Chair recognizes the Representative from Brunswick, Representative Clark.

Representative CLARK: Mr. Speaker, Men and Women of the House: The Resolution does not specify any dollars that are going back and forth in one way or the other.

The SPEAKER: The Chair recognizes the Representative from Waldo, Representative Whitcomb.

Representative WHITCOMB: Mr. Speaker, Ladies and Gentlemen of the House: I only have a limited understanding of that Act as it is before Congress but the concern that might be raised about this issue is the fact that in the Budget Act of 1991, there was an agreement made at the U.S. Congressional level to raise taxes but part of that agreement was the fact that there would also be an offset against the deficit of our country. It seems to me that this amendment that we initially adopted goes against that Act that was before the Congress.

The reason I raised the question to the sponsor of this is, if it is the understanding of the sponsor that we are now going back on this agreement that we made where at the federal level we initiated a massive tax increase, and as a part of that package, agreed that we would apply some of the defense cutbacks to reduce the national deficit, which currently takes 15 percent of our total federal budget, it ought to be an item of concern to this body having been put in a situation where we have spent more at the state level than we could afford in the past, that now the deficit, which this amendment I believe fails to address in any manner, is about to become the second largest national expenditure.

My question to the sponsor of this is the impact of the amendment at the federal level on the national deficit question.

On motion of Representative Mayo of Thomaston,



tabled pending adoption and specially assigned for  
Thursday, February 27, 1992.

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On motion of Representative Hoglund of Portland,  
Adjourned at 7:37 p.m. to Thursday, February 27,  
1992, at ten o'clock in the morning.

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