

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred And Sixteenth Legislature

OF THE

State Of Maine

VOLUME II

FIRST REGULAR SESSION

House of Representatives
May 17, 1993 to July 14, 1993

ONE HUNDRED AND SIXTEENTH MAINE LEGISLATURE
FIRST REGULAR SESSION
63rd Legislative Day
Thursday, June 3, 1993

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

Prayer by The Reverend William J. Monroe, Advent Christian Church, Friendship.

The Journal of Wednesday, June 2, 1993, was read and approved.

SENATE PAPERS

The following Communication:

Maine State Senate
Augusta, Maine 04333

June 2, 1993

Honorable Joseph W. Mayo
Clerk of the House
State House Station 2
Augusta, Maine 04333

Dear Clerk Mayo:

Please be advised that the Senate today appointed the following conferees to the Committee of Conference on the disagreeing action of the two branches of the Legislature on RESOLUTION, Proposing an Amendment to the Constitution of Maine to Protect State Parks (H.P. 176) (L.D. 228):

Senator BERUBE of Androscoggin
Senator CAREY of Kennebec
Senator BUTLAND of Cumberland

Sincerely,

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

Was read and ordered placed on file.

Reference is made to (H.P. 176) (L.D. 228) RESOLUTION, Proposing an Amendment to the Constitution of Maine to Protect State Parks

In reference to the action of the House on June 1, 1993, whereby it Insisted and Asked for a Committee of Conference, the Chair appoints the following members on the part of the House as Conferees:

Representative MITCHELL of Freeport
Speaker MARTIN of Eagle Lake
Representative BENNETT of Norway

The following Communication:

Maine State Senate
Augusta, Maine 04333

June 2, 1993

Honorable Joseph W. Mayo
Clerk of the House
State House Station 2
Augusta, Maine 04333

Dear Clerk Mayo:

Senate Paper 155, Legislative Document 486, An Act Concerning the Mandatory Use of Seat Belts, having been returned by the Governor together with his objections of the same pursuant to the provisions of the Constitution of the State of Maine, after reconsideration the Senate proceeded to vote on the question: "Shall this Bill become a law notwithstanding the objections of the Governor?"

19 Senators having voted in the affirmative and 16 Senators having voted in the negative, and no Senators being absent, accordingly, it was the vote of the Senate that the Bill not become law and the veto was sustained.

Sincerely,

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

Was read and ordered placed on file.

The following Communication:

Maine State Senate
Augusta, Maine 04333

June 2, 1993

The Honorable John L. Martin
Speaker of the House
116th Legislature
Augusta, Maine 04333

Dear Speaker Martin:

In accordance with Joint Rule 38, please be advised that the Senate today confirmed the following:

Upon the recommendation of the Joint Standing Committee on Education:

James R. Caron of Fort Kent for reappointment to the University of Maine Board of Trustees.

Bennett D. Katz of Augusta for reappointment to the University of Maine Board of Trustees.

George W. Wood, III of Orono for reappointment to the University of Maine Board of Trustees.

Sincerely,

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

Was read and ordered placed on file.

The following Communication:

Maine State Senate
Augusta, Maine 04333

June 2, 1993

The Honorable John L. Martin
Speaker of the House
116th Legislature
Augusta, Maine 04333

Dear Speaker Martin:

In accordance with Joint Rule 38, please be advised that the Senate today confirmed the following:

Upon the recommendation of the Joint Standing Committee on Labor:

Kathy MacLeod Hooke of Bethel for appointment as the Alternate Neutral Member of the Maine Labor Relations Board. Kathy MacLeod Hooke is replacing Jim Libby.

Upon the recommendation of the Joint Standing Committee on State & Local Government:

Dennis Lemieux of Brunswick for reappointment to the Civil Service Appeals Board.

Delores Finley Starbird of Augusta for appointment to the Civil Service Appeals Board. Delores Finley Starbird is replacing Barbara Powers.

Sincerely,

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

Was read and ordered placed on file.

The following Communication:

Maine State Senate
Augusta, Maine 04333

June 1, 1993

The Honorable John L. Martin
Speaker of the House
116th Legislature
Augusta, Maine 04333

Dear Speaker Martin:

In accordance with Joint Rule 38, please be advised that the Senate today confirmed, upon the recommendation of the Joint Standing Committee on Housing and Economic Development, Kirk M. Allen of Gorham for appointment to the Adaptive Equipment Loan Program Fund Board. Kirk M. Allen is replacing Gail Lawley.

Sincerely,

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

Was read and ordered placed on file.

The following Communication:

Maine State Senate
Augusta, Maine 04333

June 1, 1993

The Honorable John L. Martin
Speaker of the House
116th Legislature
Augusta, Maine 04333

Dear Speaker Martin:

In accordance with Joint Rule 38, please be advised that the Senate today confirmed, upon the recommendation of the Joint Standing Committee on Energy and Natural Resources, Owen R. Stevens of South Berwick for reappointment to the Board of Environmental Protection.

Sincerely,

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

Was read and ordered placed on file.

The following Communication:

Maine State Senate
Augusta, Maine 04333

June 1, 1993

The Honorable John L. Martin
Speaker of the House
116th Legislature
Augusta, Maine 04333

Dear Speaker Martin:

In accordance with Joint Rule 38, please be advised that the Senate today confirmed, upon the recommendation of the Joint Standing Committee on Judiciary, the following:

William R. Anderson of Morrill for appointment as Judge-at-Large of the District Court. William R. Anderson is replacing Nancy Mills.

Robert E. Crowley of Kennebunk for appointment as a Justice of the Maine Superior Court. Robert E. Crowley is replacing Stephen L. Perkins.

Thomas E. Humphrey of Sanford for appointment as Judge-at-Large of the Maine District Court. Thomas E. Humphrey is replacing Leigh Saufley.

Stephen L. Perkins of Windham for appointment as

a Active Retired Justice of the Superior Court.

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

Was read and ordered placed on file.

Ought to Pass as Amended

Report of the Committee on **Judiciary** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (S-258) on Bill "An Act to Correct Errors and Inconsistencies in the Laws of Maine" (EMERGENCY) (S.P. 434) (L.D. 1344)

Came from the Senate, with the report read and accepted and the Bill Passed to be Engrossed as amended by Committee Amendment "A" (S-258).

Report was read and accepted, the bill read once. Committee Amendment "A" (S-258) was read by the Clerk and adopted and the bill assigned for second reading Friday, June 4, 1993.

COMMUNICATIONS

The following Communication: (S.P. 524)

116TH MAINE LEGISLATURE

June 2, 1993

Senator Richard J. Carey
Rep. Beverly C. Daggett
Chairpersons
Joint Standing Committee on Legal Affairs
116th Legislature
Augusta, Maine 04333

Dear Chairs:

Please be advised that Governor John R. McKernan, Jr. has withdrawn his nomination of Greg Murchison of Fort Fairfield for appointment to the Maine State Liquor Commission.

Pursuant to Title 28A, MRSA Section 61, this nomination is currently pending before the Joint Standing Committee on Legal Affairs.

Sincerely,
S/Dennis L. Dutremble
President of the Senate

S/John L. Martin
Speaker of the House

Came from the Senate, Read and Referred to the Committee on **Legal Affairs**.

Was Read and Referred to the Committee on **Legal Affairs** in concurrence.

ORDERS

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

ORDERED, that Representative Ronald C. Bailey of Farmington be excused May 24 for personal reasons.

AND BE IT FURTHER ORDERED, that Representative Edward L. Caron, Jr. of Biddeford be excused May 21 and 28 for personal reasons.

AND BE IT FURTHER ORDERED, that Representative Virginia Constantine of Bar Harbor be excused May 27 for health reasons.

AND BE IT FURTHER ORDERED, that Representative Donald H. Gean of Alfred be excused May 28 for personal reasons.

AND BE IT FURTHER ORDERED, that Representative Donald A. Strout of Corinth be excused May 26 for personal reasons.

AND BE IT FURTHER ORDERED, that Representative Mary E. Sullivan of Bangor be excused May 27 for health reasons.

AND BE IT FURTHER ORDERED, that Representative Harry G. True of Fyreburg be excused May 27 and June 1 for personal reasons.

Was read and passed.

SPECIAL SENTIMENT CALENDAR

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

In Memory of:

John J. Fox, of South Portland, formerly of Portland, 105 years young, loving father, grandfather and great-grandfather of 16 great-grandchildren. A native of Ireland, he served in the elite Irish King's guard in England and funeral ceremony of King Edward VII, guard of the Tower of London, British Mint and Royal Burial Grounds at Windsor. He served in the U.S. Army Signal Corps in France and Germany in WWI. He was an avid listener of Notre Dame Football, communicant of Sacred Heart Church and strong supporter of Catholic Charities appeal. He devoted his life to helping the family members who remained in Ireland; (HLS 462) by Representative CLOUTIER of South Portland. (Cosponsor: Senator AMERO of Cumberland)

On motion of Representative Cloutier of South Portland, was removed from the Special Sentiment Calendar.

Was read.

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

Representative CLOUTIER: Mr. Speaker, Ladies and

Gentlemen of the House: Today I stand before you in honor of a great man, from a great country, who lived by example a great life for his family, his friends, his state, his country and his native Ireland.

John J. Fox, 105 years young, 44 years retired from Hannaford Brothers, lived most of his years at 163 Brighton Avenue in Portland, Maine. He retired from Hannaford in 1950 as produce manager at the company's wholesale warehouse on Commercial Street. Fellow workers called him "banana man." He never owned a car and always walked to work. No matter how many miles, he enjoyed his walks.

Born in Ballyshannon, County Donegal, Northern Ireland, a son of Thomas and Catherine Doyle Fox. He attended schools in Ireland. He served from 1902 to 1912 in the Irish King's Guard in England. While with that elite military group, he participated in the 1910 funeral ceremony of King Edward VII. He was also assigned to guard the Tower of London, the British Mint and the Royal Burial Grounds at Windsor.

On Labor Day 1912, he moved to the United States and away from discrimination. He knew he had to leave Ireland to earn money, said his granddaughter Christine.

He served in the U.S. Army Signal Corp in France and Germany in World War I. His previous military experience, as well as his skills at semaphore, immediately earned him the rank of 1st Sergeant. He was so proud to be an American.

He remained extremely active throughout his retirement and, at the wonderful age of 84, painted his three story home in Portland, Maine.

He also gave haircuts to the men in the neighborhood until all those customers passed away. At age 102, he would still recite all 22 stanzas of the Wreck of the Hesperes by Henry Wadsworth Longfellow, a poem he memorized in the fourth grade in Ireland.

He never overcame his preference for radio over television and he especially enjoyed listening to Notre Dame football games with a wee bit nip or two.

A long time communicant of Sacred Heart Church in Portland, he belonged to its men's club and worked for the annual Catholic Charities Appeal. He was also a member of the Harold T. Andrews American Legion Post in Portland.

His wife of 63 years, the former Catherine Doyle passed away in 1981. Most of what Mr. Fox earned in Portland went to help his family members who remained in Ireland, including his mom who lived to the young age of 99.

Gramp, I, along with the rest of the family, will miss you. You and your proud heritage will always remain with us and we thank you for that.

Subsequently, was passed and sent up for concurrence.

REPORTS OF COMMITTEES

Ought to Pass as Amended

Representative AHEARNE from the Committee on Agriculture on Bill "An Act to Amend the Law Pertaining to the Limitations on Simulcasting" (H.P. 691) (L.D. 932) reporting "Ought to Pass" as amended by Committee Amendment "A" (H-556)

Report was read and accepted, the bill read once. Committee Amendment "A" (H-556) was read by the Clerk.

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

Representative ALIBERTI: Mr. Speaker, Ladies and Gentlemen of the House: A great deal of work and dedication has gone into L.D. 932 as amended by Committee Amendment "A." This most important legislation, since the initial establishment of harness racing in the State of Maine, this amendment needs a bit more evaluation, therefore, I ask for you to allow the tabling of L.D. 932 as amended by Committee Amendment "A" for later in today's session.

On motion of Representative Strout of Corinth, tabled pending adoption of Committee Amendment "A" (H-556) and later today assigned.

Ought to Pass as Amended

Representative TARDY from the Committee on Taxation on Bill "An Act to Amend State Tax Increment Financing" (H.P. 718) (L.D. 969) reporting "Ought to Pass" as amended by Committee Amendment "A" (H-570)

Report was read and accepted, the bill read once. Committee Amendment "A" (H-570) was read by the Clerk and adopted.

Under suspension of the rules, the bill was read a second time, passed to be engrossed as amended by Committee Amendment "A" (H-570) and sent up for concurrence.

Ought to Pass as Amended

Representative NADEAU from the Committee on Taxation on Bill "An Act to Clarify the Laws Related to State Tax Increment Financing" (H.P. 704) (L.D. 956) reporting "Ought to Pass" as amended by Committee Amendment "A" (H-571)

Report was read and accepted, the bill read once. Committee Amendment "A" (H-571) was read by the Clerk and adopted.

Under suspension of the rules, the bill was read a second time, passed to be engrossed as amended by Committee Amendment "A" (H-571) and sent up for concurrence.

Ought to Pass as Amended

Representative JACQUES from the Committee on Energy and Natural Resources on Bill "An Act to Amend Certain Laws Pertaining to the Department of Environmental Protection's Bureau of Hazardous Materials and Solid Waste Control" (EMERGENCY) (H.P. 1113) (L.D. 1509) reporting "Ought to Pass" as amended by Committee Amendment "A" (H-572)

Report was read and accepted, the bill read once. Committee Amendment "A" (H-572) was read by the Clerk and adopted.

Under suspension of the rules, the bill was read a second time, passed to be engrossed as amended by Committee Amendment "A" (H-572) and sent up for concurrence.

Ought to Pass Pursuant to Joint Order (H.P. 957)

Representative COTE from the Committee on Judiciary on Bill "An Act Concerning Stalking" (H.P. 1147) (L.D. 1546) reporting "Ought to Pass" - Pursuant to Joint Order (H.P. 957)

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

Divided Report

Later Today Assigned

Majority Report of the Committee on Energy and Natural Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (H-537) on Bill "An Act to Amend the Motor Vehicle Emission Inspection Program" (H.P. 1005) (L.D. 1351)

Signed:

Senators: CIANCHETTE of Somerset
LUDWIG of Aroostook
LAWRENCE of York

Representatives: WENTWORTH of Arundel
JACQUES of Waterville
COLES of Harpswell
MARSH of West Gardiner
GOULD of Greenville
ANDERSON of Woodland
CONSTANTINE of Bar Harbor
POULIN of Oakland

Minority Report of the same Committee reporting "Ought to Pass" as amended by Committee Amendment "B" (H-538) on same Bill.

Signed:

Representatives: LORD of Waterboro
MITCHELL of Freeport

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 later today assigned.

Divided Report

Later Today Assigned

Majority Report of the Committee on State and Local Government reporting "Ought to Pass" as amended by Committee Amendment "A" (H-543) on Bill "An Act Concerning State Transactions with Businesses in Northern Ireland" (H.P. 931) (L.D. 1254)

Signed:

Senators: ESTY of Cumberland
BERUBE of Androscoggin

Representatives: GRAY of Sedgwick
WALKER of Blue Hill
AHEARNE of Madawaska
YOUNG of Limestone
KILKELLY of Wiscasset
ROWE of Portland
DUTREMBLE of Biddeford
JOSEPH of Waterville

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

Signed:

Senator: BUTLAND of Cumberland

Representatives: BENNETT of Norway
LOOK of Jonesboro

Reports were read.

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

On further motion of the same Representative, tabled pending her motion that the House accept the Majority "Ought to Pass" Report and later today assigned.

Divided Report

Later Today Assigned

Majority Report of the Committee on State and Local Government reporting "Ought to Pass" as amended by Committee Amendment "A" (H-544) on RESOLUTION, Proposing an Amendment to the Constitution of Maine to Provide Legislative Review of Delegated Rule-making Authority (H.P. 962) (L.D. 1293)

Signed:

Senators: BERUBE of Androscoggin
ESTY of Cumberland

Representatives: GRAY of Sedgwick
WALKER of Blue Hill
AHEARNE of Madawaska
LOOK of Jonesboro
KILKELLY of Wiscasset
ROWE of Portland
JOSEPH of Waterville
DUTREMBLE of Biddeford

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

Signed:
Senator: BUTLAND of Cumberland
Representatives: BENNETT of Norway
YOUNG of Limestone

Reports were read.

Representative Joseph of Waterville moved that the House accept the Majority "Ought to Pass" Report. On further motion of the same Representative, tabled pending her motion that the House accept the Majority "Ought to Pass" Report and later today assigned.

Divided Report

Later Today Assigned

Majority Report of the Committee on State and Local Government reporting "Ought to Pass" as amended by Committee Amendment "A" (H-545) on Bill "An Act Concerning Reasonable Standards and Procedures for Contracting Services by the State" (H.P. 1036) (L.D. 1388)

Signed:
Senators: BERUBE of Androscoggin
ESTY of Cumberland
Representatives: GRAY of Sedgwick
WALKER of Blue Hill
AHEARNE of Madawaska
YOUNG of Limestone
KILKELLY of Wiscasset
DUTREMBLE of Biddeford
ROWE of Portland
JOSEPH of Waterville

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

Signed:
Senator: BUTLAND of Cumberland
Representatives: BENNETT of Norway
LOOK of Jonesboro

Reports were read.

Representative Joseph of Waterville moved that the House accept the Majority "Ought to Pass" Report. On further motion of the same Representative, tabled pending her motion that the House accept the Majority "Ought to Pass" Report and later today assigned.

Divided Report

Later Today Assigned

Majority Report of the Committee on State and Local Government reporting "Ought to Pass" as

amended by Committee Amendment "A" (H-546) on RESOLUTION, Proposing an Amendment to the Constitution of Maine to Allow Maine Citizens to Propose Constitutional Amendments by Initiative (H.P. 994) (L.D. 1336)

Signed:
Senator: BUTLAND of Cumberland
Representatives: GRAY of Sedgwick
AHEARNE of Madawaska
BENNETT of Norway
YOUNG of Limestone
KILKELLY of Wiscasset
ROWE of Portland

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

Signed:
Senators: ESTY of Cumberland
BERUBE of Androscoggin
Representatives: WALKER of Blue Hill
LOOK of Jonesboro
JOSEPH of Waterville
DUTREMBLE of Biddeford

Reports were read.

Representative Joseph of Waterville moved that the House accept the Minority "Ought Not to Pass" Report.

On further motion of the same Representative, tabled pending her motion that the House accept the Minority "Ought Not to Pass" Report and later today assigned.

Divided Report

Later Today Assigned

Majority Report of the Committee on State and Local Government reporting "Ought Not to Pass" on Bill "An Act to Distribute the Power and Privilege of Serving in Elected Office" (H.P. 1076) (L.D. 1442)

Signed:
Senators: ESTY of Cumberland
BERUBE of Androscoggin
Representatives: GRAY of Sedgwick
WALKER of Blue Hill
LOOK of Jonesboro
KILKELLY of Wiscasset
ROWE of Portland
JOSEPH of Waterville
DUTREMBLE of Biddeford

Minority Report of the same Committee reporting "Ought to Pass" as amended by Committee Amendment "A" (H-548) on same Bill.

Signed:

Senator: BUTLAND of Cumberland
 Representatives: AHEARNE of Madawaska
 BENNETT of Norway
 YOUNG of Limestone

Reports were read.

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

On further motion of the same Representative, tabled pending her motion that the House accept the Majority "Ought Not to Pass" Report and later today assigned.

(H.P. 1136) (L.D. 1536) Bill "An Act to Establish the Maine Youth Apprenticeship Program" (Governor's Bill) Committee on Education reporting "Ought to Pass" as amended by Committee Amendment "A" (H-547)

(H.P. 1086) (L.D. 1465) Bill "An Act to Amend Statutory Provisions Regarding Risk Management Funds" (Governor's Bill) Committee on Banking and Insurance reporting "Ought to Pass" as amended by Committee Amendment "A" (H-553)

Under suspension of the rules, Consent Calendar Second Day notification was given, the House Papers were passed to be engrossed as amended and sent up for concurrence.

Divided Report

Later Today Assigned

Majority Report of the Committee on Judiciary reporting "Ought Not to Pass" on Bill "An Act to Protect Private Property" (H.P. 514) (L.D. 672)

Signed:

Senator: CONLEY of Cumberland

Representatives: COTE of Auburn
 KETTERER of Madison
 SAXL of Bangor
 CATHCART of Orono
 FARNSWORTH of Hallowell
 FAIRCLOTH of Bangor

Minority Report of the same Committee reporting "Ought to Pass" as amended by Committee Amendment "A" (H-551) on same Bill.

Signed:

Senators: BERUBE of Androscoggin
 HANLEY of Oxford

Representatives: LIPMAN of Augusta
 PLOWMAN of Hampden
 OTT of York
 CARON of Biddeford

Reports were read.

Representative Cote of Auburn moved that the House accept the Majority "Ought Not to Pass" Report.

On further motion of the same Representative, tabled pending her motion that the House accept the Majority "Ought Not to Pass" Report and later today assigned.

(H.P. 330) (L.D. 418) Bill "An Act to Promote Maximum Independence of Older People" Committee on Human Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (H-559)

On motion of Representative Treat of Gardiner, was removed from Consent Calendar, First Day.

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

Representative TREAT: Mr. Speaker, Men and Women of the House: I move that the unanimous committee report be accepted.

I had this set this aside merely to let you know what you are going to be voting on. You should have on your desk in a flurry of other papers a pink fax sheet from the Committee. It outlines the provision of this bill.

This bill is the Human Resources Committee's bill on long-term care. It is part of our budget recommendations and I know that many of you have already heard about some of the provisions of this bill. I just wanted to briefly go through it so people understand what is in this bill.

We think it is an excellent bill and it was already moved into the budget by the Appropriations Committee yesterday in a unanimous vote. So, hopefully, it is well on its way to ultimate enactment.

This bill saves \$5 million, more than \$5 million, over a two year period. It also, hopefully, will provide for better care for the elderly in this state. It does this by setting up a program which basically requires a face-to-face interview for all persons who are on Medicaid or who are likely to go on Medicaid, which is about 80 percent of our elderly population that is in long-term care. Each person will have a face-to-face interview with a caseworker who will sit down, evaluate what their medical needs are, what their social needs are and put together a package of options for them, whether that be home-base care, congregate housing, or whether that be a nursing home, depending on what their medical needs are and what is available in the community.

In addition, the bill changes the medical standard for getting assistance, public payment, for medical care for long-term care. Right now, Maine has the lowest standard in the country. What this means is that people are being served in nursing homes who do not need that level of care.

Between the diversion program and the medical provision, this will basically keep 800 persons out

CONSENT CALENDAR

First Day

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

of nursing homes in the next two years and serve them in the community. We recognize that community options are not funded as well as nursing homes and, therefore, we took \$3 million of the original over \$8 million in savings and put that into programs for congregate care, assisted living, home-base care, adult day care, respite care, all those kinds of programs.

This program has worked extremely well in several other states that have tried it including Florida and Wisconsin. In Washington state, there is legislation pending right now. We are actually very proud of this. There are a lot of other provisions in the bill which you can read the fact sheet for yourself and find out about.

I hope you will support this. This is something that the committee worked long and hard on and we think is an extremely good piece of legislation that really changes the policy in long-term care for the future in a really positive way which is also going to be saving money.

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

Representative HOLT: Mr. Speaker, Men and Women of the House: I would like to pose a question through the Chair.

I would like to ask Representative Treat for assurance to the House that this bill would not go into effect before there's adequate staff with proper training that would be required for home health care?

The SPEAKER: Representative Holt of Bath has posed a question through the Chair to Representative Treat of Gardiner who may respond if she so desires.

The Chair recognizes that Representative.

Representative TREAT: Mr. Speaker, Men and Women of the House: I feel very confident that this bill will do just that. It basically wouldn't require anyone to take a community care package unless those services were actually available. There may be parts of the state where all these services aren't available and the options that would be possible would be a nursing home as the best option. But, the intention is to come out with what is clinically appropriate and also what is socially appropriate for a particular person and to really work with each person in developing what their preferences are.

We think it is a very good program. There is a big difference between this bill, which envisions 800 people not going into nursing homes in the next two years and what is in the original budget bill which envisions 6,000 not going into nursing homes based on their ability to pay. So, we think this is an excellent alternative and it does protect everyone. It in fact will enhance the care that people get.

Subsequently, the Committee Report was accepted, the bill read once.

Committee Amendment "A" (H-559) was read by the Clerk and adopted.

Under suspension of the rules, the bill was read a second time, passed to be engrossed as amended by Committee Amendment "A" (H-559) and sent up for concurrence.

(H.P. 807) (L.D. 1093) Bill "An Act Repealing Advisory Boards on Human Resources" Committee on Human Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (H-560)

(H.P. 879) (L.D. 1193) Bill "An Act to Increase the Availability of Funding for Health Care" Committee on Human Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (H-561)

(H.P. 922) (L.D. 1246) Bill "An Act to Amend Laws Administered by the Maine State Retirement System" Committee on Aging, Retirement and Veterans reporting "Ought to Pass" as amended by Committee Amendment "A" (H-562)

Under suspension of the rules, Consent Calendar Second Day notification was given, the House Papers were passed to be engrossed as amended and sent up for concurrence.

(H.P. 1099) (L.D. 1486) Bill "An Act to Consolidate All Substance Abuse Programs within the Office of Substance Abuse" Committee on Human Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (H-563)

On motion of Representative Zirnkilton of Mount Desert, was removed from Consent Calendar, First Day.

On further motion of the the same Representative, tabled pending adoption of the Committee Report and later today assigned.

(H.P. 1118) (L.D. 1513) Bill "An Act to Amend the ASPIRE Program" Committee on Human Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (H-564)

On motion of Representative Treat of Gardiner, was removed from Consent Calendar, First Day.

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

Representative TREAT: Mr. Speaker, Ladies and Gentlemen of the House: I move adoption of the unanimous Committee Report.

This is the second of the Human Resources Committee's unanimous reports on major policy issues. This concerns reform of the ASPIRE welfare program. You have another fact sheet on your desk, this one is a salmon or orange color. I would just note off the bat that there is an error on the top which says that this bill's number is 1508, that is another bill that we will be dealing with later today. The correct bill number is L.D. 1513. It was originally presented by Representative Judy Foss.

I would like to briefly go through this again because sometimes unanimous reports end up not being debated and sometimes those are the best bills of all so people don't really understand what we are doing and sometimes it is very significant. It is those Divided Reports that sometimes are less good policy that end up being debated at length.

The committee bill emphasizes responsibility in a couple of ways. It requires all AFDC applicants to sign a mutual agreement where they agree to participate in the ASPIRE program as a condition of getting AFDC. This is going to cover over 16,000 of the current cases. It also gives the department more flexibility in terms of their requiring team

participants to work.

Secondly, the committee gives the department a lot more flexibility with how ASPIRE money can be used. One of the key provisions here, and I will say it was an extremely controversial one, was that the committee bill now prohibits the department from using ASPIRE money to pay for higher education costs except in a very few circumstances.

Right now, there are quite a few people, 200 or 300 people, who are being served in this way by getting funding. Under the committee bill, there's a couple of very narrow exceptions that will drop that down to 1 or 2 percent of the entire ASPIRE case load. It is generally going to be in those cases where it is actually cheaper to pay for some tuition costs like over the summer so they can get out of the ASPIRE program quicker and get back to work more quickly.

In addition, right now, we have a program which is a strict first come/first serve program which means that someone signs up and their needs get served and they may be very expensive to serve in all the ways to provide the training they need or the education or whatever. What the bill does is it says that the department can use up to 20 percent of the ASPIRE money and skip over the line and pick out people who may have less expensive needs or who might have a particular interest. For example, let's say that there were 15 people on the whole list of several thousand who were ready to take a course in accounting, instead of taking each one off the top and putting them into some existing accounting program, the department could take this money and put together one class for all of those 15 people, no matter where they were on the list. This is a provision that also allows the department to maximize federal funding so we think that this is a really excellent provision. It is going to make our ASPIRE money serve many, many more people and, hopefully, it will result in families moving off the welfare system and becoming full-time working participants in our society much quicker.

The committee package also creates a stronger link between the ASPIRE participants and the labor market. It was brought to our attention that we really need to involve businesses and non-profits and others in actually hiring ASPIRE graduates. So, what the committee bill does is it provides in the state program that there is some additional attention given to including ASPIRE participants on the list that they will have the opportunity to interview.

In addition, we are instructing the department to investigate and study ways of exploring self-employment options, businesses will be required that have a contract with the state, will be required to give notice to the department so that the department can direct ASPIRE participants to particular job openings which should help them get jobs.

We are looking into some other things dealing with the purchase program in this state to see if there might be some possibility of having some preferential treatment for companies that actually have a program to involve ASPIRE participants, that is something we are getting a report back on.

It also frees up money to expand the field placement program, which is a work type of program where you learn on the job. It also establishes a demonstration project of intensive case management so there is a lot of follow-up for individual

participants.

We think this committee package positions this state and the legislature to take advantage of what may be coming down from the Clinton Administration. We carried over a demonstration bill that was Representative Cathcart's bill that we think has great promise but that is going to need some time to work out in terms of getting waivers. We want to be positioned so that our projects are consistent with what we think the Clinton Administration is likely to fund since many of these welfare reform proposals actually cost more, not less money, and you need to invest a little bit in the front end to save some money in the back end.

Finally, our committee proposal which is not in this bill but it will be, we hope, in the budget bill includes a number of provisions which beef-up child support collections. One example of that is to make sure that the absent parent if they have health insurance include the children on that health insurance policy. That will save the state money in Medicaid and it is a way to recover costs that will help support this program.

We think this is a really excellent bill. It was a lot of hard work and, as I said, it was a controversial bill but we did come out with a unanimous report. I hope you will take the time to read the fact sheet and talk to committee members about what we did. I urge you to support this unanimous "Ought to Pass" Report.

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

Representative CATHCART: Mr. Speaker, I would like to pose a question through the Chair to Representative Treat of Gardiner.

I would like to know — under Paragraph 2 on the information sheet you gave us, whether people who are now receiving ASPIRE funds for tuition and higher education such as students at the University of Maine, will they be able to continue that education with ASPIRE funds or will they now be cut off?

The SPEAKER: Representative Cathcart of Orono has posed a question through the Chair to Representative Treat of Gardiner who may respond if she so desires.

The Chair recognizes that Representative.

Representative TREAT: Mr. Speaker, Men and Women of the House: This would not take back any money that people have right now. What we understand is in terms of future years for being in a program, that there are grant monies available and actually right now the state money is only being used to supplement the current grants, it is not actually providing full funding to most people.

So, what this does is it basically frees up that extra amount that is being given to ASPIRE participants in, as I said, about 20 percent of the cases. This wouldn't involve in money being taken away from people but it is a new policy for future years.

Subsequently, the Committee Report was accepted, the bill read once.

Committee Amendment "A" (H-564) was read by the Clerk and adopted.

Under suspension of the rules, the bill was read a second time, passed to be engrossed as amended by Committee Amendment "A" (H-564) and sent up for concurrence.

(H.P. 972) (L.D. 1303) Bill "An Act to Provide Property Tax Adjustments Necessary for the Town of Portage Lake" (EMERGENCY) Committee on Taxation reporting "Ought to Pass" as amended by Committee Amendment "A" (H-569)

On motion of Representative Nadeau of Saco, was removed from Consent Calendar, First Day.

On further motion of the same Representative, L.D. 1303 and all accompanying papers were recommitted to the Committee on Taxation.

(H.P. 543) (L.D. 739) Resolve, to Provide Savings in the Elderly Low-cost Drug Program Committee on Human Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (H-573)

Under suspension of the rules, Consent Calendar Second Day notification was given, the House Paper was passed to be engrossed as amended by Committee Amendment "A" (H-573) and sent up for concurrence.

(H.P. 907) (L.D. 1222) Bill "An Act to Amend the Maine Tree Growth Tax Law" Committee on Taxation reporting "Ought to Pass" as amended by Committee Amendment "A" (H-574)

On motion of Representative Nadeau of Saco, was removed from Consent Calendar, First Day.

Was read.

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

Representative NADEAU: Mr. Speaker, Men and Women of the House: I move that the House accept the unanimous Committee Report. I will tell you why I think this bill is a much needed bill.

This was one of those issues where we established a subcommittee within the committee. Representative Spear did a really nice job dealing with various different parties. What we have here is a tax incentive to allow individuals to have open access to their land to the citizens of Maine.

I would urge your support of this.

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

Committee Amendment "A" (H-574) was read by the Clerk and adopted.

Under suspension of the rules, the bill was read a second time, passed to be engrossed as amended by Committee Amendment "A" (H-574) and sent up for concurrence.

PASSED TO BE ENGROSSED

As Amended

Bill "An Act Regarding Automobile Air Emission Standards" (H.P. 561) (L.D. 758) (C. "A" H-533)

Was reported by the Committee on Bills in the

Second Reading, read the second time, Passed to be Engrossed as Amended, and sent up for concurrence.

ENACTOR

Emergency Measure

(Reconsidered)

An Act Concerning the Operation of Agency Liquor Stores (S.P. 157) (L.D. 488) (Governor's Bill) (C. "A" S-243)

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

On motion of Representative Zirkilton of Mount Desert, the House reconsidered its action whereby L.D. 488 was passed to be engrossed.

On further motion of the same Representative, under suspension of the rules, the House reconsidered its action whereby Committee Amendment "A" (S-243) was adopted.

The same Representative offered House Amendment "A" (H-542) to Committee Amendment "A" (S-243) and moved its adoption.

House Amendment "A" (H-542) to Committee Amendment "A" (S-243) was read by the Clerk.

The SPEAKER: The Chair will order a vote. The pending question before the House is adoption of House Amendment "A" (H-542) to Committee Amendment "A" (S-243). Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

Representative Martin of Eagle Lake requested a roll call vote.

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 Mount Desert, Representative Zirkilton.

Representative ZIRNKILTON: Mr. Speaker, Ladies and Gentlemen of the House: The advantages of standing at the rostrum are becoming increasingly apparent.

This amendment is a result of a conversation I had with a constituent in my area who is an owner/operator of an agency liquor store. He explained to me that for a very long period of time, certainly as long as I can remember, they have been operating on an established margin of 8 percent. In other words, when they purchase liquor from the state, the state allows them to mark up only 8 percent, that's it. They can sell for no more than that. As he explained it to me, his other costs have continued to go up. There has been no mandate that has held down the cost of his Workers' Comp or any other associated costs of doing business. So, what I thought would make sense would be that we would have the opportunity to decide upon an amendment like this.

What this would do would be to allow agency

stores, at their option, to charge up to and no more than 10 percent or 2 percent above the established commission retail price. It just made sense to me that if they are being squeezed in other areas that we give them the opportunity, the choice of going ahead and charging a little bit more, certainly they can elect not to do it if they want to or they could elect to charge one more percent for a total of 9 percent and then maybe we would have a little more competition going with this.

I hope that you will oppose the Speaker, the Representative from Eagle Lake, and go ahead and give our agency stores the opportunity to compete.

One more just quick point, the store, as Representative Constantine knows, the State Liquor Store in Bar Harbor is going to be closed. Looking over at some of their numbers, that store generates a profit of somewhere around \$300,000 but when I went ahead and looked at their expenditures, salaries were somewhere around \$72,000. I think Workers' Comp was somewhere around \$5,400, something like that. If that had been an agency store doing the same volume, I think it would have lost money given its cost. I think that is something we certainly need to address.

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

Representative STEVENS: Mr. Speaker, Men and Women of the House: For about three years now, we have been working on the closing of state stores, going to agency stores. Different percentages, going up for bid, a lot of other things, a lot of things I don't think have been done in the right manner.

The 8 percent markup is something that the small stores cannot live and compete with with the larger chains. It is one of the things that has been out of line and I think this could possibly put it into its place, but there are a lot of other things that go with it. I am not sure it should be explained at the present time, but I do think with the geography of the State of Maine, it is almost impossible to have the small stores competing with the large supermarkets who sold 17 percent of the alcohol last year, which we know in a matter of time they will come back and want this percentage changed after the small stores cannot make it.

As it stands at the present time, we will be ending up with 29 state liquor stores out of 71. It closes a lot of small stores but, yet again, it doesn't cut the administration end of that amount. For example, with Madawaska closing, the closest state liquor store will be 46 miles away. With Rangeley closing, the closest state liquor store will be 40 miles away. There isn't any opportunity at the present time, but yet again there is legislation pending for the agency stores to sell to restaurants. At the present time, they have to receive it from the state stores. To me, the way we have been doing it, along with other things that have been going on, the complete operation has been completely ridiculous. I would like to see at least this change made. Overall, we should take the whole thing and put it together as one package and either get in or get out of the liquor business.

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

Representative PARADIS: Mr. Speaker, Ladies and Gentlemen of the House: Speaking as the Representative from Augusta only, I am a little bit troubled by the amendment from the good Representative from Mount Desert. We have been

debating over the course of the last ten years the idea of closing state liquor stores and permitting agency stores to open. There isn't any competition in that there aren't five or six agency stores per town or per city. There is only like one per ten mile or five mile radius and that has been amended from time to time. They have to sell at a minimum of 8 percent over the state price, from what I am gathering in this morning's debate from the amendment. Where is their open free competition? They can't sell less than 8 percent. This would allow them to sell at 10 percent. We are telling the people of the state that we are setting the competition. That is not free open market, that is not capitalism, that is state dictate, 10 percent, now 8 percent. Why are we closing all the state liquor stores and giving up our control when we were making millions of dollars of profit at 8 percent? The argument was, if we sold off our liquor stores and allowed agency stores a free market to sell a bottle of Vodka or whatever, not beer now, agency stores are selling the hard liquors, we would make so much more money and the public would be better served. There isn't any free competition about agency liquor stores from what I gathered in the debate this morning. They are turning the argument around — since we are closing all these state liquor stores and there aren't as many agency stores that are opening to take their place, they have to charge more money to the consumer in order to sell their product. Where is the competition? Where is the free open market? Why are we losing control?

You can now go up to Shop 'N Save in Augusta at ten-thirty on a Saturday night and buy a case of hard liquor to continue your party. Before, on Western Avenue, seven o'clock, shutdown. Now you can party around the clock. We are giving up our control and the consumer is not getting a better price, there is no competition but these agency stores are banding together and saying, you've got to allow us to sell a little bit higher now. We are taxing it more, the federal government is taxing it more, they want a higher margin of profit but there is no free open competition because there is only like one agency store per area. There is no free competition about this concept anymore. This is robbery, robbery without state control. They are making good money and we are seeing more booze on the highways.

I urge indefinite postponement of this amendment.

The SPEAKER: The Chair recognizes the Representative from Mount Desert.

Representative ZIRNKILTON: Mr. Speaker, Ladies and Gentlemen of the House: I certainly did not intend to disturb the Representative from Augusta and I will try to clarify my intent and also try to correct some statements made by the Representative.

Number one, 8 percent is not the minimum price, the minimum markup that the agency stores are required to charge, it is the maximum margin, as I understand it, that they are allowed to mark up.

Number two, why is the state getting out of the liquor business? Well, they are closing the Bar Harbor store which nets some \$300,000 to the state, so why are they closing it? I don't know. That is a question that should be addressed with L.D. 488, not with this amendment. It is the bill itself that talks about granting three additional agency stores for the closure of these state stores.

When that store in Bar Harbor closes, they are going to go ahead and allow three new agency stores

to exist within (as I understand it) that ten mile radius and they are all going to be held to that same 8 percent maximum markup. So, I think your comments are aimed much more at the concept of why the store is closing to begin with, not at whether or not we should be allowing this miniscule adjustment to try and make it easier for these businesses to survive.

The controls that you refer to are already firmly in place. What we are looking at here is trying to relax them a little bit. If you want to go ahead and ease some of those controls, then what you would do is you would eliminate the price control altogether and allow the free market to prevail and I would have no objection to that at all.

All I am saying is, if you want to keep these hard controls in place, then at least give them the option to make it a little bit easier to survive. There is nothing that says they have to go ahead and increase that price. Three additional stores are going to be going into that area. Now, those that can go ahead and make a profit and be driven by the opportunity to do well need to elect not to raise that price by an additional 1 or 2 percent. Maybe they will go ahead and keep it at the 8 percent.

I think that your comments are better geared at the concept itself of closing down the stores and not whether or not we should make this change.

I would hope that you would not indefinitely postpone this amendment.

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

Representative DAGGETT: Mr. Speaker, Men and Women of the House: I would just like to provide some information for the members regarding this particular issue. I don't think the issue is one of privatization and there are many of us who opposed that in the past, one of the reasons is because of these kinds of issues and the pressure from the private sector to make more money. This applies not just in this instance but in any case of privatization. There is tremendous pressure, there will continue to be pressure from the private sector in this direction and in others and certainly with the liquor stores.

In the past, agency stores did not pay for licenses. There was not a franchise agreement, which is the kind of relationship that we have today with the agency stores. Generally, in the past, a community was serviced by an agency store and not by a state store. So, allowing an additional markup at that time was considered unfair. If your community had only one store and they were allowed to set the price where they wanted, those citizens in that community were captives and would either have to travel somewhere else so the price was set statewide, whether you were in a community where you had a liquor store in your community but the nearest one beyond that was 50 miles or whether it was two miles, the price was set statewide. It was not a maximum but it was set at 8 percent. An agency store was required to charge an 8 percent markup and that is simply the way it was.

Today, due to the privatization of many of our liquor stores and almost total privatization, there are 155 agency stores and the issue of the markup is different. I would ask you to take a look at that and make your own decision.

The only thing that would change here is, if the 2 percent additional were allowed to be charged, there are some communities where there might only be

one or two agency stores that would have to pay the 2 percent more. It doesn't mean that the state would take in any less money, the floor is not being changed, it is only the additional markup and it is not being totally opened up, it is being limited to 2 percent.

There has been an issue raised for you today regarding the competitiveness of the small agency stores, say a Shop 'N Save. I would ask you to disregard that, that is not pertinent here because any agency store could raise their markup 2 percent so there would be no differential, everyone would have an opportunity to do that.

I would also raise another issue for you and that is that being an agency store is optional. It is optional. It is not a requirement and, if for some reason you feel you can't make it with the 8 percent, then perhaps you might want to get rid of your license and not continue to be an agency store. It is not a mandate. The question right now in front of us with this amendment is whether you feel that it is fair to allow agency stores to mark their product up 2 percent more.

The SPEAKER: A roll call has been ordered. The pending question before the House is adoption of House Amendment "A" (H-542) to Committee Amendment "A" (S-243). Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 158

YEA - Aikman, Anderson, Ault, Bailey, H.; Barth, Bennett, Birney, Bruno, Cameron, Campbell, Cashman, Clukey, Coles, Constantine, Cross, Daggett, Dexter, DiPietro, Donnelly, Farren, Foss, Gamache, Gray, Greenlaw, Hillock, Jacques, Joy, Kneeland, Kutasi, Lemont, Libby Jack, Libby James, Lindahl, Lipman, Look, Lord, Marsh, Marshall, Michael, Michaud, Morrison, Nash, Nickerson, Norton, Ott, Pendexter, Pendleton, Plowman, Reed, G.; Richardson, Ricker, Robichaud, Rotondi, Saint Onge, Simoneau, Small, Spear, Stevens, A.; Taylor, Thompson, Tracy, True, Tufts, Vigue, Walker, Whitcomb, Winn, Zirnkilton.

NAY - Adams, Ahearne, Aliberti, Bailey, R.; Beam, Bowers, Caron, Carroll, Cathcart, Chase, Chonko, Clark, Clement, Cloutier, Cote, Dore, Driscoll, Dutremble, L.; Erwin, Faircloth, Farnum, Gean, Gould, R. A.; Gwadosky, Hale, Hatch, Heeschen, Heino, Hoglund, Holt, Hussey, Johnson, Joseph, Kerr, Ketterer, Kilkelly, Kontos, Larrivee, MacBride, Melendy, Mitchell, E.; Mitchell, J.; Murphy, Nadeau, O'Gara, Oliver, Paradis, P.; Pfeiffer, Pineau, Pinette, Plourde, Poulin, Pouliot, Rand, Reed, W.; Rowe, Ruhlin, Rydell, Saxl, Simonds, Skoglund, Stevens, K.; Strout, Sullivan, Swazey, Tardy, Townsend, G.; Townsend, L.; Treat, Wentworth, Young, The Speaker.

ABSENT - Brennan, Carleton, Carr, Coffman, Farnsworth, Fitzpatrick, Hichborn, Jalbert, Lemke, Martin, H.; Townsend, E..

Yes, 68; No, 72; Absent, 11; Paired, 0; Excused, 0.

68 having voted in the affirmative and 72 in the negative with being 11 absent, the motion did not prevail.

Representative Daggett of Augusta offered House Amendment "B" (H-552) to Committee Amendment "A" (S-243) and moved its adoption.

House Amendment "B" (H-552) to Committee Amendment "A" (S-243) was read by the Clerk and

adopted.

Committee Amendment "A" (S-243) as amended by House Amendment "B" (H-552) thereto was adopted.

The bill was passed to be engrossed as amended by Committee Amendment "A" (S-243) as amended by House Amendment "B" (H-552) thereto in non-concurrence and sent up for concurrence.

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

(Off Record Remarks)

(At Ease)

The House was called to order by the Speaker.

BILL HELD

An Act to Amend the Maine Civil Rights Act Regarding Violations of Constitutional Rights (S.P. 425) (L.D. 1334) (C. "A" S-218)
 - In House, Passed to be Enacted.
 HELD at the Request of WHITCOMB of Waldo.

On motion of Representative Whitcomb of Waldo, the House reconsidered its action whereby L.D. 1334 was passed to be enacted.

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

Representative MARSHALL: Mr. Speaker, Colleagues of the House: I move that L.D. 1334 and all its accompanying papers be indefinitely postponed.

This bill, L.D. 1334, was very cleverly packaged, though hastily, in order to make anyone opposed look like a gay basher or homophobic. I am not in favor of inflicting violence on anyone. I don't think it is necessary to specify any one category of people when it comes to crimes of violence towards persons or property. Our constitution presently provides for the pursuit of happiness to all people. The founders of our constitution created this section very broadly so as to encompass all classes of people. Some specific groups have been added because of demonstrated need, according to specific criteria. First, they must be readily discernable and an example would be a black person, a woman or a handicapped person or, in other words, you must be able to identify who is part of the group.

Next, they must be educationally or economically handicapped or unable to make a reasonable living.

The third criteria, a group must be politically handicapped. At this point, it is obvious to me that the group pushing this bill are none of the above.

Another problem I have with this bill is the term itself, "sexual orientation." What really does this mean? It is not described in the bill at all. It could be construed to mean or implicated any combination or multiple between any human beast or

implement you could imagine. It is not a very good term.

Also, if you happen to be unfortunate enough to be an employer in Maine and you need to make some layoffs or adjustments in your work staff, what do you do when someone says, "I am..." fill in the blank? The figures are starting to show that members of minorities do get preferential treatment in termination and other situations that happen in the workplace. To avoid any problems, already in Lewiston this type of claim is happening and is costing business money (and a great deal of money) in legal consultations and preferential packages. Also, the writers of this bill appear to believe that sexual orientation is a more important protected class than physically or mentally handicapped for they have been deleted from this bill.

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

The SPEAKER: The Chair recognizes the Representative from Auburn, Representative Cote.

Representative COTE: Mr. Speaker, Men and Women of the House: I would like to read into the Record an eloquent statement by Jasper S. Wyman, Executive Director of the Christian Civic League of Maine on L.D. 1334, which is an "Act to Amend the Maine Civil Rights Act Regarding Violations of Constitutional Rights" which was read before the Judiciary Committee in May.

"In his first inaugural address in 1801, Thomas Jefferson said, 'Bear in mind the sacred principles, that though the will of the majority is in all cases to prevail, that will to be rightful must be reasonable, that the minority possess their equal rights which equal law must protect and to violate would be oppression.' Nothing in our view is anymore sacrosanct in law than the preservation of individual rights. It was to protect and advance individual right and personal liberty that the Declaration of Independence and the U.S. Constitution were written.

The history of this nation is the history of the struggle for equality of opportunity for the full recognition of human dignity and the establishment of civil rights. It is a proud and noble history and it is a unique history. This nation's enduring commitment to justice and opportunity for all people is the chief reason why so many from other lands continue to sacrifice their safety, their very lives, in a sometimes desperate effort to come to America. And yet, despite all the progress we have made, the landmark achievements in federal legislation and Supreme Court decisions on behalf of the worth of the individual citizen, all is not well in this country. Our progress is marred by the forces of hatred and suspicion that still threaten human dignity, racism, anti-Semitism, religious bigotry and homophobia all represent the forces of hate and they fuel the fires of social divisions and of violence in our state and in our nation.

As Lyndon Johnson reminded us, we cannot legislate the human heart, but the law can and must protect all our citizens. The law can and must guarantee the safety and security of every person whether that person is Jewish, African-American, Asian-American, or a gay person. Above all, the law can and must set a moral example as the arbiter of justice in a free republic.

The specific wording itself found in L.D. 1334 bears eloquent testimony to the high purpose for which all law must aspire. This legislation would

guarantee that a person has a right to engage in lawful activities without being subject to physical force or violence, damage or destruction of property, trespass on property or the threat of physical force or violence, damage or destruction of property or trespass on property motivated by reasons of race, color, religion, sex, ancestry, national origin or sexual orientation.

This clear and direct provision of law would enable the Civil Rights Division of the Attorney General's Office to more effectively and expeditiously investigate and prosecute cases of civil rights violations. While we have disagreed with the majority of the Judiciary Committee concerning the necessity and advisability of a statewide gay rights law, there must be no disagreement over the need to protect all our citizens, gay and straight alike, from violence or the threat of violence. Every person in this state must be assured of the equal protection of our laws. We live in a pluralistic society and from the richness of America's diversity, we draw special national strength and vibrance. Yet, despite our many differences of culture, philosophy and politics, we share a common commitment to the indivisibility of justice. It is to reaffirm our commitment to justice for all the citizens of Maine that the Christian Civil League of Maine rises in support of L.D. 1334."

I would like to mention at this time that this was an "Ought to Pass" Report with one abstention.

Men and women of the House, please vote against this motion to indefinitely postpone this bill and its accompanying papers.

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 Representative Marshall of Eliot that L.D. 1334 and all its accompanying papers be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 159

YEA - Ahearne, Aikman, Anderson, Bailey, H.; Barth, Birney, Clark, Clukey, Coffman, Cross, Dexter, Farnum, Farren, Gould, R. A.; Heino, Hillock, Hussey, Joy, Kneeland, Look, Lord, Marsh, Marshall, Murphy, Nash, Nickerson, Pouliot, Reed, W.; Stevens, A.; Strout, Taylor, True, Tufts, Vigue, Young.

NAY - Adams, Aliberti, Ault, Bailey, R.; Beam, Bennett, Bowers, Bruno, Cameron, Campbell, Caron, Carroll, Cashman, Cathcart, Chase, Chonko, Clement, Cloutier, Coles, Constantine, Cote, Daggett, DiPietro, Donnelly, Dore, Driscoll, Dutremble, L.; Erwin, Faircloth, Fitzpatrick, Foss, Gamache, Gean, Gray, Greenlaw, Gwadosky, Hale, Hatch, Heeschen, Hognlund, Holt, Jacques, Johnson, Joseph, Ketterer, Kilkelly, Kontos, Kutasi, Larrivee, Libby Jack, Libby James, Lindahl, Lipman, MacBride, Melendy, Michael, Mitchell, E.; Mitchell, J.; Morrison, Nadeau, Norton, O'Gara, Oliver, Ott, Paradis, P.; Pendexter, Pendleton, Pfeiffer, Pineau, Pinette, Plourde, Plowman, Poulin, Rand, Reed, G.; Richardson, Ricker,

Robichaud, Rotondi, Rowe, Ruhlin, Rydell, Saint Onge, Saxl, Simonds, Simoneau, Skoglund, Small, Spear, Stevens, K.; Sullivan, Tardy, Thompson, Townsend, E.; Townsend, G.; Townsend, L.; Tracy, Treat, Walker, Wentworth, Whitcomb, Winn, Zirnkilton, The Speaker.

ABSENT - Brennan, Carleton, Carr, Farnsworth, Hichborn, Jalbert, Kerr, Lemke, Lemont, Martin, H.; Michaud, Swazey.

Yes, 35; No, 104; Absent, 12; Paired, 0; Excused, 0.

35 having voted in the affirmative and 104 in the negative with 12 being absent, the motion to indefinitely postpone did not prevail.

Subsequently, L.D. 1334 was passed to be enacted, signed by the Speaker and sent to the Senate.

BILL HELD

Bill "An Act to Expedite Maintenance of Utility Facilities" (S.P. 346) (L.D. 1041) (C. "A" S-250) - In House, Passed to be Engrossed. HELD at the Request of Representative ADAMS of Portland.

On motion of Representative Adams of Portland, the House reconsidered its action whereby L.D. 1041 was passed to be engrossed.

On further motion of the same Representative, tabled pending passage to be engrossed and later today assigned.

The Chair laid before the House the following matter: Majority Report of the Committee on Energy and Natural Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (H-537) on Bill "An Act to Amend the Motor Vehicle Emission Inspection Program" (H.P. 1005) (L.D. 1351) and Minority Report of the same Committee reporting "Ought to Pass" as amended by Committee Amendment "B" (H-538) on same Bill which was tabled earlier in the day and later today assigned pending the motion of Representative Jacques of Waterville that the House accept the Majority "Ought to Pass" Report.

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

Representative MITCHELL: Mr. Speaker, Men and Women of the House: The bill you have before you deals with the Inspection Maintenance 240 program, known as the IM240 program.

There is one important fact that I hope you will all remember as we go through this debate — in the Energy and Natural Resources Committee a couple of weeks ago, a Representative from the USEPA was there and Representative Constantine asked that representative if all of the automobiles in the State of Maine were driven into the ocean, would it improve our air quality enough for us to meet the goals of this program? The person from the USEPA said, "No, it would not." So, no matter what we do, we are not going to meet the goal.

I would like to describe the program which was enacted in the last legislature to you today. The Department of Environmental Protection will sign a contract soon to have inspections of automobiles, emissions inspections, and if you live in one of the

seven southern counties in Maine, you are required by the law to take your automobile to this facility every 24 months and have it inspected. If you fail the inspection, and about 10 percent of the automobiles will fail, you will be asked to go out and spend \$450 to have the emissions repaired. It only affects seven counties.

The reason for this bill is because some parts of the state fail to meet the federal requirement under the Clean Air Act, there was a green hand out, and there were two standards, a state standard and a federal standard. If you look at the federal standard, you will find that in 1992, Maine exceeded the federal standard by six hours. One of those days was on May 23, 1992 when we exceeded the standard for a couple of hours in Kennebunkport. I believe the other date was on August 8, 1992 when we exceeded the standard for four or five hours also in Kennebunkport, so it is pretty interesting.

I think the difference between the Majority and the Minority Report is one minor change, the Minority Report puts this whole program on hold for a whole year. I will tell you why I support the Minority Report and why I think this program ought to be put on hold for a year. I worked hard for a lot of environmental laws in this state over the years that I have served in the legislature and I think that this program is going to backfire and it is going to backfire badly. It is going to make it almost impossible to come in here and pass a decent environmental law, one that is needed. People are going to be saddled with this program and it is just full of problems. The first problem is that it doesn't solve the problem. That speaks for itself, I think.

There is no guarantee that the program is going to work. In fact, the people from the USEPA said that the program wouldn't work. The problem is caused by the states south of us in New York, New Jersey, in the metropolitan and Baltimore area, the metropolitan Boston area. There are a lot more automobiles than there are in Maine and the pollution from those automobiles drifts out over the ocean and over southern Maine and causes this problem.

Another problem with this particular program, in my opinion, is that the DEP, at the insistence of the USEPA, is initiating a sole source contract and they are going to sign a contract with one company for five years to manage the whole program and there is not going to be any competition at all once the contract is signed. Right at the moment, there is a litigation over the contracts but as soon as that litigation is solved, if you pass the Majority Report, you will be locked into this system for at least five years.

Another good reason to stop this program for a year is that some cars that have been manufactured in the last year have on-board computers that are sophisticated enough to understand when they are being tested and adjust the valves so they will pass the test. There are some late model Chrysler and Lexus automobiles which will be able to take the test and they can be programmed to always pass the test, no matter how bad the emissions are after they get out of the test.

Another problem with this particular bill is that some automobiles are all track, four wheel drive vehicles and in the State of Rhode Island, there was a public hearing two weeks ago and they were discussing the all track, four wheel drive vehicle,

apparently it has difficulty being tested. They put one of them on a dynamometer which is a spinning sort of device where the automobile is operational but not moving, the vehicle left the dynamometer and drove into the wall. So, that is another problem that you might face if you have this program implemented.

Finally, there have been a lot of questions about the Stedman device and there is a Dr. Stedman from the western states who invented the device that could be put up along the side of the highway and it shoots a laser beam out and measures the amount of exhaust coming out of everyone's tail pipe. You could put this device up and for about fifty cents an automobile, you could decide which automobiles were polluting and which were not. You could cite the ones that were and have them fix it and then the citizens of the state wouldn't be burdened with this responsibility of going out and getting their cars tested by this dynamometer every other year.

There has been a lot of corruption in some other states that have had this program. There was a scandal with the New York City taxi's, there was a scandal in Washington D.C. and there was another scandal in Seattle so these are all good reasons to get rid of this program now.

The Minority Report doesn't abolish the program, it just puts it on hold for one year so we can figure out what is going on before we saddle our people with this particular program.

The opponents of the bill are going to say that if we don't do it, we are going to have highway sanctions put on the State of Maine. My gosh, I sort of look at the seat belt bill and three other bills in the Energy and Natural Resources Committee, all which have federal highway sanctions and I begin to wonder whether we as a legislature can do anything at all without having sanctions. I didn't think that's the way that the federal and state relations were supposed to work. They don't balance their budget, they run it at a deficit and when they want a program, they enact a program and ask the states to raise the monies to fund the program and to operate it. I just think that if they want this program, they can raise the money and tax the people themselves and not require a state like Maine to do it.

California recently rejected the program and they are running the risk of sanctions. Now, the federal government, the EPA, might go out and say that California deserves to be sanctioned. I have been to Los Angeles and the air there, frankly, is very dirty and that makes a lot of sense but I don't think you can come in with a straight face and say to the State of Maine, where we exceeded six hours in 1992, that we are going to take \$70 million worth of highway money away from you.

It is also a very costly program. I did some figures — there are 550,000 automobiles in the seven county area. The law allows \$30 a car every other year. So, 550,000 automobiles at \$30, you are going to have to pay \$16,500,000 to take advantage of this program just to have the car tested and that is what the people who run the dynamometer will get. If half, if ten percent of the automobiles are supposed to fail the test and go out for the \$450 repair, that is 55,000 automobiles that would have to go out for up to \$450 repair. Assuming that, their repairs are only going to cost them \$250 because they won't all take the full amount.

By the way, they won't tell you what is wrong

with your car, they just tell you you have to go out and have it repaired, so you could spend the whole \$450 just fooling around trying to figure out what is wrong. That amounts to, at \$250 for 55,000 vehicles, \$13,150,000 which is about \$30 million every other year that people in Maine are going to have to pay for this six hours a year. Even with the program, it is not going to clean up the problem as identified by the USEPA so it's just a lot of money it seems to me.

Some opponents of the program, the IM240 program, refer to it as the "IM240, you pay \$450 program". I just think the best thing we can do is to put this program on hold for one whole complete year and take a long hard look at it. I don't want to come back here with an important environmental bill in five or six years, terms limits will be in effect then so I won't be here, but someone could come back with a bill that is going to address a real serious problem and there will be so much animosity and distrust of the DEP by that time, that you will never be able to solve a problem when you need to solve it around here.

I hope that you will reject the motion before you, adopt the Minority Report, and put this program on hold for awhile.

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

Representative MARSH: Mr. Speaker, Men and Women of the House: I learned in American History a long time ago that politics made strange bedfellows. I certainly never thought that I would be up here debating against one of the most avowed environmentalists in the House, Representative Mitchell, on an environmental bill nor did I think I would be up here to be followed by Representative Lord who is my House lead in the Energy and Natural Resources Committee who will also be debating against it.

Just so that people know, I won't be talking about Texas taxes or New York taxes or wherever they are. I won't be talking about sanctions and I certainly won't be talking about California. I will be talking about Maine and what this does or does not do to Maine. I also will be giving you a little history to tell you how we got here.

For those of you who weren't here last year, I won't be giving the Basil Powers catalytic converter speech we heard last year. Representative Powers was an expert on catalytic converters and told us what they meant to Franklin County.

I will be telling you that this legislation is a result of the efforts of then Senator Muskie in 1977 as updated by now Senator Mitchell in 1990; yet, you have a Republican up here defending it.

What we are talking about is an updated compliance to the Federal Clean Air Act. The Federal Clean Air Act was passed because citizens in this nation were being poisoned. It was also passed because we citizens in this nation wanted to be good neighbors to Canada. It was a rational Act, agreed to in Congress that all citizens would agree to clean up our air. Certainly the air in Waterboro, Maine was nowhere near as bad as the air in Detroit, Michigan, but people in Waterboro were buying and enjoying Detroit cars so we made the decision that we would all work together in cleaning it up.

Congress also made the decision that we would approach it by two factors, one, the stationary source, smokestacks, scrubbers and whatever. The second, the mobile source, catalytic converters,

reformulated gasoline, smaller cars and whatever. The legislation passed in 1977 did work and our air did clean up and in fact air pollution went down significantly. But, by the end of the 1980's, it became apparent because of more smokestacks and more automobiles that we hadn't done enough and Congress revisited it and that is why we are here today.

This isn't my bill, this isn't the DEP's bill, this isn't the Governor's bill, this is an attempt by the State of Maine to come in compliance with the Federal Clean Air Act. The decision that the administrators made in the State of Maine was that there were two ways we could go about it, we could come in compliance by going to industry and requiring more stringent cleaners on the smokestacks. That would cost \$5,000 a ton or we could go to mobile sources, your automobile and my automobile and that would cost \$500 a ton. The decision was made that we would go to mobile sources at \$500 a ton and that is the legislation that we passed here last Spring.

The legislation that we passed was unintrusive as we could possibly make it. We exempted everything we could, we exempted the older cars, we exempted racing cars, we only involved the counties that were in non-attainment, we linked it to safety inspections, we did everything, we even tried to have in response to a request by Representative Mitchell, a low income exemption. The problem that was often the case was that the fed's hadn't finally adopted their rules and, when they adopted their rules, we found out that we were in non-compliance. Then we had to come in here and update our rules to get them in compliance with the federal rules. The lady who administers this for the EPA in Boston said in our committee room, the last question I asked her was when we brought this L.D. upstairs, the Majority Report, would we be in compliance with federal law? She assured us that we would be.

This bill, like the bill last year, is the least stringent as we could get it and keep it in compliance with the law. That giving the history of it, why am I on the bill? Why do I feel so strongly about it? Why did I stand as the only person in the Republican caucus this morning speaking in favor of it? My reasons are twofold, the effect of ozone pollution on this state and in particular the effect it has on the people that I represent, ozone, no matter how you look at it, is poison. There is a monitoring station in Gardiner, Maine, I don't represent Gardiner but I represent towns on both sides of it. This monitoring station in Gardiner, Maine exceeded the safe standards as adopted by the State of Maine, parts of 25 days last summer. The people that I represent, parts of 25 days last summer, breathed poison. I am not going to stand here and oppose any legislation that is going to try to clean that up. I don't care whether you are talking about 1 hour a day or 8 hours a day, you are still talking about poison and I am going to stand up for my people and what they breathe.

Where does this poison come from? You will hear over and over and over and over that it comes from the south. Well, I wish I could talk as eloquently as people in the air bureau and that I understood all the chemistry as the people in the air bureau, but to put it in its most simplistic terms, you can go to Gardiner, Maine on a hot sunny day in July and at seven o'clock in the morning, the air will be clean and healthy, people can breathe it. At ten o'clock in the morning, that same air becomes marginal as far

as meeting the state's standard. At one o'clock on that day, it often exceeds the standard. Why is it that at ten o'clock it is marginally meeting the standard and at one o'clock it goes off? The reason is that the air at ten o'clock that we are breathing in Gardiner, Maine comes from the people that are driving to work in Portland and Portsmouth at seven o'clock in the morning. Our own air can create a problem here and, if you follow the graph day after day, you will find out that it goes up at ten o'clock, it goes down a little, it goes way up at one o'clock and goes down at five and comes up again at seven o'clock at night and then about the time we go to bed, we get the influx of southern air again.

We are creating the problem ourselves in part right here in the State of Maine. The poison definitely does not always come from the south. I have seen models that show if you had a hot sunshiney day with no wind in Maine, yet you had a cool cloudy day in the states to the south, that Maine air can and does exceed the standard with its own poison, so this isn't only from things which are coming from the south. We do have a lot of automobiles here in the State of Maine, we have a lot of sources in the State of Maine and we are poisoning our own air, no doubt about it, at least according to the statistics that I have read.

The second reason and the reason I didn't get right up quick in front of Representative Mitchell is because I didn't have all my notes together, so if you will allow me, I am going to read.

The second reason that I feel very strongly about this is that I feel very strongly about children. I like kids. I like my own kids, I like the kids that come through the State House here, I like the kids that ride on the boats at the marina that I own and I feel very strongly about them.

I am going to read something from the Maine Lung Association. This says, "Repeated exposure to ozone over several summers may impale lung development in children." There is no doubt that we have repeated exposure to ozone here in the State of Maine and have had it for several summers. "This may impale lung development in children and may contribute to premature aging of the lung and lung cancer in adults." Further it says, "Ozone worsens breathing problems in people with asthma and other chronic diseases. During the 1980's, the hospitalization rates for asthma increased by 25 percent and the death rate for asthma increased by 56 percent. Much of this increase was found in children. In the United States, the prevalence of asthma in children under age 15 increased 15 percent between 1982 and 1990." That's in the United States, "in Maine" please listen to this, "In Maine, there has been a 46 percent increase in hospital admissions of children with asthma between 1980 and 1987." They have a different way of testing it, are they the tests that showed this earlier? No, they are using exactly the same testing procedures, yet the increase has gone up 46 percent.

When you push your buttons, ladies and gentlemen, I know it is a bitter pill to swallow and I really have a hard time arguing with some of this, especially with Representative Mitchell and Representative Lord, but I want you to remember we've got a 46 percent increase in asthma in children to the point that there are over 20,000 children in the State of Maine that have asthma. I ask you to follow my button.

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

Representative LORD: Mr. Speaker, My Learned Colleagues: A year ago, I stood up here and endorsed the program, this program. I thought that we were doing the right thing. If I had had the knowledge then that I have now, I would have sat in my seat right there and I would have stayed glued to it and voted the other way. Why? You heard, we have to meet the federal standards. The federal standards are different than the state's standards, our state standards are different, but if we are going to lose this money for the roads, all we've got to do is meet the federal standards. When we have six hours last year, six hours of six months where we are out of compliance, I can't believe that if anybody ever went to court, the judge would say we were really polluting.

There are 23 states in this country that are under this program, the whole northeast corridor from Washington D.C. up this way, including Maine, part of Maine, and if you take the total number of cars in that area, the States of New York, Pennsylvania and New Jersey represent 60 percent of all the cars in the area, 60 percent.

Yesterday, Representative Anderson and I spent a couple of hours over to the P110 seminar on clean air and there was a speaker that said, in Massachusetts, (you heard about Maine, he spoke about Massachusetts) if they shut everything down in Massachusetts, they couldn't meet the federal standards because of the pollution coming up from those southwestern states, the other states. The State of Vermont is not polluting but because of the air coming across Vermont, Vermont has got to go in this program.

I am not very smart but I don't think you have to be very bright to know where that pollution is coming from. If the states down there would clean up their act, we wouldn't have any trouble. This is what bothers me, it really bothers me.

We have talked about getting penalized if we don't do what the EPA wants — the EPA is like some of our agencies over here, they got their feet set in cement and you got to do it that way or no way at all. When they came up with this IM240, they didn't know anything about the laser thing of Dr. Stedman who manufactured it. They said you can use that to test whether or not the program is working on the road but you can't use it up-front. Is that common sense? I will admit and they admit — we saw a video on it and they admitted it isn't going to get the cars that are polluting very minor, they will get the majority of the cars that are polluting great.

Another thing, we talked about being penalized. I would like to read you a note, this is from Senator Quinton Coats of California, Senate Transportation Committee, tabled two IM240 bills three weeks ago pending review by the Blue Ribbon Commission, the commission report is due in three or four weeks. After receiving the EPA/DOT letter threatening loss of highway funds due to bad faith, Senator Coats told the EPA representative, "As of this morning, we consider that you are acting in bad faith." I think they are.

Now, let's go into the IM240. I would like to read to this assembly part of a letter that John Dingley, who is the U.S. Representative on the Subcommittee on Oversight and Investigation of the Committee on Energy and Commerce, Washington, D.C. and it is dated October 15, 1992. It is addressed to

the Honorable William Reilly who is the administrator of the Environmental Protection Agency.

It says, "Enclosed is the GAO's September 25, 1992 report to our subcommittee on the IM rule-making and on EPA's supporting information for the proposed rule." It is entitled "Air Pollution—Unresolved Issues May Hamper Success of EPA's Proposed Emissions Program." I won't read the whole thing to you, it will take too long, we will be having a late dinner, but I would like to read just a couple of paragraphs. "Our review of EPA data found that over 25 percent of the vehicles that EPA tested using the IM240 test procedure failed an initial emission test but passed a second emission test, even though no repairs were made to the vehicles." Now, that tells you something is screwy, in my opinion. To go a little further, "These results raise questions about whether the IM240 test procedure is reliable in identifying out of compliance vehicles and whether the inaccuracies identified of emission problems could result in unnecessary repairs."

Another paragraph, "We have reviewed EPA data on the vehicles that were initially tested at the Hammond, Indiana testing site and consequently tested at EPA's contractor laboratory facility in New Carlisle, Indiana. We found that test results can vary substantially from one location to the other. We identified 64 vehicles — 1986 models or newer — that failed the IM240 test at the Hammond testing site and were sent for further tests at repair the service at the contractor's laboratory. In each case, the laboratory emission test results varied from lane testing resulting for and at least one pollutant. Eighteen of the 64 vehicles, or 28 percent, that initially failed the IM240 test at the Hammond testing site passed a second IM240 test at the laboratory in New Carlisle, even though no repairs were made to the 18 vehicles." What does that tell you?

I read this letter to one of the EPA troubleshooters at our hearing. He said, "I will send you a letter that the EPA sent back to Representative Dingley" and I am still looking for it, so what does that tell you? Maybe he forgot it or maybe he didn't want to send it.

The thing that I think needs to be done — we get so tied up with this IM240 test, it is going to be expensive, very expensive, if we could go with a program that uses the laser beam, it would be less expensive. There is new technology coming out all the time and we wouldn't be saddled with these expensive costs.

I think what the Governor has got to do or somebody has got to do is go to EPA or go to Congress and tell them what kind of a mess we are getting into. It is going to be expensive, it is going to be costly and we are not going to be able to get out of it. This is why I am asking you to forget about the Majority Report and go along with the Minority Report.

(Off Record Remarks)

(At Ease until 5:00 p.m.)

The House was called to order by the Speaker.

The following is a continuation of L.D. 1351 that was being taken up before recess:

The SPEAKER: The Chair recognizes the Representative from Boothbay, Representative Heino.

Representative HEINO: Mr. Speaker, Ladies and Gentlemen of the House: One of my constituents is a computer bug fanatic and lives on Southport Island. Last summer, he put together quite an extensive amount of research, getting his material from turnpike traffic coming through Kittery, all of the weather reports that were available and he has come to a couple of conclusions that I would like to share with you.

One is that during the very few times that the air in the State of Maine exceeds the federal regulations, you will find that there is at that same time a large numbers of cars coming through the Kittery gate. You will also find that during the months of June, July, August and September, the prevailing winds in the State of Maine shift and the prevailing winds during that period of time are coming out of the southwest.

We can legislate all we want to but you can't legislate the wind trends out of the southwest. Those have been there for years and are going to continue to be there and they are part of our problem of pollution.

I would urge you to follow the light of the good Representative from Freeport, Representative Mitchell.

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

Representative JACQUES: Mr. Speaker, Men and Women of the House: It is indeed unfortunate that all of the four or five Divided Committee Reports on Energy and Natural Resources came out in the last two days because we had close to 170 bills and came out with only 5 or 6 Divided Reports, which I think is quite extraordinary.

I just want to clarify for the members who aren't familiar with this whole issue that a lot of what Representative Mitchell has said is a concern that also concerns Representative Lord.

We had the gal from EPA come up here on three different occasions at the request of Representative Marsh from West Gardiner and I have to tell you that there has been a lot of discussion over whether or not the sanctions will be in place, whether or not what we are doing is the right thing or the wrong thing and I would agree that probably when the Federal Clean Air Act and amendment was passed that not all things were not taken into consideration. Unfortunately, when we posed a series of questions to the gal from EPA, she stood across from the table and we told her what our intentions were and I have got to tell you, she never blinked. She never blinked because right now there is no attempt to change the current law in Congress, amend it or do it any different, and ultimately when I sat down and talked with her, she said, "Look, if you people in Maine want to go along with the federal law, you make that choice and you will live with the ultimate repercussions whether you believe them or not." She never blinked then either.

My concern is that, as has happened in the past,

if we don't follow federal law, the feds will come in and do it for us. I don't believe the feds will do it any cheaper, I don't believe the feds will do it anymore efficiently but I think the feds will do it less responsibly and I think delaying the implementation or the signing of the contract for one year is asking for big trouble.

I have no doubts, as Representative Mitchell has said, when this whole thing comes to fruition, the citizens of the State of Maine are going to find it objectionable. As Representative Constantine pointed out during our deliberations, her suggestion was that we come up with something that is going to be as convenient and as inexpensive to our constituents as could be done. That is the direction we gave DEP, that is the direction the committee intends to go.

My biggest fear is that should we choose not to pursue the IM inspection program that it is going to have a very detrimental effect to the businesses of this state, the businesses you people made very clear to me yesterday that you wanted to protect, whose jobs you wanted to protect. Those jobs you wanted to protect, the \$5,000 a ton fee is not a joke, \$5,000 a ton for every ton of air emissions put out by the major industries of this state and those are the paper industries of this state. If we fail to institute and implement an IM program, DEP has no choice but to go back and put the total burden of complying with the Federal Clean Air Act onto industry. I do not believe there is one industry in the State of Maine that will be able to survive those sanctions put onto them if we fail to implement the IM inspection program for all of our vehicles.

We have asked industry, and many times justifiably so, to invest hundreds of millions of dollars in technology to clean up our air. Understanding the arguments made by Representative Heino, understanding the arguments made by Representative Lord about drift and where it is coming from out of state, the fact of the matter is, we have put those burdens on our industries. They have spent lots of money.

We are asking in this program to alleviate some of the burdens on that industry by applying it to every mobile source and that is the cars you and I drive. I think that the Majority Report is, indeed, the most responsible way to go today. That is not to say that if the federal repeal comes along later on, this legislature or any other legislature cannot make amendments to that to change the way we implement the process. You chose not to listen to me yesterday, I sincerely hope that you do not choose to not listen to me today because this is a bill that has real, real significance and very severe financial impacts to these industries. Believe me, that was made very clear. Mr. Keschi from the Air Bureau made it clear, Mrs. Murphy from EPA made it clear and I just have to ask you, do you really want to gamble on the fact that the federal government and the Congress will not follow through on their threat to Maine or any other state? I firmly believe that we cannot afford to gamble. To delay this with the belief that things are going to be better in a year, I do not think is a wise way to go. The choice is up to you but I think you should understand the full potential of ramifications, a heck of a lot more than chlorine-free paper, a heck of a lot more than Workers' Comp Reform — you are talking about \$5,000 a ton and you should call your industries to find out how many tons they put up in the air in one year or

the three licensed period of their licenses. Find out what those impacts are and find out how many jobs (those are real now, not make believe, not potentially) really impact your industry.

My final word is that, as Representative Marsh started to say, we have indeed left our young people a heck of a legacy, the debt that they will have to carry will not be taken care of in their lifetime. We have left them a legacy of water that at one time was not fit to drink, we have left them a legacy of more cancer-causing agents than has ever been known in the history of this country and it appears that some would like to leave a legacy — never mind the fact they may not have a job someday, that they might not be able to breathe clean air because we blame the other states and the other province. I can just hear the Canadians saying now, "It is not our problem, it is coming from Maine, New Hampshire, Vermont and Massachusetts, just like we do to the southern states. Well, men and women of the House, the time is now, not later, that excuse is not acceptable any longer and I don't believe the federal government is going to put up with it. I firmly believe that in the long run, we have much too much to lose to stick our heads in the sand and say we are just not going to go along anymore. It just doesn't work that way. The mouse never wins the fight with the lion and until you can get Congress to change the way the Clean Air Act is worded, and is passed on to the state, you either have to bite the bullet and do the job or suffer the consequences.

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

The SPEAKER: The Chair recognizes the Representative from Cumberland, Representative Taylor.

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

Representative Jacques, is there any assurance from the federal government that if we do adopt the Majority "Ought to Pass" Report that there will be no further enforcement action against the mills and other industries in the state?

The SPEAKER: The Representative from Cumberland, Representative Taylor, has posed a question through the Chair to Representative Jacques, who may respond if he so desires.

The Chair recognizes that Representative. Representative JACQUES: Mr. Speaker, I apologize. Could Representative Taylor restate the question? I didn't hear the last part of it.

Representative TAYLOR: I am sorry. My question was, if we do accept this Report, what assurance do we have from the federal government that there will be no more requirements for the industries to tighten their air emission standards?

Representative JACQUES: Mr. Speaker, the only assurance we have is, if we don't adopt this Report, there will be more restrictions put on the industries of this state.

The SPEAKER: The Chair recognizes the Representative from Township #27, Representative Bailey.

Representative BAILEY: Mr. Speaker, Ladies and Gentlemen of the House: I don't know about the rest of you legislators in this body but when I was campaigning, the biggest complaint that I had from my constituents was that DEP is ruining this state by the regulations that they are forcing onto businesses and driving every business in this state out.

I just feel that it is time that this legislature

stood up to the DEP and the EPA and the federal government and say, get out of our lives and let us pass regulations that govern this state.

I would urge all of you to follow the good Representative from Freeport, Representative Mitchell's light.

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

Representative COLES: Mr. Speaker, Men and Women of the House: It is very important to remember that what we are talking about today is the result of the Clean Air Act of 1991. This Act was supported unanimously by all of our Congressional delegation, both Senators and both Representatives. It flies uniformly across the country so there is a level playing field and everyone is subject to the same rules.

It is designed to remove substantial amounts of pollution from the air that all of us have to breathe every day. You have heard some others today talk about the impact of bad air on a lot of Maine people.

The Clean Air Act says that in fact even though most of our ozone may come from out-of-state, Maine is required to reduce its current emissions by a set amount of tons per year. In doing so, it must do two things, that is implement an inspection maintenance program, the kind that this bill addresses. The other is that we must impose air fees on major polluters and execute a program to reduce that pollution. In addition, there are other optional courses for the State of Maine. No matter what we do or don't do, no matter which ones we choose, we must in the end come out with the exact amount of tonnage reduction that is required by the Clean Air Act.

If, for example, we don't obtain that reduction to the Inspection and Maintenance Programs, we must obtain through some other methods. That was what Representative Jacques was talking about, if we don't obtain it from automobiles, mobile sources, we must obtain it from stationary sources and those are our mills and our colleges and our schools and our small businesses. So then the question becomes, what is the most cost effective way to obtain the reduction we must obtain? In fact, by far the most cost effective way is to obtain it from mobile sources.

Representative Jacques and Representative Marsh are exactly right, \$500 a ton this way or \$5,000 a ton the other way. The Chamber of Commerce, the paper industry, all the major businesses of this state support this program because they know if we don't do this, they are going to have to bear the burden because that's what the federal law calls for, the federal law that was passed by a large margin and supported unanimously by our own Representatives and Senators and signed by President Bush.

Another point, the sanctions are real and they aren't the peanuts that's involved with the seat belt legislation. The sanctions aren't an option for EPA, the EPA is required by the Act and we have seen the language that is required by the Act to impose the sanctions if we do not have a program that meets federal requirements. We are talking about \$60 million a year of highway money. That is a significant blow to the state.

In addition, we are talking about a substantial portion of the operating budget of the Air Barrel at DEP. If we lose that money, one of two things will have to happen, we will have to make it up out of the General Fund or all the businesses in this state will have to get air pollution licenses and we will see a

major delay in the process and an increase in costs.

Maine is a member of the Ozone Transport Region, those are 12 states from Virginia to Maine, formed under the federal law to help deal with common air pollution problems because air pollution moves across borders.

It is very important to Maine that the other states do their part because in fact much of the air pollution in Maine comes from other states. We can't ask other states to do their part if we are not willing to do our part. It is simply a morally tenable position.

One last point, there was some talk earlier about a laser device that will measure these cords, the so-called Stedman device, that device in fact will not do the job, it measures only one of three pollutants required to be measured and Mr. Stedman himself admits that it is only effective in ten to twenty percent of the cases and that's why it is useful only as a backup to the basic iron 240 system which we are now in the process of installing in Maine.

To sum up, ladies and gentlemen, our choices are clear, we can go ahead with this program, implement it in the most cost effective and efficient way we in Maine can devise to do it or we can lose \$60 million a year in federal highway funds and impose substantial additional burdens on our industries.

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

Representative LORD: Mr. Speaker, My Learned Colleagues: I would call your attention to this green sheet. Last year in 1992, two days, six hours, the State of Maine was not in compliance. Does that mean we are producing the pollution in the State of Maine? No, we are not polluting in the State of Maine, it is coming from down south or southwest. All this talk about we are causing a lot of pollution here is hogwash.

There was a retired meteorologist from the weather bureau in Boston and he said to compare Maine with California and some of these other states is absolutely ridiculous. He said, "You just wait in Maine, the wind changes, bang-o, there's go your pollution. You get your pollution when you get hot, sticky days, when the air is heavy and the air is coming up from the south or southwest."

Last Thursday morning a bunch of us was having breakfast down in the cafeteria and a lawyer came along and I am sure a lot of you people know him, Severin Beliveau. He sat down with us for a spell and we were talking about the air emissions and I mentioned to him the fact that if we didn't go with this IM240 plan that we were going to lose a lot of federal money. He laughed and said, "You know, I have heard this many, many times before and I have yet to see this happen. This is just ridiculous." He said we should be sticking to our guns. I think that is exactly what we should be doing now. If we do and the Governors of some of these states get together, and they should be getting together, go down to EPA or to the legislators in Washington and tell them what a mess we are getting into, maybe we could get some relief. That's the only way we are going to get it. If we don't do it this way, we are stuck.

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

Representative COLES: Mr. Speaker, Men and Women of the House: My friend from Waterboro is right,

when it comes to the federal standards, we are in violation only two days a year. The current medical evidence suggests the fact that the point in which ozone concentration begins to have serious adverse effects on asthmatics and other people who suffer from respiratory illness is around .06 or .07, thus the Maine standard of .08 is the right kind of standards. Federal standards are .12 and it is much too high, it is almost twice as high as it takes to have adverse effects on asthmatics or other people like that. If you look at the Maine standards from this green sheet, there is a violation for 29 days a year and 652 hours a year. Those are days and hours when people who have these problems cannot be outside without suffering severe adverse effects.

More than that, no matter where it comes from and what I said earlier still holds true, Maine must reduce the amount of pollutants it puts into the air by a set number of tons. If we don't achieve it through IM240, we are going to have to achieve it through our industries.

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

Representative MITCHELL: Mr. Speaker, Ladies and Gentlemen of the House: Representative Marsh and Representative Coles have told you about the health effects of poor air today and they are right. I think it is important to remember however the first statement that was made in the debate and that was the remark by the gentleman from the USEPA when he said that if all the automobiles in Maine were put into the ocean or driven into the gulf of Maine, it would not improve the problem. So, the health effects are there and they are real, but this program isn't going to affect them at all.

Representative Jacques discussed the whole sanction issue and he is right, that they did threaten sanctions and they didn't blink — Ms. Murphy from the EPA is a very good poker player, I suspect, she didn't blink at all. I don't think there is any way to get out of this sanction problem. Last year, we had this bill and we were threatened with sanctions so we passed the bill. This year they came in with another program called the California Vehicle Program and they said if we didn't pass that bill, which we have, we are going to get sanctions from that. Then they came in a couple of weeks later with an Air Fee Bill which is going to put huge fees on industry and they threatened us with sanctions for that, so every time you turn around in that committee, you have a whole lot of sanctions that you have to deal with and it seems to be the new way we are doing business.

The whole issue of a level playing field has been brought up here and I think we ought to discuss that for a few minutes. I have a very good friend who is going to school in Missoula, Montana, the home of the University of Montana, and I call her every week and all through this winter they had a lot of air inversions and they get warnings that they shouldn't go outside when these inversions are taking place. They can't burn their woodstoves but they don't have an IM240 program. Many states in the United States that have air problems don't have this program either and Maine only has it because we are in the eastern part of the country, upwind of all of this stuff from the west and that is the reason we have that program.

I am on the Energy and Natural Resources Committee and I sit down there and I can't understand what is going on. I have more and more questions

every year about this program. Every time we talk about it, some more things come up that I just can't seem to understand and that is why I think we ought to put the thing on hold and try to figure out what's going on here before we burden our citizens with a great costly program that the EPA said is not going to have any effect on our health or our air pollution.

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

Representative ADAMS: Mr. Speaker, Men and Women of the House: I do not serve on the Energy and Natural Resources Committee, I serve on the Utilities Committee but I rise to speak to this bill today because one year ago, Representative Marsh and I were the only two sponsors on the bill that became the Emission's Test Law which is now before us. We were the only two sponsors even though we started out with a very long list of sponsors. When the hail started to hit, I admit sponsors bailed from that bill faster than they bailed from the Titanic but we did manage to bring it to a much better end and that is because there is only one fact which we cannot change. We have only so much air and they aren't making anymore of it but we can destroy what we do have at a pretty fast rate.

I know that these are new ideas, that it is a new vocabulary but we, in considering all of that, had to say that we are dealing with ozone, what makes ozone good up there in fact makes it bad down here close to earth. It has the ability to combine with other gases in ways that can be very detrimental to us, literally eat us alive.

The reason that the bill did finally pass last year was because we were able to restrict it rather tightly. It affects only coastal counties primarily because that's where the winds of the world bring the pollution from other places and because that is where we primarily make it. It made no sense to expand the testing to other parts of the state where we would be looking for a problem that wasn't there.

Secondly, because we do make some of it and because the feds can measure it, and they do know that it is here, and how much we make, we had very good statistics to base it upon. I don't think we are playing chicken with the feds when they say that they will apply sanctions to us. During the break, I asked to see what the history of other states receiving sanctions were and indeed they are there. All the way from 1980 up until last year, these were the states that have received heavy federal sanctions for violating what was then a discretionary act. It no longer is. California, six major metropolitan areas, Kentucky, two whole counties, Pennsylvania, the City of Philadelphia itself, Colorado, the City of Denver, Nashville, Tennessee, one town in Oregon, the Albuquerque area and county in New Mexico and the entire Cleveland, Ohio area and county all received heavy federal sanctions. I have no doubt that Maine being a small place will receive exactly what the full force of the non-discretionary law will allow the feds to do to us.

We were told that the federal standards were exceeded only twice in a year — that may be true but the state's standards in which we exceeded the state ozone standard fills these three pages that I am holding here which I cannot possibly read to you because I have not been able to add up the totals of the various towns myself, single space, one side filling three sheets of paper. In the interest though of being able to point out to Representative

Heino a little bit of interesting information, Port Clyde exceeded the state's standards 14 times last summer, not last year, last summer. The town of Jonesport 8 times and Acadia and Isle au Haut, more times than I can possibly count on this page, including also more places and more times than I can possibly count for Lovell, Maine, a small town next to the one I grew up in in a remote part of Oxford County.

I go into that detail to tell you that. I come from now one of the smallest districts in the State of Maine, it is the most ethnically diverse and the most economically diversified. You and I would essentially call that poor. It is probably one of the poorest per capita districts in the state. We have a monitoring station in the middle of the district that I now represent.

The kids who live around me have no place to go and no choice of going, they live in that area, they live in that heat and they stay there all summer long in that heat. They breathe that air. If they were lucky enough to get to the coast, not much good, the nearest testing station to us and the nearest coastline is in Cape Elizabeth and the testing station there indicated that Cape Elizabeth, Maine exceeded both the federal and the state's standards more than any other places than three up and down the entire eastern seaboard. There were a dozen times last summer when Cape Elizabeth, Maine measured dirtier air than New York City itself.

I go into that detail merely to tell you that we then tried to focused the answer. Remember we are speaking about cars here, the present law exempts all automobiles made before 1968. If you have a 25 year old car, it is not tested, it does not fall under the law. From 1968 to 1980, your car will get only an idling test, that's all. From 1981 on, yes, the law requires a little bit more testing, but I would point out to you that the latest figures from the Secretary of State's Office indicate that the most cars that are on the road in the State of Maine are made in model years '86 and '87. If you could see the graphs I have here, you would see that those two years stand up upon the bar chart like a pair of popsicle sticks, nothing near them is anywhere near like that. These are primarily the cars that will be those most heavily tested. From 1987 on, all cars will have to meet a higher standard but they are also built to a higher standard. If you can afford to buy a brand new car, then you are buying part of the solution because the car is simply built better to meet these standards or with an anticipation that it is built better and will not be emitting the very same things in here that we have been talking about.

Last year it was very painful for me, and I know for Representative Marsh, to have to debate on the opposite side of people with whom we have become personal friends, like Representative James Mitchell of Freeport and then Representative Basil Powers of Coplin Plantation. Basil Powers, as you may remember, rather amused us at one point by rising on the floor of the House to opine that he had long since pulled the catalytic converter off his pickup truck and hove it into the ditch. Further, he opined that he would have me follow it if I voted for the bill. Regrettably, Basil Powers, I think, was wrong but having embalmed that particular wish in the liquid amber of his thought, he did then go on to say that he realized they just weren't building anymore air and that is the fact. They aren't building

anymore air and they are not building any bigger budgets either. The latest figures that I have here indicate that the penalty we will receive unless we act by this fall is between \$50 and \$70 million in federal highway funds. They are not building anymore air, they are not building anymore money for us to pour into the budget, I say we can't do without the money and we can't do without the air. That is why I urge you to follow Representative Marsh's light upon this question.

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

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

A question to any signer of the Majority Report and it deals, not with the intent of the bill, but rather the content.

It seems to me that Committee "A" (H-537) imposes a considerably differential penalty for violation of this Act if it were to be in place, something more than three to one. In light of the fact that Article I, section 9 of the Constitution that says "fines and penalties must be proportioned to the offense" and it is clear that these are not in proportion, I would ask if any signer of the Majority Report sought an opinion from the Attorney General as to whether or not this bill, if it were enacted, would pass the test of Article I, section 9?

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

The Chair recognizes the Representative from Freeport, Representative Mitchell.

Representative MITCHELL: Mr. Speaker, Ladies and Gentlemen of the House: I am not a signer of the Majority Report but I will try to answer that question. I don't believe that anyone asked the Attorney General about the penalties. I thought the penalty of \$450 was kind of high. When we were in our work session, I particularly objected to a sentence that said "that the court couldn't suspend that particular fine" and I moved to have it stricken from the bill and the head of the Air Bureau, Dennis Keschi who is sitting up in the gallery right now, got up and went back to the EPA representative in the back of the room and said, "Is it okay if we strike that sentence from the law and give judges basically the discretion to lower the fine if they thought it was necessary?" The EPA representative generously conceded to that particular wish, which was very nice, but it shows you the sort of situation we are in. The fine is \$450 because the EPA told us that we had to have a \$450 fine. Now, if the Attorney General tells us that that is too much, maybe we have a conflict between state and local law.

The SPEAKER: The Chair recognizes the Representative from Arundel, Representative Wentworth.

Representative WENTWORTH: Mr. Speaker, Ladies and Gentlemen of the House: To further clarify that issue, we are required by the federal government to have a penalty for non-compliance that is equal to the fee that can be imposed or the maximum amount that is required to be spent for compliance for fixing your car. The reason for that is that the federal government doesn't want a penalty that is lower than the cost to fix your car that is mandated under the law so it would give you an incentive to not comply because the penalty would be lower than the fee to fix your car. They required that the penalty be equal to the maximum amount required for

repairing the car and, therefore, we have no choice with this.

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

Representative JACQUES: Mr. Speaker, Ladies and Gentlemen of the House: A few short comments. Representative Lord is exactly right, the unfortunate thing is that the federal law does not exempt the State of Maine from the same requirements that they put on California. Fair or unfair, the simple fact of the matter is that Maine is not recognized for still being a fairly clean state. The law treats Maine just like any other state that have areas of non-attainment.

I would ask you not to vent your frustrations on the ineptness and the unfairness of federal law by pounding this bill. I would pose a challenge to you that sometime today or tomorrow, call your mill people, call your Environmental Affairs Managers in your mills and pose this question to them, that if the state fails to adopt an IM Inspection Program for mobile sources and the increments are made up on industry, what will the effect be to your industry in dollars and cents this year, not next year, but this late Summer and Fall? If they give you an answer and you think that is acceptable, then vote against the bill.

I want a roll call so I can remember next session when you come in with bills to bail out your industries because they had to spend \$2 or \$3 million extra to meet the Clean Air Act increments, we can simply say, sorry, this was your decision. But, I ask you to talk to the same people that you talked to yesterday on chlorine-free paper.

At this point, the rules were suspended for the purpose of members removing their jackets for the remainder of today's session.

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 West Gardiner, Representative Marsh.

Representative MARSH: Mr. Speaker, Ladies and Gentlemen of the House: Just two or three things. Number one, I would like to thank all of those who have debated for me, I wish I had the ability of some of the eloquent speakers that are here in the House. I would just ask you to remember my debate this morning and it did come from the heart.

Last year when I sponsored this in concert with Representative Adams, this bill was backed by the Maine Chamber, the Maine Automobile Association, dealers and whatever, it got a lot of support and went through here rather easily.

This year, when I sensed it was going to have what we have had here today, I didn't feel it was

right to ask someone else to try to lug the water with me so I signed on alone. The only thing I ask you is, when you vote, the one thing I didn't read from the Maine Lung Association this morning is their logo at the bottom. Any of you who are having any questions as to how you will vote, please remember this, "When you can't breathe, nothing else matters."

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

ROLL CALL NO. 160

YEA - Adams, Ahearne, Anderson, Ault, Beam, Bennett, Bowers, Brennan, Bruno, Cameron, Campbell, Carleton, Cashman, Chase, Clark, Clement, Cloutier, Coles, Constantine, Cote, Donnelly, Dore, Driscoll, Erwin, Faircloth, Farnsworth, Fitzpatrick, Gamache, Gean, Gould, R. A.; Gray, Hale, Hatch, Heeschen, Hoglund, Holt, Hussey, Jacques, Johnson, Joseph, Ketterer, Kneeland, Kontos, Larrivee, Lemke, Libby James, Lindahl, Marsh, Martin, H.; Melendy, Michael, Michaud, Nadeau, Oliver, Paradis, P.; Pendexter, Pfeiffer, Pineau, Pinette, Plowman, Poulin, Rand, Richardson, Rotondi, Rowe, Ruhlin, Rydell, Saxl, Simonds, Stevens, A.; Stevens, K.; Sullivan, Swazey, Townsend, E.; Townsend, L.; Tracy, Treat, Vigue, Walker, Wentworth, Zirnkilton, The Speaker.

NAY - Aikman, Aliberti, Bailey, H.; Bailey, R.; Birney, Caron, Carroll, Chonko, Clukey, Coffman, Cross, Daggett, Dexter, DiPietro, Dutremble, L.; Farnum, Farren, Foss, Greenlaw, Gwadosky, Heino, Hillock, Joy, Kerr, Kilkelly, Kutasi, Lemont, Libby Jack, Lipman, Look, Lord, MacBride, Marshall, Mitchell, E.; Mitchell, J.; Morrison, Murphy, Nash, Nickerson, Norton, O'Gara, Ott, Pendleton, Plourde, Pouliot, Reed, G.; Reed, W.; Ricker, Robichaud, Saint Onge, Simoneau, Spear, Strout, Taylor, Thompson, Townsend, G.; True, Tufts, Whitcomb, Young.

ABSENT - Barth, Carr, Cathcart, Hichborn, Jalbert, Skoglund, Small, Tardy, Winn.

Yes, 82; No, 60; Absent, 9; Paired, 0; Excused, 0.

82 having voted in the affirmative and 60 in the negative with 9 being absent, the Majority "Ought to Pass" Report was accepted, the bill read once.

Committee Amendment "A" (H-537) was read by the Clerk.

Representative Poulin of Oakland offered House Amendment "B" (H-583) to Committee Amendment "A" (H-537) and moved its adoption.

House Amendment "B" (H-583) to Committee Amendment "A" (H-537) was read by the Clerk and adopted.

Representative Mitchell of Freeport offered House Amendment "A" (H-580) to Committee Amendment "A" (H-537) and moved its adoption.

House Amendment "A" (H-580) to Committee Amendment "A" (H-537) was read by the Clerk.

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

Representative MITCHELL: Mr. Speaker, Ladies and Gentlemen of the House: House Amendment "A" changes the low mileage waiver from 5,000 miles to 10,000 miles.

The EPA did grant us permission to grant waivers for certain classes of vehicles so the committee put on a 5,000 mile waiver. That's for every two years

if you drove your car less than 5,000 so you wouldn't have to have it inspected. I propose to change that 10,000 every two years, that's 102 weeks or 96 miles a week and if you drove your car less than that, you wouldn't have to go in for an inspection. I know a lot of people who don't drive too much, basically they are retired and they only go to church or to buy groceries or such. It hardly seems fair to subject them to this program where they are going to have to pay \$30 to have their car inspected, up to \$450. We do exempt a lot of other people from the program. For example, we exempt all trucks over 10,000 pounds, which is almost every truck. They are all completed exempted from the program by Congress. We also exempted all diesel vehicles so we have a pretty substantial polluters exempted already and I think it is only fair to those people who have an automobile and don't drive it very far each year that they also be exempted.

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

Representative COLES: Mr. Speaker, Ladies and Gentlemen of the House: The committee discussed this 10,000 mile option for a fair amount of time and we also received a very clear indication from EPA that that would disqualify the program and we would not redeem having conformed to federal law, thus we will be subject to sanctions. Now, we can nitpick the miles a little bit somewhere in between maybe, but it is pretty clear in my mind at least that 10,000 miles is beyond what EPA is willing to accept as a reasonable standard.

I also want to mention a couple of red herrings my friend from Freeport just threw out, that there are so many diesel vehicles engaged in interstate commerce, the trucks and buses, they are being regulated on a national level, not a state level.

The SPEAKER: The Chair will order a vote. The pending question before the House is adoption of House Amendment "A" (H-580) to Committee Amendment "A" (H-537). Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

Representative Coles of Harpswell requested a roll call.

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

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

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

Representative COLES: Mr. Speaker, Ladies and Gentlemen of the House: If we adopt this amendment, we will put ourselves in the same position as having adopted the Committee Amendment, which means that we will hence reverse the action we just took a few minutes ago. So, I hope you vote against the amendment.

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

Representative MITCHELL: Mr. Speaker, Ladies and Gentlemen of the House: I was in the room then and I did not get the message from the person from the EPA that 10,000 miles would exclude the State of Maine. Diesel vehicles are exempt and gasoline vehicles are

not exempt and they are not exempt because they are involved in interstate commerce. They are involved because they have a good lobby in Washington when the Clean Air Act was passed. If we can do that for those people, I think we can do it for these people.

There is no grocery store in my legislative district — if you want to buy food in Freeport, you have to go to Yarmouth or Brunswick. Brunswick is 10 or 12 miles away so you are apt to add a few miles up pretty quickly. We have some housing for the elderly in my district and people there live on very low incomes. In fact, one \$450 order to fix your car might blow their entire income for the month. There are a few cars sitting on there at the housing for the elderly and they don't go very far, so it seems to me that the least we can do is give them a little bit of freedom so that they can go to church, go to the grange or go to Yarmouth or Brunswick to buy some groceries when they feel they need some without having to comply with this onerous program.

The SPEAKER: A roll call has been ordered. The pending question before the House is adoption of House Amendment "A" (H-580) to Committee Amendment "A" (H-537). Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 161

YEA - Aikman, Aliberti, Ault, Bailey, H.; Bailey, R.; Beam, Bennett, Birney, Bruno, Cameron, Caron, Carroll, Cathcart, Chonko, Clark, Cloutier, Clukey, Coffman, Cross, Daggett, Dexter, DiPietro, Donnelly, Driscoll, Dutremble, L.; Farnsworth, Farnum, Farren, Foss, Gamache, Greenlaw, Gwadosky, Heino, Hillock, Hussey, Joy, Kerr, Kilkelly, Kutasi, Lemke, Lemont, Libby Jack, Lipman, Look, Lord, MacBride, Marshall, Melendy, Mitchell, E.; Mitchell, J.; Morrison, Murphy, Nash, Nickerson, Norton, O'Gara, Ott, Paradis, P.; Pendexter, Pendleton, Plourde, Plowman, Pouliot, Reed, G.; Reed, W.; Ricker, Rotondi, Saint Onge, Simoneau, Skoglund, Spear, Strout, Taylor, Thompson, Townsend, G.; Tufts, Whitcomb, Winn, Zirkilton.

NAY - Adams, Ahearne, Anderson, Bowers, Brennan, Campbell, Carleton, Cashman, Chase, Clement, Coles, Constantine, Cote, Erwin, Faircloth, Fitzpatrick, Gean, Gould, R. A.; Gray, Hale, Hatch, Heeschen, Hichborn, Hoglund, Holt, Jacques, Johnson, Joseph, Ketterer, Kneeland, Kontos, Larrivee, Libby James, Lindahl, Marsh, Martin, H.; Michael, Michaud, Nadeau, Oliver, Pfeiffer, Pineau, Pinette, Poulin, Rand, Richardson, Robichaud, Rowe, Ruhlin, Rydell, Saxl, Simonds, Stevens, A.; Stevens, K.; Sullivan, Swazey, Townsend, E.; Townsend, L.; Tracy, Treat, True, Vigue, Walker, Wentworth, Young, The Speaker.

ABSENT - Barth, Carr, Dore, Jalbert, Small, Tardy.
Yes, 79; No, 66; Absent, 6; Paired, 0;
Excused, 0.

79 having voted in the affirmative and 66 in the negative with 6 being absent, House Amendment "A" (H-580) to Committee Amendment "A" (H-537) was adopted.

Committee Amendment "A" (H-537) as amended by House Amendments "A" (H-580) and "B" (H-583) thereto was adopted.

Under suspension of the rules, the Bill was read a second time, passed to be engrossed as amended by Committee Amendment "A" (H-537) as amended by House Amendments "A" (H-580) and "B" (H-583) thereto and sent up for concurrence.

The Chair laid before the House the following matter: Majority Report of the Committee on State and Local Government reporting "Ought to Pass" as amended by Committee Amendment "A" (H-543) on Bill "An Act Concerning State Transactions with Businesses in Northern Ireland" (H.P. 931) (L.D. 1254) and the Minority Report of the same Committee reporting "Ought Not to Pass" on same Bill which was tabled earlier in the day and later today assigned pending the motion of the Representative from Waterville, Representative Joseph, that the House accept the Majority "Ought to Pass" Report.

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

Representative BENNETT: Mr. Speaker, Friends and Colleagues of the House: I am reluctant to rise to speak against this bill because I believe that its purposes are pure, its intentions are admirable and also because in its amended form, it will not hurt the state, it will not impinge on our fiduciary responsibility to the taxpayers. I don't believe it will affect us fiscally because, in its amended version, it promises much and delivers nothing.

No one can deny the terrible situation that exists in Northern Ireland, a situation that has existed for decades and indeed for generations, indeed for centuries, but reasonable people can disagree about whether we in the Maine Legislature can do anything to positively affect the situation. Reasonable people will disagree over what action, if any, is best for Northern Ireland and reasonable people will disagree about whether or not we should inject our state government into that problem.

I do not believe that I was elected to represent the Catholics of Northern Ireland or the Protestants of Northern Ireland, I was elected to serve the Maine people and to solve Maine problems. If we want to deal with perplexing problems of the world, if we want to speak out about religious or ethnic persecution, why leave it only to Northern Ireland? Why discriminate against the other suffering people of the world, why discriminate against the Muslims in Bosnia, the Armenians in Azerbaijan, the Buddhists in Vietnam, the Pias Indians in Columbia, the Tauregs of Niger, Baha'is and numerous other people in Iran, the Catholics in China and Zaire, Ouaddais in Chad, the members of Al'-Adi-Wa'l-Ihsan in Morocco, the Jehovah's Witnesses in Greece and what about the discrimination and suffering endured by the Inuit's in neighboring Canada?

Now, I know that we live in a global economy in a global village but we have in this country the power of our individual actions as well as the President and the Congress to handle our foreign policies. We are not members of the Congress yet, though some of us may want to be, we are in extraordinarily trying times in state government, let's focus our energy and time on the problems of Maine. If we feel the need to make a statement about Northern Ireland or any other troubled area of the world, let us use the proper parliamentary device, the resolution, not the statute.

Please vote against the pending motion. Mr. Speaker, I request the yeas and nays.

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

Donnelly.

Representative DONNELLY: Mr. Speaker, Men and Women of the House: Representative Bennett left out the Branch Davidians of Waco, Texas and they are about as relevant to this bill as are the other people that he listed.

I think what we need to focus on is that we have a place that we have identified, as Representative Bennett has admitted, where there has been religious discrimination. I think the State of Maine has a long and proud history of religious tolerance. When you travel around our state and you see the Shakers and the Quakers, you see the Baptists and the Catholics, you see them walking down the street together and talking with each other because we don't make a distinction on who we hire because of their religious background or their faith in God. I don't think we as people of the State of Maine are doing anything wrong by saying we expect the same high standards of countries that we do business with than we expect of ourselves and our neighbors.

I will keep it brief and to the point and I hope you will accept that argument and vote for this bill and I appreciate your support.

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

Representative JOSEPH: Mr. Speaker, Men and Women of the House: First you need to know that this bill is drafted from a New York model, that it talks about the fear employment principles, which in this piece of legislation, are the MacBride Principles and one that would be left out would be the security of transportation to and from the work site.

I would like to add, before we talk more about this bill and the importance of doing something about the discrimination against the Catholics in Northern Ireland and the fact that over 60 percent of the Catholics are unemployed in Northern Ireland, that a few short years ago, the Maine Legislature voted to divest investments in corporations doing business in South Africa.

We need to ask Nelson Mandella and we have heard Nelson Mandella talk about the effectiveness of the sanctions that this state and other states had against the government of South Africa so this bill is an important bill. We must remember that the United States was founded upon the issues surrounding religious freedom and if you do not believe that this bill is important to those persons of the government of Great Britain, you only needed to be in the State and Local Government Committee hearing room when in fact persons traveled from Great Britain and from Northern Ireland to testify in opposition to this piece of legislation. When people go to those great expenses to testify on a bill in the State of Maine, a state that has 1,200,000 persons across the Atlantic Ocean, you know that it is an important piece of legislation and in fact we should endorse this legislation because it will have an effect in Northern Ireland.

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

Representative CASHMAN: Mr. Speaker, Men and Women of the House: I just want to comment briefly on exactly what the bill does in case anybody is unclear.

This piece of legislation started out as a strict prohibition against the State of Maine purchasing goods and services from companies doing business in Northern Ireland and not practicing fair hiring

practices. That raised a number of problems, we put a fiscal note on and it caused a lot of problems with the Bureau of Purchases. I spent a great deal of time running between the Bureau of Purchases and the State and Local Government Committee trying to work out a compromise that would appease the majority of the people. We did reach a compromise by adopting the language that is in the New York State Legislature. They adopted this piece of legislation last year and I would like to point out that that was a unanimous vote in both the State Assembly and the Senate and signed into law. New York City has a similar law on the books and they have had it in action since 1991 and I have a letter from the Comptroller's Office saying this has caused them no fiscal impact at all.

In basic terms what the bill does is, when you are bidding with the State of Maine, you will declare whether or not you have a subsidiary in Northern Ireland. If you do, it simply asks that you attempt to abide these nine affirmative action and fair employment guidelines. Anything short of that is a pure statement that, no, we are going to discriminate.

I think this is a good bill, it does have teeth in it, it could cost a company discriminating against Catholics in Northern Ireland a contract with the State of Maine. It has had positive effects in New York by making IBM and Northern Telecom both sign on, two very large companies that thought this was reasonable and this did not harm them in any way.

I would appreciate your support.

The SPEAKER: The Chair recognizes the Representative from Rumford, Representative Cameron.

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

Can you give me an example of any company presently doing business in the State of Maine, just so I can get a handle on what we are doing here, any company in the State of Maine who may be doing business in Northern Ireland and how much it might affect them?

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

The Chair recognizes the Representative from South Portland, Representative Cloutier.

Representative CLOUTIER: Mr. Speaker, Ladies and Gentlemen of the House: The answer to that question is that companies who have implemented the Fair Hiring Practices — I won't list them all, I will just give you a number of companies who have implemented these Fair Hiring Practices in Ireland. They are AT&T, Data General, Digital Equipment, Dupont, Federal Express, Honeywell, IBM, Nynex, Oneida, Proctor & Gamble, Sunoco, Texaco, and the list goes on.

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

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

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

The Chair recognizes the Representative from St.

George, Representative Skoglund.

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

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

ROLL CALL NO. 162

YEA - Adams, Ahearne, Aliberti, Beam, Bowers, Brennan, Bruno, Cameron, Campbell, Caron, Carroll, Cashman, Cathcart, Chase, Chonko, Clark, Clement, Cloutier, Clukey, Coffman, Coles, Constantine, Cote, Daggett, DiPietro, Donnelly, Dore, Driscoll, Dutremble, L.; Erwin, Faircloth, Farnsworth, Farnum, Fitzpatrick, Gamache, Gean, Gould, R. A.; Gray, Gwadosky, Hale, Hatch, Heesch, Hoglund, Holt, Hussey, Jacques, Johnson, Joseph, Joy, Kerr, Ketterer, Kilkelly, Kneeland, Kontos, Kutasi, Larrivee, Lemke, Lemont, Lindahl, Lipman, Martin, H.; Melendy, Michael, Michaud, Mitchell, E.; Mitchell, J.; Morrison, Murphy, Nadeau, O'Gara, Oliver, Paradis, P.; Pendleton, Pineau, Pinette, Plourde, Plowman, Poulin, Pouliot, Rand, Reed, W.; Richardson, Ricker, Robichaud, Rotondi, Rowe, Ruhlin, Rydell, Saint Onge, Saxl, Simonds, Spear, Stevens, K.; Strout, Sullivan, Swazey, Thompson, Townsend, E.; Townsend, G.; Townsend, L.; Tracy, Treat, Tufts, Vigue, Walker, Wentworth, Winn, Young, The Speaker.

NAY - Aikman, Anderson, Ault, Bailey, H.; Bailey, R.; Bennett, Birney, Carleton, Cross, Dexter, Farren, Foss, Greenlaw, Heino, Hillock, Libby Jack, Libby James, Look, MacBride, Marshall, Nash, Nickerson, Norton, Ott, Pendexter, Pfeiffer, Reed, G.; Simoneau, Stevens, A.; Taylor, True, Whitcomb, Zirnkilton.

ABSENT - Carr, Hichborn, Jalbert, Lord, Marsh, Small, Tardy.

PAIRED - Skoglund (Yea)/ Barth (Nay).

Yes, 109; No, 33; Absent, 7; Paired, 2; Excused, 0.

109 having voted in the affirmative and 33 in the negative with 7 being absent and 2 having paired, the Majority "Ought to Pass" Report was accepted, the bill read once.

Committee Amendment "A" (H-543) was read by the Clerk and adopted.

Under suspension of the rules, the bill was read a second time, passed to be engrossed by Committee Amendment "A" (H-543) and sent up for concurrence.

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

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

The House was called to order by the Speaker pro

tem.

The Chair laid before the House the following matter: Majority Report of the Committee on State and Local Government reporting "Ought to Pass" as amended by Committee Amendment "A" (H-544) on RESOLUTION, Proposing an Amendment to the Constitution of Maine to Provide Legislative Review of Delegated Rule-making Authority (H.P. 962) (L.D. 1293) and Minority Report of the same Committee reporting "Ought Not to Pass" on same RESOLUTION which was tabled earlier in the day and later today assigned pending the motion of Representative Joseph of Waterville that the House accept the Majority "Ought to Pass" Report.

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

Representative JOSEPH: Mr. Speaker, Ladies and Gentlemen of the House: This is the first step of a two step process. I would urge you to vote in favor of the Majority "Ought to Pass" Report of the State and Local Government Committee, a ten to three report.

Since the 1930's, rule-making has been an important process in state government. The review of rules has become more popular because of the growth of state and federal government and state government regulations. However, if the legislature wishes to review rules, we must pass a statute. If the legislature wishes to veto or stay a rule, then we must pass a Constitutional Amendment. The Constitutional Amendment would allow the legislature to stay a rule of a department or agency or veto that rule. The Governor of this state, in fact, would have the ability to overrule a stay if issued by a legislative committee and the rule would continue in effect unless the legislature enacts legislation to invalidate that rule.

You are probably asking yourself, why do we need this legislation? The State and Local Government Committee had six pieces of legislation dealing with the promulgation of rules by departments and agencies. You must understand as well that probably every department and agency that has rule-making authority is opposed to this piece of legislation and a subsequent piece of legislation that we will be dealing with tonight. However, there have been many examples when the legislature as a whole, legislative committees and individual legislators, have felt that legislative intent had not been adhered to in the rule-making process. It has happened in permitting, it has happened in the Department of Human Services, it has happened in the Bureau of Insurance, just to name a few examples. Because of this and because each rule that is passed by a department or agency has the effect of law, you now have bureaucrats writing the laws of this state.

I was privileged last summer to be invited to talk about rule-making at the National Association of Secretaries of State, almost all states were represented. In this dialogue that we had, it was apparent to me that almost all states have done something in this area to deal with the number of rules that are promulgated by departments and agencies. In fact, 41 of the 50 states now have some form of legislation to review the rules from the departments and agencies. For this reason, I ask you to take this first step to start the process where,

if there has been a violation of legislative intent, that the legislature may play some part in the review and the staying of those rules.

I believe that there may be others who would speak to you on this issue and would tell you about their experiences with some departments and agencies that will actually help you to understand why this legislation is needed.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Limestone, Representative Young.

Representative YOUNG: Mr. Speaker, Ladies and Gentlemen of the House: My good friend and House Chair from the State and Local Government Committee — much of what she says is absolutely correct. I think everybody recognizes the difficulties that exist with bureaucrats making laws and rule-making. She said that this is the first step in a two step process to correct that problem. I think both of these proposed steps are bad steps and that there is another way to fix the problem that everyone here will agree does exist. We don't want bureaucracies to become legislatures, making laws.

This amendment to our Constitution, I believe if you read it carefully, interposes the legislature in the position of the Executive Branch and gives it the power to stay a rule. Issues of public health could be involved here. We need a bureaucracy which is able to act quickly and effectively in emergency situations. Legislatures can't work that way. This amendment will make a fundamental change in the nature of our government, allowing the legislature to circumvent the Executive Department and stay a rule. Yes, it is true that the Executive can then override the staying of the rule, but is this the solution to that problem of rule-making? I don't think so. I think it is going to create a legislature (and also there is an associated bill which makes statutory changes along with this) it is going to create a legislature which is continually involved in rule-making and the review of rule-making and nothing else. There is a better way if you defeat this amendment and with the Majority Report on the associated bill, you will get a chance to look at that.

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

Representative FARNSWORTH: Mr. Speaker, Men and Women of the House: It is with some hesitation that I would oppose the Majority Report of this committee but I have to say that my own experience in state government, my involvement with the rule-making process over the years as well as my legislative experience, gives me just a complete sense that this bill would in fact, although the goal may be laudable, would in fact make the legislature more of a part of the bureaucracy and in effect creating a worse evil, I think, than the one that we are intending to fix.

I completely support the remarks made by Representative Young.

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

Representative LOOK: Mr. Speaker, Men and Women of the House: If you will look at House Amendment (H-544), you will see the contents of this amendment which is the committee's report. I know perhaps it isn't before you but if you look at it, it will give you a better insight of exactly what this is to do.

The reason we have this legislation is because we

have repeatedly heard complaints by the public and from legislators as well that time and time again rules come forth which do not comply or agree or reflect or whatever word you want to say with the intent of the legislature's actions when they authorize this to happen. As you look at this, what this Constitutional Amendment will do is to put the review of the rule, keep it within the committee of jurisdiction that the issue is concerned with, and it will allow them to act within 30 days after the rule is brought forth. With the accompanying legislation which you will be hearing later, it will give you a more in-depth explanation of the exact process. The process now is that the rule has to be approved by the Attorney General etcetera and then the Constitutional Amendment will provide for the sequence of the action from then on, which will, if the legislature is not in session, give the right of the Executive Department to stay the rule and leave it in effect until the next session of the legislature.

I ask you to look at this and then you will better understand the purpose for which this, hopefully, will be enacted.

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

Representative BENNETT: Mr. Speaker, Friends and Colleagues of the House: This may be one of the most significant issues coming out of the State and Local Government this year. I believe that because this deals with a fundamental difference in our Constitution between the Legislative and Executive Branches. I encourage you all to think hard and consider this issue before you vote.

Occasionally rules do go beyond legislative intent, but I would submit that often the legislature may be a bit remiss in spelling out exactly what they do intend and sometimes, particularly at the end of our session we have all seen committees evolve responsibility to agencies to craft a rule to take care of a problem that either the legislature didn't want to deal with or couldn't deal with politically or it required too much technical expertise for us as broad policy makers and citizen legislators to deal with.

I do not accept the need for a Constitutional Amendment. I am supportive of the statutory change which will be coming up shortly. I do not consider this, as some committee members apparently do, as accompanying legislation related to the Constitutional Amendment. They deal with two separate things and they are distinct and they are separate. The Constitutional Amendment, if it passes, will allow the next legislature or the next session of this legislature to implement, to pass implementation language, new legislation. This bill is different and distinct from the other bill, the statutory change, that will come later. I think the statutory change is a better way to go about dealing with this problem rather than a Constitutional Amendment. I feel that because of two reasons, one is that the Constitutional Amendment does tread on the very sensitive issue of separation of powers. The legislature enacts legislation and we ask the executive to carry that out. Sometimes that involves the creation and promulgation of rules.

The other reason that I disagree with this Constitutional Amendment is that it only deals with a narrow period of review and that is 30 days around the adoption of the rule. Frequently, the problem,

if there is one, doesn't appear until six months, a year, two years, from the date that the rule was adopted. The Majority Report on the statutory change, I think, may need some work but it deals with the whole gamut of possibilities for when a rule could be considered to be in conflict with legislative intent.

We do not need this Constitutional change to correct the problem, we can do it in the statutes and I encourage you to reject the pending motion and support another alternative.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Eagle Lake, Representative Martin.

Representative MARTIN: Mr. Speaker, Members of the House: This happens to be a bill which I sponsored this session and one that I sponsored two years ago as well.

Let me put it very simply. It is an issue that every single legislator has complained about ever since I have been a legislator. We passed the APA, and whenever rules are enacted by a department, we as legislators always complain. This is your opportunity, very simply, to put up or shut up. There is really no simple way to put it. If in fact you as a member of the legislature want to say to departments, we are now going to regulate and watch what you do, then this is the way to do it. You cannot do it by statute, you must change the Constitution.

There have been a number of Supreme Court decisions in this state and in other states that make it very clear to that effect.

I will tell you that Committee Amendment "A", as drafted, does not exactly do what I had hoped the committee would come out with. If, in fact, the House chooses to adopt the Majority Report, it is my intention to kill Committee Amendment "A" and offer an amendment at second reading.

Let me tell you that on this vote it is a question of whether or not you want to let the departments write the laws and then it will be whether or not you want to find a process to change that.

It is very simple. I am not going to ask any of you to vote, vote the way you want to. But, whatever way you vote today, it is an opportunity for you, once and for all, to say, I like the way the departments are doing rules and leave it alone. If you want to change it, this is the one opportunity you have and this will be the vote that will reflect that.

Mr. Speaker, when the vote is taken, I move that it be taken by the yeas and nays so the people of Maine will know how we all voted as to where the power will lie.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Limestone, Representative Young.

Representative YOUNG: Mr. Speaker, I request permission to pose a question through the Chair.

To Representative Martin of Eagle Lake, here I am genuinely trying to become informed on this issue, is it not a legitimate possibility that instead of this Constitutional Amendment and Committee Amendment "A" to L.D. 1050 that we take another attack on this problem which would be to institute a faster track for legislation which would deal with problem rules and would at the same time also keep those lines of responsibility between the Executive Branch and the Legislative Branch distinct?

The SPEAKER PRO TEM: Representative Young of

Limestone has posed a question through the Chair to Representative Martin of Eagle Lake who may respond if he so desires.

The Chair recognizes that Representative.

Representative MARTIN: Mr. Speaker, Members of the House: It would all depend on whether or not this legislature becomes full-time. If it did, then obviously the legislature would always be in a position to deal with rules that are promulgated by a department and we could require that before the final implementation of the rule that they have to come back for ratification. The problem that we have, of course, especially in the second year, is that we are out of here by April, the middle of April or a little earlier we hope, and we are gone until December. In the meantime, the state has to operate and the APA process allows the departments to do that.

For those of you who remember, and there are a few in this room who were here, that probably the best example was the Department of Labor back about 15 years ago, when they were authorized to promulgate chemicals used in the workplace as to what had to be reported. Over night, all legislators were inundated by every person in their community, including storeowners that were required to report every chemical that they washed the floor with and that included ammonia, chlorox and everything else because they defined it as any chemical. We then asked the Governor, who happened to be a member of my party, to order the Department of Labor to rescind the rule, it did not happen. We waited six months to come on and at this point, everyone in Maine was upset at us. The purpose of this process, if done right, would allow the legislature to come in.

I will now tell you what I believe would be the way to go, and you may choose to agree or not agree, and that would be to allow a committee — much as Appropriations is now allowed but no authority — to review within 30 days after rules have been promulgated and letting that committee suspend the rule. Then, if the Chief Executive of this state wants to override a committee, I would give the Chief Executive the authority to do that because the Governor speaks for the entire state. The Governor then would take the heat or would agree with the legislative committee. That would be very simple but it would provide a mechanism to force the staff of various departments to deal with legislative intent. You know how much we complain about legislative intent and whether or not it is being followed by departments.

All I am saying to you is, if you believe that the departments of this state ought to be forced to follow legislative intent, this is a process by which you can do it. If you choose not to buy it, that is fine with me, I have absolutely no problem because very often I like what the departments do a heck of a lot more than what we do here, but this is a way in which we can deal with the problem, if you believe you want it to happen.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Westbrook, Representative Lemke.

Representative LEMKE: Mr. Speaker, Men and Women of the House: We have heard a great deal in this chamber about accountability. We have heard about accountability of the legislature and legislative officers. We have heard about accountability of Constitutional officers. We hear about accountability of the Governor. At least in two of those categories, the good Representative from Norway

has been very vocal. Well, I believe this is a bill about bureaucratic accountability and, as such, I urge you to support it.

There has been a trend that we are getting away from the three branches of government that are set up by the Constitution and we in effect have a fourth branch which is unelected, semi or full-permanent which is making rules and making laws and getting away from elected officials and that is the bureaucracy. This is an important first step in bringing back power where it should be, through the elected representatives of the people.

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

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

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

Representative SKOGLUND: Mr. Speaker, Men and Women of the House: I am also very supportive of this change. I prefer to think of it not so much as a change in the Constitution as a return to the purpose of the Constitution. The State Constitution specifies that there shall be three distinct branches of government, Legislative, Judicial, Executive. We each have our function and, according to the Constitution, no branch is supposed to go over into the other's territory. Over the years, things have become more complicated. We have had to make rules more rapidly than they did in the past, so this rule-making came into existence for perfectly good reasons, but it is time, I think, and our people are demanding at home, that this be brought under control and that we reassert and reaffirm the division of power. As it stands now, we have a rather unusual situation of some departments making the rules, enforcing the rules and levying the fines. Some departments fulfill the roles of all three branches of government. The people instinctively feel that this is eroding the basis of our Constitution, which naturally it is. So, I look at this not as a change in the Constitution so much as a restoration of the intent of the Constitution.

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

Representative COLES: Mr. Speaker, Men and Women of the House: I rise in opposition to this report. I have several reasons for doing so. One is that I think we have too much work right now to cram into a session and this would increase our workload substantially. Many of the rules in the departments that I am involved with are complicated, highly technical rules such as opening and closing of clam flats and I don't want the legislature to be able to slow down either process. On one hand, it affects public health and on the other hand, it affects the ability of my clambers to make a living. I think this would be a prescription of a major step toward a full-time legislature.

We have a rule-making process laid out under the Administrative Procedures Act that sets up very careful rules and regulations and methods for public participation in rule-making, so that all those who are affected or who believe themselves affected,

including legislators, may participate and make comments and those comments must be responded to. In fact, most cases the comments result in changes to the proposed rule before those rules are adopted.

If in fact we are now proposing to short-circuit that whole process, essentially throw it out the window, what is the point of having it to begin with?

I also have a concern about an amendment which gives a committee of the legislature the right to act on behalf of the whole legislature and suspend a law that the legislature passed for possibly nine or ten months or maybe longer. I think we ought to think very carefully about that particular point. I think the provision which allows the Governor to overrule makes the whole thing fairly meaningless in fact. So, it is just another exercise in political gamesmanship. I don't think that will contribute to public confidence in our government. I think that the regulated communities will find that amendments such as this will add great uncertainty to the process. If you ask the business community out there in the lobby what are one of the things they hate most, they will say uncertainty. They don't want to be in a position, after having worked months on rules, worked through the APA process, to have some legislative committee suddenly upset the apple cart that they have very carefully constructed.

Most important of all, I think, is that no agency may write rules without statutory authority. If we don't give them that authority, they can't do it. If the intent of the laws we write are not clear in the law, whose fault is that? In my view, it is our fault. If we can't write laws that people understand the meaning of relatively easy, it is not their fault, it is ours. We often deliberately write confusing laws, they are fudged to get votes, they are fudged because we don't have time, they are fudged for all kinds of reasons. We deliberately give agencies rule-making authority to try to resolve policy issues that the legislature itself has not been able to resolve in the hope that the problem will go away and we won't have to think about it any longer.

If we really want to stop agencies — by the way, having served in two committees for eight years, having participated in many discussions of our intent on bills we passed two, four, six or eight years ago, I find that memories aren't perfect. I think there's often great disagreement about what the intent of the committee was and what the intent of the legislature was. If the only way to clarify it is to look at a Legislative Record, you will see endless hours of people reading intent into the Record, taking even more time than we already take on unanimous bills and any other bill, to be certain or try to get an edge on the rule-making process.

Let's go back to the basic question of responsibility. If we really feel that agencies are abusing the authority we give them to write rules, it is our responsibility then to write better laws because we have only ourselves to blame if the intent is not clear. Let's not make a major shift in the way in which we do business, let's not delegate to an appointed committee the authority of the legislature as a whole. Let's kill this report.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Raymond, Representative Bruno.

Representative BRUNO: Mr. Speaker, Ladies and Gentlemen of the House: We are policy-makers. We are not micromanagers. I echo Representative Cole's

statements, if we are not satisfied with the rule-making that is being done in this chamber or by the administrative branch, we are not doing our job. I cannot afford to be up here every day of the year looking at the zillions of rules that the Department of Human Services or the Department of Mental Health puts out. I do get a copy of those rules and I do read them and, if I object to them, I will go to the Department and ask them, why are you putting this rule into place? If I want to work for the Department, I will go work for the Department. If I want to be a legislator, I will set policy and make law. I think we need to really think about where we are going with this bill.

Most of these comments have been echoed for the people speaking in opposition to this bill. I just want to support those people and ask you to vote against this bill. I do not want to be up here every single day working on rules.

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

Representative FARNUM: Mr. Speaker, I would like to pose a question.

I think it has been answered, but I am not sure. Will this bill create a full-time legislature? I have been asked that many times.

The SPEAKER PRO TEM: Representative Farnum of South Berwick has posed a question through the Chair to any member who may respond if they so desire.

The Chair recognizes the Representative from Eagle Lake, Representative Martin.

Representative MARTIN: Mr. Speaker, Members of the House: It is just the reverse, it would not. The reason it would not is, what would transpire in case you don't know, right now, all the rules, every time there is a rule, it is sent to the Legislative Council and in particular to the Executive Director. In fact, it is mailed out. All that would occur would be if seven members of the committee decided that there ought not to be implemented in the way in which it has been promulgated, a telephone call would be made to the Executive Director and that would terminate the rule until the committee meets or the Governor overturns it. So, in fact, there would not be, and the last thing I would want, is the legislature being here year-round. The purpose of this is to avoid just that but, at the same time, give authority to the legislature. Otherwise than that, let's forget and be honest and stop having every department mail the rules and regulations to us because it has absolutely no impact, it is an absolute insult and, frankly, it is misleading the public and this, unfortunately, goes on every single day of the year.

It would have absolutely no work, in reference to the remarks made by Representative Coles, if we are in session, this would not apply. It would apply when the legislature is not in session and rules are promulgated, not while we are here because while we are here we can pass a bill to prevent it or to change it. Remember what we are trying to do, we are trying to shorten the length of legislative sessions, not broaden them. Every time that we do something like this and not allow the legislature to take action, it creates more time because we have to put in bills in effect to overturn rules. We do it every single year.

If you look at the legislation and I have read every piece of legislation (I hope you all have) that

we have enacted so far this year. Do you realize that more than three-fourths — I haven't counted them but probably will before it is over if the debate goes on long enough on some of these bills — three-fourths of these bills are to correct things that we did in the past, to change rules that departments have implemented? They are not major pieces of legislation at all. That is why when people say there are 2,000 bills introduced in the Maine legislature, I just come back and say, how many major bills were actually introduced? Probably ten percent. Most of the time we are trying to correct things rather than do anything else.

So, my answer is that it will shorten the legislative session, it will prevent us from going to become full-time and it is going to create and continue making sure that the Maine Legislature continues as a part-time institution, which certainly is my goal.

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

Representative BENNETT: Mr. Speaker, Friends and Colleagues of the House: I would like to respond to Representative Farnum's question by stating my opinion that the answer is a maybe. We don't know because the way the Constitutional Amendment came out of committee it allows the legislature to adopt implementing legislation and who knows what that will say.

Representative Martin from Eagle Lake says that his intention is to have a phone call placed to members of the committee and then perhaps with a conference call or some other mechanism we can make that determination. But, that remains for the legislature to determine through implementing legislation what that process will be.

It certainly allows the opportunity for committees to get together more frequently perhaps during off session time, probably during off session time, and so it very well could lead to a much greater burden on all of us who are trying to serve in the legislature, while undertaking a normal private sector activity as well.

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

Representative LORD: Mr. Speaker, My Learned Colleagues: For the last six years since I have been on the Energy and Natural Resources Committee, I have been asking for something like this to happen. Many, many times when we would pass bills in there, when the rule came out, they would far exceed what we intended. That is why we need it. It will save time. Three or four bills I put in this year have been put in to correct mistakes of things that went too far. I can't see but what it is going to be a plus for the legislature. It is not my intention, was never my intention, to even think about going to a full-time legislature. I don't think it is good for us to put in bill after bill every year to correct something because either they misinterpreted what we wanted or they went further than they should have. That is why I think it is a good bill and I hope you pass it.

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

Representative TREAT: Mr. Speaker, Men and Women of the House: I would like to pose a question through the Chair.

Did I understand correctly that seven members of a committee under this proposal could stop a

regulation based on some phone calls, they wouldn't even have to get together at a committee meeting and meet? Is that a correct understanding of this bill?

The SPEAKER PRO TEM: Representative Treat of Gardiner has posed a question through the Chair to any member who may respond if they so desire.

The Chair recognizes the Representative from Eagle Lake, Representative Martin.

Representative MARTIN: Mr. Speaker, Members of the House: The present draft does not call for that but, yes, it is my intention. It is very much the same as what happens now (some of you who may or may not know it) with the Appropriations Committee process. At the present time, under the law that we passed a few years ago, the Governor's transfer orders are all sent to members of the Appropriations Committee. When seven members at that point indicate that they want to meet or they decide they have a problem with the Executive Order, they will so indicate through the staff. In between last session, they did not meet, but the point I want to make, however, even though they did not meet, the fact that there were sufficient numbers to raise the question that the Governor in fact (I know of a number of instances and can think of one right off and I know there are more) where changes were made in the Executive Order or the Executive Order was not carried through. The purpose is to call attention to it and that would allow it. Remember, my concept would allow the Governor to have the final authority because the Governor is the Chief Executive and should take the heat or take the responsibility in the final analysis. This is where the responsibility would lie.

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

Representative TREAT: Mr. Speaker, Men and Women of the House: Thank you for the explanation. I would just say that I find that actually more troubling than the concept of a more full-time legislature, although I am not in favor of a full-time legislature. I think this is about all that I personally can handle and I think that a citizen legislature is something very positive for this state.

It does concern me that seven members of one committee of the legislature would be making decisions for all of the legislature sometime in the summer (when everyone is on vacation) through a series of telephone calls. I think it is worse than micromanagement of state departments, it is micromanagement by people who don't even get together and have the give and take of a discussion or an opportunity for a work session or a hearing. It is not just bringing attention to the matter, it is stopping it. I think this really raises a lot of questions and, as a Constitutional Amendment, I think we ought to be thinking very carefully before we do something of this nature.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Limestone, Representative Young.

Representative YOUNG: Mr. Speaker, Members of the House: It is precisely this concern that gives me pause with this issue. I understand the problem. Expanding on what Representative Coles has said — for example, there are no records of committee proceedings when the bureaucracy tries to interpret a rule. Yes, they do go, as Representative Lord has said, they do go too far. They have to try and interpret as best they can legislative intent and

when they don't interpret it, legislation gets instituted and much of the legislation we have here is to correct a rule. That leads me to the conclusion that this problem is a problem of legislative process. That is why I think the way to address it is with a fast track for bills to correct rules, not a Constitutional Amendment, which may allow seven members of a committee to interfere with a rule that may be a public health order, for example. You see now a majority of this body as a bill is going to have to act to interfere with a rule, the way it is now. It is true the Governor would have override but seven members of a committee could make a decision, a political decision perhaps, to interfere with a rule, to stay a rule, which might be a public health order.

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

Representative JOSEPH: Mr. Speaker, Men and Women of the House: I think we need to bring this back to the facts and not the myths. Only if a rule was objectionable to seven members of a committee, those seven members would call the Chairs of the Committee and ask the committee to meet and decide this issue.

We all can talk about some substantive rules that we feel that are beneficial and we do not need to use scare tactics about emergency rules that we all agree are for the good health, benefit and safety of the people of the State of Maine. So, that is one myth. Seven persons would not be making the decision. Seven persons would be asking that committee to meet and to go through a process which heretofore is not developed because this is a Constitutional Amendment and implementing legislation would have to be written. However, the statute that you will be asked to vote on soon would somehow outline perhaps that implementing legislation.

I think that you need to know as well that the public is very concerned about this issue. At a time when we were not advertising public hearings to the fullest extent as we got into the crunch of the Legislative Session, the Committee Clerk received 65 calls from members of the public from all around the state because somehow they read the one advertisement that did advertise this hearing and not the two weekend rule that has been agreed upon. The public needs to know and to have confidence that we, their elected Representatives, are writing the laws in this state.

If you believe we could take the time or if we had the time that we would write all the details of the legislation, that would be fine, but it is time-consuming and, quite often, because of the technical issues concerning that department or agency, we give them rule-making authority and this is not an attempt to micromanage any department or agency. It is simply an attempt to see that legislative intent of the legislation passed is adhered to by those departments and agencies. Not all of the rules would be challenged, this is only a vehicle, a mechanism, an option to deal with that.

I need to tell you from first-hand experience as a naive first-term legislator coming in here with a bill dealing at that time (in the 111th to make it very clear) with an issue of mental health benefits in group insurance policies. We went around and around with that and being the prime sponsor, I was very involved in that piece of legislation and I believed that we were doing the right thing. The

lobby, of course, did not agree, all of the lobby did not agree and it seemed as we came to closer to the vote and enactment of this piece of legislation that the lobby retreated and I didn't know where the lobby had retreated to, but they had retreated and we did pass the legislation.

I, as a freshman legislator, went home feeling that I had done something to provide the citizens of this state with mental health benefits. Unbeknownst to me, the Bureau of Insurance did promulgate rules which diluted the effect of that law and it was not until last year when Representative Dore brought the same bill back to the Banking and Insurance Committee and we enacted that same law that we provided adequate coverage for individuals who suffer from mental illness. That is just one example of my personal experience and the frustration that I have felt serving in this body.

I urge you to provide this state and the citizens of this state a mechanism in which a rule could be challenged, vetoed or stayed. I urge you to support the Majority "Ought to Pass" Amendment.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Winthrop, Representative Norton.

Representative NORTON: Mr. Speaker, Ladies and Gentlemen of the House: I have been on both sides of this issue, once in state government when I didn't realize the power of the office in terms of how this body sees it, in fact, it was never there. I have now heard about this and I think, as Representative Joseph says, that we are blowing it up quite a bit. There aren't many occasions when I think we would need to interact in this manner as a committee, but I will tell you one of them. We had a company in my area that has a certain technology to measure the volume of a tank and the liquid in it. I could find no law whereby they were being denied a license to do business in this state. This technology had been accepted in every state in this country but Maine. It had been accepted in several major foreign countries, including Germany, Italy, Spain, and France. It was a rule that made this technology illegal to use in the State of Maine and the technology being used to measure the volume of a liquid in a tank was correct, so far superior in percentage to the method that is being used, which is merely measuring the thing with a stick with some marks on it. You could be off the measure by the slippage in your eyesight and the lack of specificity of a stick, graduated in 16ths of an inch. The thing that ruled out this technology was that it involved a calculation — my friends, it was a rule.

You know, I haven't yet acted on that but I am coming back and act on that this next time around. I didn't consider it when I found it an absolute emergency since Maine hadn't used that technology since it became a state, but I do feel that next time around, I will put it in to strike that rule.

I want to give you one other example and they are the only ones I have and I have only been here going on seven years but, there is another one. For two years, I tried to get the State Board of Education to give the Commissioner of Education the right to grant a waiver in certification of educational personnel. Now, two years seems like a reasonable time to act. I was promised they would. They didn't. This legislature this year has. Now the Commissioner of Education can grant a waiver in those cases where one is due. I don't believe that this would be used much but I believe it would keep people on their toes both

as legislators and as people who work in the bureaucracy. I would urge you to advance on this and accept it, I think it is a reasonable piece of legislation.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Cherryfield, Representative Farren.

Representative FARREN: Mr. Speaker, Ladies and Gentlemen of the House: I know that something has got to be done and I will tell you why. I have been on both sides of this issue. I worked under the Administrative Procedures Act during my tenure in state government. I have told many, many people when this issue arose in this legislature this session that I am supportive of the APA process. I think the APA process can work, it is not broken but the methods in which it is administered is a problem. That doesn't mean to say that all agencies are abusing that privilege of making rules. However, some of those that are have resulted in the discouragement of the citizenry out there who have attended these hearings in the past and their voice gone unheard. On several occasions, and one occasion which resulted in a piece of legislation being put in this year by myself and Senator Vose, it was a blatant violation of the APA process. Maybe this is not the full solution to the problem but if there are major rules made that have a major impact upon the people out there, there has got to be a check and balance on whether or not they are going to be allowed to go through with it. That is all I have to say.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Portland, Representative Adams.

Representative ADAMS: Mr. Speaker, Men and Women of the House: I believe that Representative Coles has presented us really with the coin of the realm with this question and I think he well illustrated one side of it. I would like to speak about the other side and that is my concern of the unintended power that this proposed Constitutional Amendment would hand over to the unofficial fourth branch of government which in fact attempts to sometimes swing the biggest hammer possible in the middle of all of our affairs. By that branch of government, I refer to the lobbyists.

The way I fear I see it is that this proposed Constitutional Amendment would in essence give them three guaranteed whacks at bat, first in the hearing process on any given piece of legislation. Second, in the rule-making that may result from that piece of legislation, usually done in the summertime, usually when we are not here and usually when we don't know about it. And third, if they don't like the result of the other two, by telephone, not even by face-to-face meetings, gather up enough members of any given committee to bring the whole thing back before the committee and reargue the whole case that they may have lost in situations one and two.

We all know exactly how much power they like to exert in a committee hearing. We have all lived through that.

Not all of us have gone down to any one of the agencies to witness the power that they exert on a rule-making procedure — I have at the Public Utilities Commission in which we have no voice and I felt extremely left out and very frustrated. For that reason, I really fear what they may be able to do in the third eventuality. I see no good reason to grant lobbyists a guaranteed three whacks at bat with

no real chance for us to call them out until the last ditch at the last moment.

To sum it up, my fear is that if this is a new vehicle, it might well prove to be an Edsel and we should be very cautious before approving it.

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

Representative CROSS: Mr. Speaker, Members of the House: I had a mandate, I guess you would call it, when I left Dover-Foxcroft and one of those mandates was that we would get rid of or we would somehow bring the Administrative Procedures Act under control. This seems to be the vehicle to do it.

Town governments were getting hit by rule-making that the legislature had no way of controlling. As far as I am concerned, and this isn't going to set good with some of my Republican friends, but, as far as I am concerned, I hope that everybody will endorse this Act because we need it.

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

Representative FARNUM: Mr. Speaker, Men and Women of the House: I think every one of us can tell more or less a horror story of some of these rules. I know I have stormed up here about four times, gone to both offices and all of those times, eight times altogether, I have been told, you can't do anything, that is the rule. Today we can change that, we can put the rules back in the legislature, not in the commissioners.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Sedgwick, Representative Gray.

Representative GRAY: Mr. Speaker, Ladies and Gentlemen of the House: I had a problem with supporting this because it was a Constitutional Amendment. I do understand the problem. I did sign on later because I was assured by the Attorney General's Office or some of the lawyers that were in the room after endless hours of debate on this issue that there is a good possibility, even though the Constitution right now reads that we are the controller of rule-making and law-making. It has been dissipated so much that no one seems to know and I have a big fear of the accountability that we are losing if we don't put it in again, restate that it is our power and we want it back.

The other concern and why I am backing rule changing is because of the time and expense that I see the citizens of this state spending and wasting before they get us back up here to change the rules that the rule-making body has done. It's a lot of money, depends on which one whether it be wetlands or anything else, there is money being wasted until we do come back. If we do have a mechanism that allowed us to stay something until we were sure it was correct, I think it would be the right thing to do. I hope you will support this.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Winslow, Representative Vigue.

Representative VIGUE: Mr. Speaker, Ladies and Gentlemen of the House: This is going to be short and sweet. Whenever I hear this, everyone wants to bail out, right?

I only want to say I keep thinking of a man that I had a great deal of respect for when I was a boy and that was Harry Truman. Harry Truman said it very clearly and plain and right to the point, "The Buck Stops Here" and if the buck stops here, then the

control of the buck should be right here. I want to sit on this. I do support this and I hope that you will also.

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

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

The SPEAKER PRO TEM: The pending question before the House is the motion of Representative Joseph of Waterville that the House accept the Majority "Ought to Pass" Report. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 163

YEA - Ahearne, Aliberti, Anderson, Bailey, H.; Bailey, R.; Beam, Birney, Bowers, Cameron, Campbell, Caron, Cathcart, Chonko, Clark, Clement, Cloutier, Clukey, Coffman, Cote, Cross, Dexter, DiPietro, Dore, Driscoll, Dutremble, L.; Erwin, Farnum, Farren, Foss, Gamache, Gean, Gould, R. A.; Gray, Greenlaw, Hale, Hatch, Heino, Hichborn, Hogle, Hussey, Jacques, Johnson, Joseph, Joy, Kerr, Ketterer, Kilkelly, Kneeland, Kutasi, Larrivee, Lemke, Lemont, Libby Jack, Lindahl, Look, Lord, Marsh, Marshall, Martin, H.; Melendy, Michael, Michaud, Mitchell, J.; Morrison, Nadeau, Nash, Nickerson, Norton, O'Gara, Oliver, Ott, Paradis, P.; Pendleton, Pineau, Pinette, Plourde, Pouliot, Rand, Reed, G.; Reed, W.; Ricker, Rotondi, Rowe, Ruhlin, Saint Onge, Saxl, Simoneau, Skoglund, Spear, Stevens, A.; Strout, Sullivan, Swazey, Thompson, Townsend, G.; Tufts, Vigue, Walker, Wentworth, Winn, Zirkilton, The Speaker.

NAY - Adams, Aikman, Ault, Bennett, Brennan, Bruno, Carleton, Carroll, Cashman, Chase, Coles, Constantine, Daggett, Donnelly, Faircloth, Farnsworth, Fitzpatrick, Gwadosky, Heesch, Hillock, Holt, Kontos, Libby James, Lipman, MacBride, Mitchell, E.; Pendexter, Pfeiffer, Plowman, Poulin, Richardson, Robichaud, Simonds, Stevens, K.; Taylor, Townsend, E.; Townsend, L.; Tracy, Treat, True, Whitcomb, Young.

ABSENT - Barth, Carr, Jalbert, Murphy, Rydell, Small, Tardy.

Yes, 102; No, 42; Absent, 7; Paired, 0; Excused, 0.

102 having voted in the affirmative and 42 in the negative, with 7 being absent, the Majority "Ought to Pass" Report was accepted, the Resolution read once.

Committee Amendment "A" (H-544) was read by the Clerk.

Representative Martin of Eagle Lake moved that Committee Amendment "A" (H-544) be indefinitely postponed.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Eagle Lake, Representative Martin.

Representative MARTIN: Mr. Speaker, Members of the House: I intend to offer an amendment tomorrow at second reading which will do what I said I wish it would do.

On motion of Representative Joseph of Waterville, tabled pending the motion of Representative Martin of Eagle Lake that Committee Amendment "A" (H-544) be indefinitely postponed and specially assigned for Friday, June 4, 1993.

The Chair laid before the House the following matter: Majority Report of the Committee on State and Local Government reporting "Ought to Pass" as amended by Committee Amendment "A" (H-545) on Bill "An Act Concerning Reasonable Standards and Procedures for Contracting Services by the State" (H.P. 1036) (L.D. 1388) and Minority Report of the same Committee reporting "Ought Not to Pass" on same Bill which was tabled earlier in the day and later today assigned pending the motion of Representative Joseph of Waterville that the House accept the Majority "Ought to Pass" Report.

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

Representative JOSEPH: Mr. Speaker, Ladies and Gentlemen of the House: I urge you to support the Majority "Ought to Pass" Report as amended. This piece of legislation is very important to the contracting and privatization of state government as seems to be the trend in this state and other states.

Currently, the State of Maine has no standards as to how, when, and why and to whom they will contract services.

I believe that this bill is an important bill. This bill had been discussed by the previous legislature. This bill had been enacted by the previous legislature but had not been endorsed by the Chief Executive of this state. We believe this bill as amended will meet all the standards that are important to see that we are doing the right thing, fiscally and responsibly as far as privatization in this state. I urge you to support the Majority "Ought to Pass" Report.

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

Representative BENNETT: Mr. Speaker, Friends and Colleagues of the House: I am rising to encourage you to vote against the pending motion.

I oppose this bill because I believe that it effectively will prohibit contracting out services to the private sector in the state. The title of this bill is "An Act Concerning Reasonable Standards and Procedures for Contracting Services by the State" and I would submit the standards and procedures that this bill would establish are not reasonable for three reasons. First, contracting only with a firm prevents government from contracting with individuals who are not incorporated as sole proprietors, this can prevent some professional services such as physicians, psychiatrists, engineers, geologists from participating.

Secondly, the provisions which a contract must meet are so numerous and vague that almost any contract under this bill could be challenged. There are ten provisions in the legislation and each must be satisfied before a contract can be awarded.

Let me give you just one example of one of those ten provisions. It is on page two of the bill, paragraph 2, subsection g, it says, "The firm to which the contract is awarded cannot have anymore than three occupational safety and health or labor law violations in their previous five calendar years." Any of you who has ever worked in a company that has been visited by OSHA will know that usually when they walk in the door, they find five or six or seven or eight or nine or ten violations

immediately. That's just one example. Each proposal would need to be researched and analyzed prior to letting a contract.

Third, the procedure that this bill sets up is very cumbersome and time consuming for the department initiating the contract. They have to do a ten step analysis for the Department of Administrative and Financial Services which must carry out the procedures outlined in the legislation.

I would like to indulge your patience for a moment and just read to you from the bill exactly what this procedure is. "Any state agency proposing to execute a contract pursuant to this section shall notify the Commissioner of Administrative and Financial Services of its intention, all organizations that represent state employees who perform the type of work must be contacted, the Joint Standing Committee of the legislature having jurisdiction over State and Local Government affairs and the Joint Standing Committee of the legislature having jurisdiction over Appropriations and Financial Affairs must be contacted immediately by the Commissioner of Administrative and Financial Services upon receipt of this notice so that they may be given a reasonable opportunity to comment on the proposed contract. Then, departments or agencies submitting proposed contracts shall retain and provide all data including written findings and other information relevant to the contracts and necessary for a specific application of the standards set forth in Subsections 1 and 2. Any employee organization may request within five days of notification the Commissioner of Administrative and Financial Services to review any contract proposed or executed pursuant to this section. The review must be conducted in accordance with the Maine Administrative Procedures Act. Upon such a request the Commissioner of Administrative and Financial Services shall review the contract for compliance for the standard specified in Section 1 and Section 2."

This is an extremely burdensome process. Perhaps we should be a little more attentive to the methods that we are using in contracting out services but I submit this bill would not establish reasonable standards, it would effectively prohibit the contracting out of services and I encourage you to vote against this bill.

Mr. Speaker, I request the yeas and nays.

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

Representative DAGGETT: Mr. Speaker, Men and Women of the House: I would like to respond to some of the concerns mentioned by Representative Bennett to help you understand that this indeed is an extremely reasonable bill considering that we contract out over \$40 million a year in personal services contracts without one single standard to be met. That is over \$40 million without any standards whatsoever.

If you think very carefully about this, many of us, if not all of us, in our everyday lives make decisions about privatizing. We make decisions as to whether we are going to hire someone else to do work for us or whether we are going to do the work for ourselves.

For example, some people don't have the time to mow their own lawns and do the landscaping on their own property and so would hire someone to do that. They would make a decision, they would probably look at whether they could afford it, whether it was worth

their time to do it or whether they would rather hire someone. They look at the person or the company they might be hiring to do it, check on references to see if they have done a good job at other times. There are many, many things you would look at if you were going to hire someone to do your lawn. That might be a fairly easy decision for you but you might think about whether or not you are going to have your oil burner serviced. Many of us don't know how to do oil burner servicing and so we then have to make a series of decisions about an oil burner being serviced that are different because we don't know that much about it.

I would submit to you that any time a decision is made to contract out a state service, those same kinds of decisions should be made. Data should be gathered, information should be looked at, the decision should be able to be justified. Anytime we are buying a service in the private sector, we need to be able to justify the decision we are making. Today in state government that simply does not have to happen. There is not even a standard that a cost savings should be achieved. I want to repeat that, there is not even a standard that a cost savings should be achieved.

This bill asks for some very minimal standards. It asks that an agency that is considering privatization go through the same kind of logical decision making that you and I might if we were spending our money in some other place and buying a service.

I would submit to you that that is not too much to ask.

One of the complaints that Representative Bennett raised had to do with contracting with a firm. In fact, that phrase and there were four other phrases, that there was a concern expressed by the administration, those concerns were addressed in an amendment to the bill. That is no longer an issue, privatizing with individuals is a part of the bill and should not be a concern.

I hope that you will support this because it is a reasonable method of accountability and I hope you will join me in supporting the "Ought to Pass" Report.

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

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

The SPEAKER PRO TEM: The Chair recognizes the Representative from Cumberland, Representative Taylor.

Representative TAYLOR: Mr. Speaker, Men and Women of the House: This bill appears to me to merely block completely any attempt to save state funds by contracting out work. I have no ax to grind with state employees, I feel they should be treated fairly but there are many opportunities to privatize work. We should not encumber this opportunity to save tax funds for this bill.

Please vote against L.D. 1388.

The SPEAKER PRO TEM: The pending question before the House is the motion of Representative Joseph of Waterville that the House accept the Majority "Ought to Pass" Report. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 164

YEA - Adams, Ahearne, Aliberti, Ault, Beam, Bowers, Brennan, Caron, Carroll, Cashman, Cathcart, Chase, Chonko, Clark, Clement, Cloutier, Coffman, Coles, Constantine, Cote, Daggett, DiPietro, Dore, Driscoll, Dutremble, L.; Erwin, Faircloth, Farnsworth, Fitzpatrick, Gamache, Gean, Gould, R. A.; Gray, Gwadosky, Hale, Hatch, Heeschen, Hichborn, Hogle, Holt, Hussey, Jacques, Johnson, Joseph, Kerr, Ketterer, Kilkelly, Kontos, Larrivee, Lemke, Martin, H.; Melendy, Michael, Michaud, Mitchell, E.; Mitchell, J.; Morrison, Norton, O'Gara, Oliver, Paradis, P.; Pfeiffer, Pineau, Pinette, Plourde, Poulin, Pouliot, Rand, Richardson, Ricker, Rotondi, Rowe, Saint Onge, Saxl, Simonds, Stevens, A.; Stevens, K.; Strout, Sullivan, Swazey, Townsend, E.; Townsend, G.; Townsend, L.; Tracy, Treat, Vigue, Walker, Wentworth, Winn, Young.

NAY - Aikman, Anderson, Bailey, H.; Bailey, R.; Bennett, Birney, Bruno, Cameron, Campbell, Carleton, Clukey, Cross, Dexter, Donnelly, Farnum, Farren, Foss, Greenlaw, Heino, Hillock, Joy, Kneeland, Kutasi, Lemont, Libby James, Lindahl, Lipman, Look, Lord, MacBride, Marsh, Marshall, Murphy, Nash, Nickerson, Ott, Pendexter, Pendleton, Plowman, Reed, G.; Robichaud, Simoneau, Spear, Taylor, Thompson, True, Tufts, Whitcomb, Zirkilton.

ABSENT - Barth, Carr, Jalbert, Libby Jack, Nadeau, Reed, W.; Ruhlin, Rydell, Skoglund, Small, Tardy, The Speaker.

Yes, 90; No, 49; Absent, 12; Paired, 0; Excused, 0.

90 having voted in the affirmative and 49 in the negative with 12 being absent, the Majority "Ought to Pass" Report was accepted, the bill read once.

Committee Amendment "A" (H-545) was read by the Clerk and adopted.

Under suspension of the rules, the bill was read a second time, passed to be engrossed as amended by Committee Amendment "A" (H-545) and sent up for concurrence.

The Chair laid before the House the following matter: Majority Report of the Committee on State and Local Government reporting "Ought to Pass" as amended by Committee Amendment "A" (H-546) on RESOLUTION, Proposing an Amendment to the Constitution of Maine to Allow Maine Citizens to Propose Constitutional Amendments by Initiative (H.P. 994) (L.D. 1336) and Minority Report of the same Committee reporting "Ought Not to Pass" on same RESOLUTION which was tabled earlier in the day and later today assigned pending the motion of Representative Joseph of Waterville that the House accept the Minority "Ought Not to Pass" Report.

On motion of Representative Joseph of Waterville, retabled pending her motion that the House accept the Minority "Ought Not to Pass" Report and later today assigned.

The Chair laid before the House the following matter: Majority Report of the Committee on State and Local Government reporting "Ought Not to Pass" on Bill "An Act to Distribute the Power and Privilege

of Serving in Elected Office" (H.P. 1076) (L.D. 1442) and Minority Report of the same Committee reporting "Ought to Pass" as amended by Committee Amendment "A" (H-548) on same Bill which was tabled earlier in the day and later today assigned pending the motion of Representative Joseph of Waterville that the House accept the Majority "Ought Not to Pass" Report.

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

Representative BENNETT: Mr. Speaker, Friends and Colleagues of the House: This bill, because its title is not that obvious to you, deals with the offices of the U.S. House of Representatives and U.S. Senate and limiting terms thereto. Some of us on the committee felt that where the voters this year would be having the opportunity to establish term limits on legislators and other state officials that it would be appropriate as well for us this year to deal with the issue of term limits for our members of Congress and our U.S. Senators.

Mr. Speaker, I respectfully ask the House to reject the pending motion, to give this bill a chance to be debated and heard and perhaps amended if the members of the House care to.

I request the yeas and nays.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Auburn, Representative Michael.

Representative MICHAEL: Mr. Speaker, Men and Women of the House: I am not going to debate this bill long because I think most folks have made up their mind on how they feel about the philosophy of term limits.

I just want to give you a couple of pieces of information. This amended version, as the Representative from Norway said, applies only to the federal officers, Congress and the U.S. Senate. The effective date is 1998, so we effectively exempted out the next election where, for instance, George Mitchell will be running. We have exempted out the election after that where Bill Cohen will be running and in 1998, if you think of the two Congress people we have, I don't think either of those people are going to be hanging around the House in 1998, so I think we have effectively postured this in a way that it will affect new Congress people that we may have in the next few years.

One other important thing, this is a 12 year term limit, 12 years is the most modest term limit number that anybody proposes anywhere. Five or six years ago, when the term limit idea was first introduced, 12 years is what you heard, but now the standards across the country is six and eight years. Indeed, most of those thirteen or fourteen states which passed term limits in 1992, the last election — by the way, none of them failed to pass a term limit proposal that were on the ballots and out of all those states I think almost all of them were eight year term limits. That translates into eight years for Congress, 12 years for the U.S. Senate by the way those terms limits are worded.

So, just an idea, it looks like the term limit ideas are coming down the pike, it looks like it is going to be passed. If we don't send something out, probably somebody else is going to put something on the ballot by referendum or initiative and it is just something to think about. This November, there will be an initiative on the ballot for state term limits. If a couple of terms ago we had passed a 12 year term limit, that would be the standard and now

it looks like we will be having an eight year limit imposed on legislators. Just something to think about — perhaps we ought to pass this thing out.

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

Representative GWADOSKY: Mr. Speaker, Ladies and Gentlemen of the House: I would like to pose a question through the Chair.

If I understand this particular measure, it only applies to those federal positions, the members of Congress and the United States Senate and that the effective date in this bill is 1998. As I remember and I stand corrected, the initiated referendum that appears to be heading to the voters this Fall would require term limits for members of this chamber and the other body effective in 1996. As I look at the original bill before us, the effective date was also 1996. My question is, why the sponsor or those who subscribe to this change would choose to hold those members of Congress to a lesser standard by backing off the effective date to 1998 when the legislation that has been advanced by citizens of this state would make term limits effective for members of the Maine State Legislature effective 1996? Is this in fact an attempt to preserve some members of Congress and Senate from the same standard that we would be held to this November?

The SPEAKER PRO TEM: Representative Gwadosky of Fairfield has posed a question through the Chair to any member who may respond if they so desire.

The Chair recognizes the Representative from Auburn, Representative Michael.

Representative MICHAEL: Mr. Speaker, Men and Women of the House: In regard to Representative Gwadosky's question, certainly if you want to bring the issue up, we can amend this to go into effect in 1996, I won't object to that. In fact, we postured this bill in a way that we thought would have the greatest chance of passage, that is the sole reason for it, I believe. Members of the committee can speak differently if they saw a different reason but I think we just postured this in the most likely way that we could get this passed. To me, 12 years starting in 1998 removes a couple of the problems and a couple of the objections.

I certainly would have no objection to amending this to have it go into effect the same time as the referendum that will be voted on by the people this November.

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

Representative GWADOSKY: Mr. Speaker, Ladies and Gentlemen of the House: I apologize for speaking a second time on this measure. Comforted by the thoughts and words of the good Representative from Auburn, Representative Michael, I find that I could support this bill if in fact you were willing to change the effective date to 1996 to treat everyone the same. I would encourage members to support this measure. If so, I will offer an amendment on Second Reading to make this effective for 1996.

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

A vote of the House was taken and more than one-fifth of the members present and voting having

expressed a desire for a roll call, a roll call was ordered.

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

ROLL CALL NO. 165

YEA - Adams, Aliberti, Anderson, Beam, Bowers, Brennan, Cameron, Caron, Carroll, Cashman, Cathcart, Chase, Chonko, Clark, Clement, Coles, Constantine, Daggett, DiPietro, Donnelly, Driscoll, Dutremble, L.; Erwin, Faircloth, Farnsworth, Farren, Fitzpatrick, Gamache, Gray, Gwadosky, Hale, Hatch, Heesch, Heino, Hichborn, Hognlund, Holt, Jacques, Johnson, Joseph, Ketterer, Kilkelly, Kneeland, Larrivee, Lemke, Lipman, Look, Marshall, Martin, H.; Michaud, Mitchell, E.; Morrison, Murphy, Nadeau, Nash, Norton, O'Gara, Pfeiffer, Pineau, Pinette, Rand, Richardson, Ricker, Rotondi, Rowe, Saxl, Simonds, Spear, Stevens, K.; Strout, Sullivan, Swazey, Townsend, E.; Townsend, L.; Tracy, Treat, Walker, Wentworth, Winn.

NAY - Ahearne, Aikman, Ault, Bailey, H.; Bailey, R.; Bennett, Birney, Bruno, Campbell, Carleton, Cloutier, Clukey, Coffman, Cote, Cross, Dexter, Dore, Farnum, Foss, Gould, R. A.; Greenlaw, Hillock, Hussey, Joy, Kerr, Kutasi, Lemont, Libby James, Lindahl, Lord, MacBride, Marsh, Michael, Nickerson, Oliver, Ott, Paradis, P.; Pendexter, Pendleton, Plourde, Plowman, Pouliot, Reed, G.; Reed, W.; Robichaud, Simoneau, Stevens, A.; Taylor, Thompson, Townsend, G.; True, Tufts, Whitcomb, Young, Zirkilton.

ABSENT - Barth, Carr, Gean, Jalbert, Kontos, Libby Jack, Melendy, Mitchell, J.; Poulin, Ruhlin, Rydell, Saint Onge, Skoglund, Small, Tardy, Vigue, The Speaker.

Yes, 79; No, 55; Absent, 17; Paired, 0; Excused, 0.

79 having voted in the affirmative and 55 in the negative with 17 being absent, the Majority "Ought Not to Pass" Report was accepted. Sent up for concurrence.

The Chair laid before the House the following matter: Majority Report of the Committee on Judiciary reporting "Ought Not to Pass" on Bill "An Act to Protect Private Property" (H.P. 514) (L.D. 672) and Minority Report of the same Committee reporting "Ought to Pass" as amended by Committee Amendment "A" (H-551) on same Bill which was tabled earlier in the day and later today assigned pending the motion of Representative Cote of Auburn that the House accept the Majority "Ought Not to Pass" Report.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Kingfield, Representative Dexter.

Representative DEXTER: Mr. Speaker, Men and Women of the House: Before I go any further, I wish to apologize, the only other time I got up and made a brief statement I forgot to say "Men and Women of the House" but a colleague reminded me and excused me because I am just a freshman.

To start off with, I guess I caused a little eruption here with this simple bill.

I want to go back first to the Spring of 1940 when I took a job on the last river drive on the

Carrabassett River. We went to Oh My Gosh Corner, which some of you skiers might know where it is, this side of Sugarloaf and there was a walk rope spread across the river. They opened the gates, high water and ice was coming down the river. The pulp that we had to throw in was on the other side of the river so the foreman said, "Here's where we separate the men from the boys." The pay was \$3.00 a day for 14 hours, that was pretty good pay. So, half the crew decided they didn't want to tackle it. I weighed 105 pounds wringing wet, I went across for that \$3.00.

To get to the point, this bill right here will separate the men from the boys. Now, I've got to mention the women from the girls. In those days, we didn't use girls in the woods nor women either. We are talking about the fifth — now I ran a lumbering operation for 35 years and my crew knew what a fifth was. In fact, one day over at New Portland Fair, I passed a fifth out there and it never came back. The fifth amendment, this is all about the fifth amendment, life, liberty or property.

When I presented this bill originally, it would have had a fiscal note on it of a billion or two. Obviously, I had to back off. I have compromised to the point where I feel like Chamberlin, peace in our time, when he gave away Czechoslovakia. It is now down to where they have to take 100 percent of your property before you are compensated and it only applies to prospective taking. I certainly can't back off anymore.

Representative Jacques spoke about facing the lion, well, it looks like I am facing a pride of lions. I hope you people will vote against the pending motion, separate the men from the boys and the women from the girls.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Auburn, Representative Cote.

Representative COTE: Mr. Speaker, Men and Women of the House: You will be happy to know that the Judiciary Committee has only one Divided Report.

Even as amended, L.D. 672 is a solution for a non-existent problem. The Minority Report on the amendment to L.D. 672 attempts to reduce to a simple sentence or two federal constitutional law on when a state law or regulation is a taking of private property. The amendment which the Attorney General's Office advised the Judiciary Committee is an unfunded mandate, does nothing to bring parity to this area of the law. It creates as many ambiguities and issues as it tries to address.

The amendment is more restrictive on governments' ability to protect the public's health and welfare, thus it imposes on municipalities as well as the state, costs they have not constitutional burden to bear. Under current U.S. Constitutional Law articulated last year in the Lucas case and the Maine Supreme Court's ruling, landowners' reasonable investment back expectations limit and define the economic uses of land that government must avoid overregulating. A landowner cannot claim a taking has occurred when denied ability to undertake a development with no reasonable expectations, the development could be built. For example, draining a lake for a subdivision. Also, under Lucas, a landowner denied all the economic value of her property by regulations that are based on pre-existing nuisance and real estate law concept cannot win a taking's case. This amendment does not recognize these additional limits on private property.

Enactment of this legislation will be an

inducement to litigation. Towns will bear the economic burden of hiring experts, appraisers, and lawyers to defend against claims that otherwise may not have arisen. Moreover, under the terms of the amendment, it is not clear how or when a landowner may allege a taking in court. At what point would the state or town have imposed a regulation on the landowner? When the law or ordinance is enacted? When the landowner is told to apply for a permit or denied a permit? The amendment will have a chilling effect on municipalities and the state. For example, a town afraid of the time and expense of a takings challenge may choose not to impose land use restrictions that benefit some natural resource within the towns. Likewise, increased concern over taking could hinder state efforts to map significant wildlife habitat.

The amendment creates the prospect of two separate bodies of the taking law in Maine. This will in no way simplify the lives of municipal officers and others working to understand the balance between public and private property rights.

Key terms in the amendment are not and cannot be adequately defined in statute. The amendment provides that a taking occurs where an ordinance or law removes all economically viable use of the property and exception is made for laws addressing a public or private nuisance but these highlighted words are legal terms of art that in the case of the nuisance language point to another extensive body of legal doctrine. In short, this amendment does nothing to clarify the law for municipal officers and others. As under current law, a court would have to judge each case where a taking is alleged independently under the unique facts of that case. There is simply no reason to believe that this amendment will prevent litigation.

The amendment calls for unwise as well as unnecessary interference with the judicial role. This amendment adds nothing to guide judgment on the complex factual issues underlying these cases.

The amendment does not make clear what property should be examined and when evaluating, whether a taking has occurred.

There is a tremendous uncertainty and flux in this area of law right now, thus attempting to codify the rule is a lot like raking leaves in the wind. This is no time for the state to be passing laws that will make it more difficult on our municipalities.

This bill is a lawyer's dream come true. Some call it a lawyer's delight. It will cause nothing but lawsuits, confusion and problems. Men and women of the House, this legislation should not be before us because it will place a considerable strain upon municipalities. They are deeply concerned that passage of this legislation poses a threat of dramatic increases in local property taxes. Maine has many more pressing issues to address.

L.D. 672 clearly is a mandate and carries a huge fiscal impact. It would have a profound environmental and financial impact on this state. Men and women of the House, I ask you to make the responsible choice, please vote for the "Ought Not to Pass" Report.

Mr. Speaker, when the vote is taken, I would ask for the yeas and nays.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Brunswick, Representative Pfeiffer.

Representative PFEIFFER: Mr. Speaker, Friends

and Colleagues of the House: Representative Dexter referred to this as a simple bill but I think it could more readily be characterized as an over-simplification. It attempts to codify in two sentences what took the Supreme Court of the United States 55 pages and five separate opinions to revise that. Basically, it muddies what is already a rather murky area of the law. The complexity of the inquiry involved can be seen from the criteria that the Supreme Court established in the Lucas case. The total taking inquiry we require today will ordinarily entail as the application of state nuisance law ordinarily entails analysis of, among other things, the degree of harm to public lands and resources or adjacent private property posed by the claimants proposed activities, the social value of the claimants activities and their suitability to the locality in question and the relative ease with which the alleged harm can be avoided through measures taken by the claimant and the government alike. The court goes on to concede that changed circumstances or a new knowledge may make what was previously permissible no longer so.

That is some indication of the complexity of the area that is to be codified here in two sentences. Not only is this exceedingly complicated, but it is an area that is already amply covered by our own State Constitution. Article 1, Section 21 of the Maine State Constitution says, "Private property shall not be taken for public uses without just compensation; nor unless the public use exigencies require it."

I submit that there is nothing in this proposed statute that isn't already covered in the Constitution. I think there is also the risk of the mandate provision being called into play. I would submit that the proposed legislation is not only unclear, it is unnecessary. I urge you to support the Majority "Ought Not to Pass" Report.

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

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

The SPEAKER PRO TEM: The Chair recognizes the Representative from Biddeford, Representative Caron.

Representative CARON: Mr. Speaker, Members of the House: I rise today in opposition to the Majority "Ought Not to Pass" Report.

This particular bill is a codification of the Lucas decision, it is presently the law of Maine and the United States. Having worked as the city solicitor for the City of Biddeford and worked with planning boards and with city councils, whenever an issue is raised before a planning board or the council as to changing particular zoning ordinances, one of the issues raised by the opponents is that there is a taking and is a violation of the State Constitution and that the town was going to have to compensate them for it.

This particular bill codifies the law, it tells the planning board exactly what the law is in the State of Maine. I must take issue with Chairman Cote as being a lawyer's bill. This takes the lawyers out of the issue. At the present time whenever the issue of a taking arises before a planning board, you have

the city attorney writing an opinion, you have the attorney for the opponents writing an opinion and then they also seek an opinion from Maine Municipal Association. You have three different lawyers trying to interpret a 28 page report. This is really clear, it is concise. When you are dealing with planning boards and zoning ordinances, it is strictly statutory. It is a statute that we have created and I think that the planning boards and the towns deserve the right to know exactly what it is they are doing and when they are violating the Constitution of the State of Maine.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Holden, Representative Campbell.

Representative CAMPBELL: Mr. Speaker, Men and Women of the House: I don't know that much about attorney's, I don't know that much about laws, but I do know something about private property. I have been involved with development for about ten or fifteen years. Let me give you just one example of what can happen in a case of the regulations taking away value of property.

A project just outside Bangor, we purchased 350 acres of very prime industrial property. This property went before the planning board, went before the selectmen, everyone was encouraged. It was on the outskirts, it was by the Interstate, it had everything going for it, but a small drainage swale down through the center. With 350 acres, we expected to lose maybe a third of it to wetlands and then all of a sudden, we brought in our people to research the wetland situation, we lost all but 22 acres to wetlands. Now, because most of the uplands were to the rear of the property and one can't pass over wetlands to get to uplands, we were faced with 350 acres now becoming 2 to 5 acres of developable property. Here is something that not only the owners lost, but the town of Herman lost prime industrial development property, one of the biggest tracts of land in the area and it was lost due to regulations. So, if it becomes a function of compensation to the property owner, I think that is the least we can do. Regulations do in fact remove values of property, so I recommend we support the bill.

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

Representative CATHCART: Mr. Speaker, Members of the House: I urge you to support the Majority "Ought Not to Pass" Report from the Judiciary Committee on this bill.

There really is not a problem with the state or the municipality taking away private property in the State of Maine. I have four towns that I represent and I believe the selectmen and the planning board are extremely careful about this already. This would just add complications and create more legal hassles and more expenses for the municipalities that we all live in.

It has been said that this bill really over-simplifies the Lucas case and that certainly seems to be true. I don't think you can reduce the Supreme Court case of many pages into two sentences. There are questions in the Lucas case and loopholes that just cannot be covered in this short bill. I think still that a landowner who feels that his or her property has been completely devalued has the access to the courts and can take a case to the court. So, there is no necessity for doing this to municipalities, thus as a mandate to the state, making us pay for this when we already have a remedy

under the law with our courts.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Augusta, Representative Lipman.

Representative LIPMAN: Mr. Speaker, Men and Women of the House: I didn't intend to speak on this matter but I think that some further explanation is due. I am one of the minority who supports the bill. If anything, the bill is designed to avoid litigation. Representative Caron is 100 percent correct. The perfect example would be the situation the Representative from Holden gave us where if a municipality contemplates issuing a regulation that may make property totally worthless so that they have to pay damages, we are putting them on notice "don't do that" because if you do, you have got to pay. What we are hoping to do through this legislation is avoid that type of litigation and to put them on notice. In the bill itself, we are setting the law of the land and we are doing it to avoid litigation to put the municipalities on notice.

I don't see a down side and I see a definite positive side to passing this legislation.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Sedgwick, Representative Gray.

Representative GRAY: Mr. Speaker, I would like to ask you to do a ruling on the mandate preamble on this bill.

The SPEAKER PRO TEM: The answer to the Representative is negative, there is no mandate. There is a fiscal note which would go on the Appropriations Table.

The Chair recognizes the same Representative.

Representative GRAY: Mr. Speaker, is that the Speaker's ruling that there is no mandate on this bill? Because I differ with what I just heard.

The SPEAKER PRO TEM: The Chair ruled that there is no mandate preamble on the bill.

The Chair recognizes the same Representative.

Representative GRAY: Mr. Speaker, with due respect, I didn't ask if there was a mandate preamble, I asked if this is a mandate to the municipalities?

The SPEAKER PRO TEM: The Chair would rule that it is a mandate. However, the Chair will rule that it is not at that point. If the bill passes, then we would have to put the mandate language in the bill.

The Chair recognizes the Representative from Madison, Representative Ketterer.

Representative KETTERER: Mr. Speaker, Ladies and Gentlemen of the House: Under current law, according to the State Constitution and the Federal Constitution, private property cannot be taken without just compensation being paid, that is our current law. A body of laws developed through the courts, through that third coequal branch of government to tell us what guidelines we have and when money has to be set aside to pay for the taking of private property.

I am one of the people who signed the Majority "Ought Not to Pass" Report because it is my belief that all we are attempting to do is, through statute, have us say in one paragraph as legislators what the U.S. Supreme Court took pages and pages to write about.

The laws, as decided by the cases of the United States Supreme Court, becomes the decisional law that governs all of the states, including the State of Maine, whether or not we take any action on this bill this evening or any other time while we are in session.

Let's also for a moment talk about one of my favorite topics, money. This bill costs a lot of money, why is that? When the state makes these takings, the state is going to have to pay. But, whether or not the state has made these takings, if someone thinks that the state has made a taking, the state is going to have to pay in the form of litigation costs. I can tell you since my day job happens to be being a lawyer that litigation costs are not inexpensive and they are not small.

I happen to represent, not in my capacity as a member of this House but as a lawyer, the towns of Smithfield, Norridgewock, Cornville, Skowhegan and a number of other small towns. When you read that bill, you realize that every rule, every ordinance that those municipalities pass, has the potentiality for generating a new cause of action set by statute, which we would be making that new cause of action tonight, the cause of action is the right to sue. Every one of those municipalities, particularly the smaller ones, are going to engage in the services of counsel to tell them whether or not the proposed rule or regulation is going to be something which is going to affect people's rights in land. When they do that, they are going to pay a legal fee at the beginning when they go to pass that ordinance. They may pay a legal fee when they go to court to say we don't have to pay any money because it is not a taking and then, if they happen to be wrong about that, and I hope I haven't given that incorrect advice, they are going to have to pay a third time when they have to step up and collect it from the municipal real estate owners and then they are going to get some of that money back from us because under our state mandate, we are going to be liable for 90 percent of it.

There are a lot of lawyers out there, as a result of the action taken by the 115th Legislature with regard to Workers' Comp Reform, don't have enough to do. So, with this legislation, they will be busy for at least the next two years until we can come back here and repeal this.

I ask you to vote the same way I did and accept the Majority "Ought Not to Pass" Report.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Kingfield, Representative Dexter.

Representative DEXTER: Mr. Speaker, Men and Women of the House: I can close my eyes during this debate and I can see the men with their white flowing robes with signs, "The End of the World is Near" and all because of this simple bill, a bill here which is perfectly clear to this uneducated woodsman. You shall not take 100 percent of the value of a person's property, it is in the Constitution, without just compensation. Committee Amendment "A" becomes the bill. I am looking at the fiscal note and I will read, "The additional workload and administrative costs associated with a minimal number of new cases filed in the court system can be absorbed within the budgeted resources of the Judicial Department."

The SPEAKER PRO TEM: The Chair recognizes the Representative from Brunswick, Representative Pfeiffer.

Representative PFEIFFER: Mr. Speaker, Friends and Colleagues of the House: Fortunately, there are not very many lawyers in this body but you have just heard two lawyers speak for this bill and two lawyers speak against it. I think that underlines Representative Cote's contention that the net result of this bill will be to keep lawyers arguing and

lining their pockets for some time to come.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Auburn, Representative Cote.

Representative COTE: Mr. Speaker, Men and Women of the House: L.D. 672 will result in a new statutory cause of action against state and municipal government in Maine, separate from real estate takings claim brought under the State and Federal Constitutions. Where this new statutory cause of action results in new financial claims against the government, the General Fund will be obligated to pay the amount involved. If such a new statutory claim is successful against a municipality, L.D. 672 may create a municipal mandate which, by recent amendment to the Maine Constitution, would have to be substantially paid by the state's General Fund rather than by the municipality.

It is impossible to quantify the amount of fiscal impact to the General Fund if L.D. 672 is enacted. But, over time, new claims from any damages could be considerable. In sum, any statutory codification of the Constitutional takings clause based upon a simplified version of one U.S. Supreme Court opinion, will likely result in new claims on the General Fund that might not have arisen under judicial interpretations of the Constitution itself.

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

Representative FARNSWORTH: Mr. Speaker, Men and Women of the House: I, too, was a member of the majority on this bill. I believe that the people who asked that we pass this bill are drastically understating the effects of it. People forget that Mr. Lucas in the Supreme Court decision won his case. He did get compensated for takings. We have Maine case law prior to that that compensates our rules that under Maine law, beneficial use of land being taken away is cause for compensation. It was suggested by the Representative from Augusta, Representative Lipman, that the purpose of this bill is to reduce litigation.

First of all, you see all the lawyers on our committee are not in agreement on this so it is hard to believe that that is an automatic result.

Secondly, the whole point of this bill, the effect of it is to create a new statutory cause of action. That means already lawyers can go into court in Maine for the same purpose under the State Constitution and the Federal Constitution. We don't need to pass a law for people to litigate over this issue. Already Maine law and the Federal Constitution provides that takings must be compensated. And, has been suggested, the Federal Constitution has now got a very careful thorough description of when it is appropriate to compensate. Out of the many phrases that were used to describe what kind of taking should be compensated, this bill picks one phrase, "all economically viable use" but doesn't define it, doesn't define real property and creates a new basis that is different than the Supreme Court's decision on how to sue. I ask you, can you really believe that this will not encourage litigation? Could you really believe that this is to avoid litigation?

Mr. Speaker, I move that this bill and all its accompanying papers be indefinitely postponed and I ask for a roll call on that motion. I believe that the state cannot afford this bill.

The SPEAKER PRO TEM: The Chair recognizes the

Representative from Eliot, Representative Marshall.

Representative MARSHALL: Mr. Speaker, Colleagues of the House: Just a very short something to think about. I am not sure that the intent of this bill is to reduce litigation but perhaps to reduce taking. Perhaps an expensive mandate will cause the state and local communities to be more careful in setting policy that removes value of private property.

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

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

The SPEAKER PRO TEM: The pending question before the House is the motion of Representative Farnsworth of Hallowell that the L.D. 672 and all accompanying papers be indefinitely postponed.

The Chair recognizes the Representative from Sedgwick, Representative Gray.

Representative GRAY: Mr. Speaker, pursuant to House Rule 7, I wish to pair my vote with Representative Barth of Bethel. If he were present and voting, he would be voting nay; I would be voting yea.

The SPEAKER PRO TEM: The pending question before the House is the motion of Representative Farnsworth of Hallowell that the L.D. 672 and all accompanying papers be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 166

YE - Adams, Aliberti, Ault, Beam, Bowers, Brennan, Carroll, Cashman, Cathcart, Chase, Chonko, Clark, Clement, Cloutier, Coles, Constantine, Cote, Cross, Daggett, Dore, Driscoll, Dutremble, L.; Erwin, Faircloth, Farnsworth, Fitzpatrick, Gamache, Gean, Gwadosky, Hale, Hatch, Heesch, Hichborn, Hoglund, Holt, Jacques, Johnson, Joseph, Ketterer, Kilkelly, Kontos, Larrivee, Libby James, Martin, H.; Melendy, Michaud, Mitchell, E.; Mitchell, J.; Morrison, Nadeau, O'Gara, Oliver, Paradis, P.; Pfeiffer, Pinette, Poulin, Pouliot, Rand, Richardson, Ricker, Rowe, Ruhlin, Saint Onge, Saxl, Simonds, Stevens, K.; Strout, Sullivan, Swazey, Townsend, E.; Townsend, L.; Tracy, Treat, Vigue, Walker, Wentworth, Winn.

NAY - Ahearne, Aikman, Anderson, Bailey, H.; Bailey, R.; Bennett, Birney, Bruno, Cameron, Campbell, Caron, Clukey, Dexter, DiPietro, Donnelly, Farnum, Farren, Foss, Gould, R. A.; Greenlaw, Heino, Hillock, Hussey, Joy, Kerr, Kneeland, Kutasi, Lemont, Lindahl, Lipman, Look, Lord, MacBride, Marsh, Marshall, Michael, Murphy, Nash, Nickerson, Norton, Ott, Pendexter, Pendleton, Plourde, Plowman, Reed, G.; Reed, W.; Robichaud, Rotondi, Simoneau, Skoglund, Spear, Stevens, A.; Taylor, Thompson, Townsend, G.; True, Tufts, Whitcomb, Young, Zirkilton.

ABSENT - Carleton, Carr, Coffman, Jalbert, Lemke, Libby Jack, Pineau, Rydell, Small, Tardy, The Speaker.

PAIRED - Gray (Yea)/ Barth (Nay).
Yes, 77; No, 61; Absent, 11; Paired, 2; Excused, 0.

77 having voted in the affirmative and 61 in the negative with 11 being absent and 2 having paired, the motion to indefinitely postpone did prevail. Sent up for concurrence.

At this point, Speaker Martin resumed the Chair.

The House was called to order by the Speaker.

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

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

REPORTS OF COMMITTEES

Divided Report

Majority Report of the Committee on State and Local Government reporting "Ought Not to Pass" on Bill "An Act to Authorize Sagadahoc County to Provide Centralized Administrative Services to Those Sagadahoc County Municipalities That Desire to Share the Cost of Those Services" (H.P. 978) (L.D. 1309)

Signed:

Senator: BERUBE of Androscoggin

Representatives: WALKER of Blue Hill
LOOK of Jonesboro
BENNETT of Norway
JOSEPH of Waterville
YOUNG of Limestone
DUTREMBLE of Biddeford

Minority Report of the same Committee reporting "Ought to Pass" on same Bill.

Signed:

Senator: BUTLAND of Cumberland

Representatives: AHEARNE of Madawaska
GRAY of Sedgwick

Reports were read.

On motion of Representative Joseph of Waterville, the House accepted the Majority "Ought Not to Pass" Report.

On motion of Representative Coles of Harpswell, the House reconsidered its action whereby the Majority "Ought Not to Pass" Report was accepted.

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

Representative COLES: Mr. Speaker, Men and Women of the House: This is a bill which the Sagadahoc County Delegation has played an interest in. It is a very simple, straightforward bill. I can't just understand the fact why the committee voted "Ought Not to Pass" on the bill.

It simply allows towns on a purely voluntary basis that wish to share services to do so with the

cooperation of the county in such a way to enable the county to collect from those towns that may renege on the payments rather than those towns having to go to court as they now do. It is purely voluntary on all parties concerned. No one is forced to do anything they don't want to do. It simply provides a more efficient and effective means for the towns of Sagadahoc County to cooperate if they wish so. It applies only to Sagadahoc County as well.

It is a bill which two of my selectmen have asked for and the selectmen from Representative Holt's district as well showed up to testify in favor of it. They went home that day totally puzzled as to why this bill was not given almost a routine and automatic "Ought to Pass."

I would ask you to vote strongly to reject the Majority Report and accept the Minority Report.

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

A vote of the House was taken.

Representative Coles of Harpswell requested a roll call vote.

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 Harpswell, Representative Coles.

Representative COLES: Mr. Speaker, I would like to pose a question through the Chair. Would some member of the Majority please offer an explanation as to why the committee rejected the bill?

The SPEAKER: Representative Coles of Harpswell has posed a question through the Chair to any member who may respond if they so desire.

The Chair recognizes the Representative from Waterville, Representative Joseph.

Representative JOSEPH: Mr. Speaker, Men and Women of the House: I apologize for not being prepared because I didn't happen to have that particular bill in front of me.

I remember this bill slightly and I remember the discussion of granting additional powers to Sagadahoc County and yet we had very little input from other counties if in fact this was going to be somewhat of a demonstration project or as well did we not have overwhelming discussions with other Representatives from Sagadahoc County. The bill does talk about allowing Sagadahoc County to adopt cooperative plans with municipalities. At first glance, it sounds like a good idea but as the committee did talk about this bill, it seemed that in fact we were giving additional powers to counties and perhaps members of municipalities and remembering that by doing this, we would be putting them in a position because they are solely supported by taxpayer dollars, property taxpayer dollars.

As you can tell from my discussion with you here tonight, it was not one of those bills that we felt terribly strongly about but for those who did sign the report, and there are three members who are

absent from signing this report, and I apologize for that for whoever's error that happens to be, but based on that, those are the only reasons.

Representative Coles and I have talked about this in passing and at that time I really never gave him a good explanation and I know I have not tonight but it was nothing that we felt terribly strongly about.

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

Representative LOOK: Mr. Speaker, I would like to pose a question.

My question is to Representative Coles. Can you elaborate a little bit? Exactly what is meant by the administrative services?

The SPEAKER: Representative Look of Jonesboro has posed a question through the Chair to Representative Coles of Harpswell who may respond if he so desires.

The Chair recognizes that Representative.

Representative COLES: Mr. Speaker, Men and Women of the House: Administrative services — what it meant is the fact whatever towns involved and the county agree on. The key provision in the bill is a provision which allows which says that if towns enter into an agreement with the county voluntarily and what the services are and how they are to be provided and all the other issues surrounding that are all up to those people who negotiate amongst themselves because there is no coercion of any kind in this thing. It says, if that is true, if they enter into such an agreement, if one of the parties, one of the towns defaults on its payment, thus putting a big burden on the other towns, instead of those towns having to take them to court, the county will assess that payment against the county taxes. It simplifies the needs at which these towns have a remedy from a default and thus encourages the towns to enter into an agreement to provide shared services.

Remember, it is all voluntary. It was devised by my selectmen in Sagadahoc County and the County Commissioners in Sagadahoc County, and this applies only to Sagadahoc County, who also found the bill acceptable and had no problem with it.

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

Representative BENNETT: Mr. Speaker, I would like to pose a question.

To Representative Coles of Harpswell, you said that the Sagadahoc County Delegation was in support of this. My understanding was that at least one member of the Sagadahoc Delegation didn't know about this bill until yesterday and I was wondering if the Representative would answer whether or not the delegate had a chance to meet and deliberate over this bill?

The SPEAKER: Representative Bennett of Norway has posed a question through the Chair to Representative Coles of Harpswell who may respond if he so desires.

The Chair recognizes that Representative.

Representative COLES: Mr. Speaker, Men and Women of the House: If I conveyed that the whole delegation approved it, I was mistaken, I did not mean that. The Representatives from the towns involved and the State Senator from the towns involved have approved and have asked for it to be passed.

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

Representative LOOK: Mr. Speaker, I am not so

sure there may not be something in the statute that would provide for that now. If this could be researched, I think it might be well to do it.

Subsequently, on motion of Representative Look of Jonesboro, tabled pending acceptance of the Majority "Ought Not to Pass" Report and specially assigned for Friday, June 4, 1993. (Roll Call ordered)

Divided Report

Majority Report of the Committee on State and Local Government reporting "Ought to Pass" as amended by Committee Amendment "A" (H-557) on Bill "An Act to Repeal the Laws Allowing State Agencies to Adopt Rules Having the Force of Law" (H.P. 777) (L.D. 1050)

Signed:

Senators: BERUBE of Androscoggin
ESTY of Cumberland

Representatives: JOSEPH of Waterville
AHEARNE of Madawaska
LOOK of Jonesboro
DUTREMBLE of Biddeford
WALKER of Blue Hill
KILKELLY of Wiscasset
BENNETT of Norway
ROWE of Portland
GRAY of Sedgwick

Minority Report of the same Committee reporting "Ought to Pass" as amended by Committee Amendment "B" (H-558) on same Bill.

Signed:

Senator: BUTLAND of Cumberland

Representative: YOUNG of Limestone

Reports were read.

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

The SPEAKER: The Chair recognizes the Representative from Limestone, Representative Young.

Representative YOUNG: Mr. Speaker, Men and Women of the House: I will only speak briefly. I think that this language implements the Constitutional Amendment and provides statutory provisions for allowing the legislature to conduct oversight of rule-making. I think if you look at them, they are rather extensive and involved. It involves oversight of proposed rules as well as existing rules. There is a whole architecture and framework that is involved. I decided to suggest a separate procedure and that is my Committee Amendment "B." So, I would ask that you defeat the Majority "Ought to Pass" Report.

Mr. Speaker, I ask for a Division.

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

Representative ROWE: Mr. Speaker, Men and Women of the House: I rise to speak in favor of the Majority "Ought to Pass" as amended Report.

I would like to take this opportunity to tell you

what this bill does and doesn't do. First of all, it is not the implementation statute for the proposed Constitutional Amendment that we voted on earlier this evening. The Constitutional Amendment that we voted on earlier this evening, L.D. 1293, would give the Committee of Jurisdiction the right within 30 days after a rule had been filed with the Attorney General or had been approved by the Attorney General to review that rule and to make a decision to suspend the rule to be overridden by the Governor. That proposed Constitutional Amendment, if it passes this body, passes the Governor and the voters approve it, there would be a separate statute that would implement that rule.

That is not what L.D. 1050 does. I want to make that clear. L.D. 1050 establishes a procedure for committees to exercise review authority over proposed rules and rules that have been adopted but have not yet been approved by the Attorney General.

I would just very quickly like to go through the procedure. Many of you are familiar with the Administrative Procedures Act, I am sure. As you know at present, the Committee of Jurisdiction through the Executive Director of the Legislative Council receives a summary of each rule and that is provided to the members of the committee. You have an opportunity to ask for a copy of the complete rule if you want to review it but there is not a procedure that is set up and formalized within the APA or outside the APA that involves the legislature and that is what this would do.

Once an agency proposes a rule, this statute would require that the agency send 15 copies of the rule, not the rule summary but the proposed rule itself, to the Secretary of the Senate and Clerk of the House. They would in turn provide those copies to the 13 members of the Joint Standing Committee of Jurisdiction. Within 7 days after receipt of those, if one-third of the members of the committee wanted to review the rule, they would notify the Clerk and/or the Secretary. The Clerk and/or the Secretary would notify the Committee Chairs that the committee wished to review the proposed rule. The Committee Chairs would in turn notify the agency of review, the administrative agency. This would basically toll the time period that an agency has under the APA to promulgate rules so this wouldn't affect the administrative agency's work under the APA.

The clock would tick from the time that the Secretary of the Senate or the Clerk sent out the copies of the rules to the members of the committee, there would be 30 days within which the committee would have to review the rule, to conduct a review, and issue recommendations. The committee could hold a public hearing. This public hearing would be held just like any other committee public hearing, it would be advertised and scheduled as all public hearings are.

If a majority of the committee decided to object to the rule, the objections would be put in writing and submitted back to the agency.

There are certain standards in the statute that you may want to look at that the committee must use in reviewing the rule. It is not discretionary, there are standards and they are the same standards that the Attorney General uses when the Attorney General reviews a rule as to form and legality. They are listed on Page 3 of the Committee Amendment: Absence of statutory authority; lack of compliance with legislative intent; conflict with state law;

changed circumstances after enactment of the law; authorizing the rule that negates the need for the rule; abuse of discretion by the agency in proposing the rule or fees established by the rule are unreasonable or unrelated to the cost of administration.

So, there are some objective criteria that the committee would use in evaluating the rule. If the committee wanted to accept the rule, fine, they would notify the agency of jurisdiction and the rule-making process would continue. If they objected, as I said, they would prepare a report, send it to the agency and the agency would use the report and, hopefully, would make modifications in the rule. The agency could modify or withdraw the rule at that time and they would not have to repeat the prior steps that had been taken place in the APA.

I will try to hurry through this, I know some of you have indicated to me you were interested in what this rule was about.

The agency would have a second step once a rule has been adopted. Once a rule has been proposed and the committee would be involved, once the hearing has been held by the administrative agency, they have receive the comments of all interested parties, they have received the comments of the Committee of Jurisdiction of the legislature, if it had any, then they would put together the final rule. Once they did that, the final rule would be filed and, again, go through the same sequence to go to the members of the Committee of Jurisdiction at the same time that it goes to the Secretary of State's Office. Again, the committee would go through the same procedure if one-third of the members wanted to hold a hearing or a meeting to discuss the rule. They would go through the same procedure, a meeting would be held, it could be a hearing and, at that time, if the majority of the committee objected to the rule, they would again prepare a written report and submit the report to the agency. Again, the agency could take and modify, they could withdraw the final rule that has been filed with the Secretary of State or they could make modifications to it without going back and going through all the earlier APA processes.

One important thing this rule does along the way that we don't have now, it allows a Committee of Jurisdiction to initiate legislation, prepare an L.D. to modify a rule or to repeal a rule. As you know now, after cloture, all rules go through the Legislative Council. This would empower the Committee of Jurisdiction to initiate an L.D. to make changes to rules. That is written into this proposed statute.

The final thing the statute does is — there is a section that deals with review of rules currently in effect. Once a rule become effective, there is a six month period of time that must lapse before the committee can take action to hold a hearing on the rule. Once the committee has their hearing on the rule, then again, they can at that time initiate legislation to repeal the rule or to modify the rule. Obviously, if it is during a legislative session, that can be done immediately. If it is not, it can be taken up when the legislature reconvenes.

That is basically what this statute does. It does not need constitutional amendment approval because it certainly is not volitive in any way of the constitution. The earlier L.D. that we heard tonight the reason it needed a Constitutional Amendment was because it empowered a committee of the

legislature to suspend a rule. This does not. It simply empowers a committee to hold hearings, to prepare reports, submit it to the agency and on the initiative prepare legislation to repeal or modify the rule.

I would ask for your support of this. The committee spent a lot of time on this bill and I believe that it is a good bill. I don't think that the legislature will abuse it. Indeed, I think it will be a tool to improve the process.

I ask for your support and that you vote to accept the Majority "Ought to Pass" Report.

The SPEAKER: The Chair recognizes the Representative from Holden, Representative Campbell.

Representative CAMPBELL: Mr. Speaker, Men and Women of the House: As cosponsor of this bill, I rise just for a moment and tell you my thoughts.

Similar to the bill presented earlier, presented by the good Representative from Eagle Lake, Representative Martin, this is also addressing a very important issue. It is important to me, both in my business and many businesses and also with municipalities, the fact that the rulemakers, intentionally or unintentionally, continue to exceed the intent of the law with their rules. So, unfortunately, this is a process that is necessary. If we had a way of changing the philosophies of the bureaucratic employees to work within the constraints of the intent of the law, we wouldn't have to do this. This is a very important process and I would recommend that we support the bill.

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

A vote of the House was taken.

79 having voted in the affirmative and 13 in the negative, the Majority "Ought to Pass" Report was accepted, the bill read once.

Committee Amendment "A" (H-557) was read by the Clerk and adopted.

Under suspension of the rules, the bill was read a second time, passed to be engrossed as amended by Committee Amendment "A" (H-557) and sent up for concurrence.

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

REPORTS OF COMMITTEES

Divided Report

Later Today Assigned

Majority Report of the Committee on Human Resources reporting "Ought Not to Pass" on Resolve, to Establish the Labor and Welfare Transition Team to Facilitate the Inclusion within the Department of Labor of Certain Welfare Functions of the Department of Human Services (EMERGENCY) (H.P. 1102) (L.D. 1489) (Governor's Bill)

Signed:

Senator: PARADIS of Aroostook

Representatives: TREAT of Gardiner
JOHNSON of South Portland
TOWNSEND of Portland
FITZPATRICK of Durham
BRENNAN of Portland
BEAM of Lewiston
GEAN of Alfred

Minority Report of the same Committee reporting "Ought to Pass" as amended by Committee Amendment "A" (H-565) on same Resolve.

Signed:

Senators: HARRIMAN of Cumberland
BALDACCI of Penobscot

Representatives: BRUNO of Raymond
PENDLETON of Scarborough
PENDEXTER of Scarborough

Reports were read.

Representative Treat of Gardiner moved that the House accept the Majority "Ought Not to Pass" Report.

On further motion of the same Representative, tabled pending her motion that the House accept the Majority "Ought Not to Pass" Report and later today assigned.

Divided Report

Majority Report of the Committee on Energy and Natural Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (H-566) on Bill "An Act to Exempt Gravel Pits with Less Than 5 Unreclaimed Acres from Regulation by the Department of Environmental Protection under the Site Location of Development Act" (H.P. 406) (L.D. 519)

Signed:

Senators: LAWRENCE of York
LUDWIG of Aroostook
CIANCHETTE of Somerset

Representatives: COLES of Harpswell
MARSH of West Gardiner
JACQUES of Waterville
CONSTANTINE of Bar Harbor
LORD of Waterboro
POULIN of Oakland
ANDERSON of Woodland
GOULD of Greenville

Minority Report of the same Committee reporting "Ought to Pass" as amended by Committee Amendment "B" (H-567) on same Bill.

Signed:

Representatives: MITCHELL of Freeport
WENTWORTH of Arundel

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, Ladies and Gentlemen of the House: I guess I will start by telling you that I have been working on gravel pit bills for probably four years. Representative Lord and I have been at it for quite awhile. When we started to revamp what has been the way gravel pits were licensed, when they got to five acres, they triggered the site law. Once they triggered the site law, the fee for licensing a pit from there would run anywhere from \$15,000, \$20,000, \$25,000, \$50,000 to \$100,000. This was all up-front money spent on engineering. We have tried to change that and use this money for reclaiming instead of all up-front.

We set up a subcommittee out of our committee and Representative Lord, myself, Representative Gould, Representatives Coles and Poulin and the industry spent many hours coming up with this bill. We completely revamped the way we license gravel pits. We set up a set of standards that they are going to now have to abide by. We still leave the first five acres the same as before. At five acres, they trigger these standards and when they do, they are then under review at ten, twenty, and at thirty acres, they go back under the site law again.

We set up standards to do with the water table, to do with distance from water supplies, traffic, dust, sound barriers. We have done our best to cover all situations.

The big thing in this is, you people have to understand if we are going to talk about industry in the State of Maine, gravel is a needed thing. Gravel is needed to build woods roads, to make cement, to build roads, it is used in the beginning of any industrial job, it is used at the end, in the middle, used for hot-top and we have to have gravel. If you want to talk about things that stifle economy, gravel is one of them. We have to have gravel to do all these things that we want to do.

This is what we have tried to do with this bill, make it more assessable and make it more presentable after these pits have been finished so that there will be some reclaiming done. We have set up so that they can only maintain a ten acre hole from the top with a two acre variance for stockpiles in the bottom extended, which would allow them not to be over twelve acres at any one time.

This is what we have tried to do. Then, as they go from there, they have to slope with a two to one slope unless they have a variance — two and a half to one slope and they have to reseed either some kind of vegetation or trees. We have done our best to come up with a good bill.

I agree with the chairman of our committee that we should support this bill. I hope that you would support the Majority Report.

The SPEAKER: The Chair recognizes the Representative from Arundel, Representative Wentworth.

Representative WENTWORTH: Mr. Speaker, Men and Women of the House: I would submit to you that much of what the Representative from Woodland has said, Representative Anderson, is true in terms of the goals of the committee. However, I think the process broke down somewhat and I would submit to you that the Minority Report is a more cautious approach to try to achieve some of the same outcomes as the Majority Report will do.

In the hearing that we held on this bill and

another bill dealing with gravel pits, many committee members asked over and over again to the pit operators that testified if it was the standards under site law review that was the problem or if it was the process. Without fail, everyone of them admitted that it was not the standards that was the problem, that it was the process which was too long and too costly. So, the committee attempted to establish a new process which would cut down the time it takes to legally comply with environmental standards and will cut down the cost for pit operators up-front. But, there is absolutely no guarantee under the Majority Report or the Minority Report that we will bring more pits into compliance and that we will adequately protect the environment. It is our goal to do that but there is no guarantee.

The new permit by rule process will cut costs and this permit by rule process is essentially the same under both the Minority and Majority Reports. It will cut costs and it will cut time, but in order for the process to work, it is dependent upon the good will of gravel pit operators in this state and dependent upon the effective enforcement of the environmental laws, the standards that are in this bill.

I would submit to you many, many gravel pits right now in this state that are over five acres in violation of the law are not permitted and it is because the process is expensive and because it is timely. The fact is people in this state, gravel pit operators and owners, are out of compliance, they are violating the law right now. The large number of people that are violating the law proves that there are many renegades in this industry. I am convinced that good will in the gravel pit industry is not quite as abundant as gravel.

I further would point out that in order for this to work, the DEP must effectively enforce the compliance standards so we will have a bigger problem than we have now. I think the DEP's record on enforcement is abysmal with respect to gravel pits. To expect that dumping a truckload of dollar bills in the Department of Environmental Protection for more enforcement staff is going to solve the problem, I think is a leap of faith that is dangerous to make.

DEP will get more enforcement staff under either report but the question is, can they do their job? I handed a fact sheet out this morning that explains some of the differences between the Majority and the Minority Report. It is my belief and I hope you will support me that the Minority Report does not go as far as the Majority Report for good reasons. It will create the savings, it will streamline the process, but the Minority Report will better protect the environment.

If in fact we find under the Majority Report that expanding pits to 30 acres under a permit by rule process does not work, the damage will be done and this legislature, the next legislature, will be hard-pressed to correct the problems that might occur from unregulated mining of gravel or improperly regulated.

On the other hand, if in fact this process works and you adopt the Minority Report, it would be very easy for a future legislature to expand the threshold for site review from 15 to more acres.

Some important differences between the two reports — under the Majority Report, significant wildlife habitat, which is very important to this state's economy, is only protected if it is currently

mapped by Inland Fisheries and Wildlife. Under the Minority Report, much the same is current law under site review and it protects unmapped areas as well which there are many of in this state and many important ones that we will discover.

The Majority Report offers many variances. It is my belief that if you are going to have compliance standards in law, you shouldn't be offering variances. If people want a variance to any of the provisions that are in this law, they are free to go under site law review and make a formal request and prove that they have the ability to comply with the environmental laws before they get that variance.

Another difference between the two reports, the Majority Report has a setback from public roads of 50 feet. There is a slight inconsistency in that report in that they require a buffer strip from public roads of 150 feet. I don't know how that is possible. Under current law, the set back is 150 feet from a public road and on the Minority Report that is the same.

In addition, the revegetation of a natural buffer strip which is extremely important for the abutters to gravel pits. Under the Majority Report, if a pit operator decides that they want to harvest all the timber around their pit that is not in compliance right now and then they file a notice of intent to comply under the amnesty provisions in either report, under the Majority Report, they don't have to revegetate that natural buffer strip until they reclaim the pit which could be some time in the very distant future. Under the Minority Report, that revegetation would have to start upon filing notice of intent to comply so that abutters could be adequately protected.

The Majority Report and the Minority Report shift the burden of proof for complying with environmental laws from the applicant to the state. Under the current law, at five acres, if you want to be lawful in operating a pit, you have to prove to the state that you know how to comply with the environmental standards that are in the law. If you don't have the knowledge, then you have to go out and hire somebody who does have the knowledge to teach you how to do it and prove that you can do it. Under the permit by rule process, just the opposite is the case. You are assumed to be in compliance after you send your notice of intent to comply, a map of the site detailing where you are going to dig, where your monitoring well is going to be located and where your solid waste is going to be put and a fee, then you are in business. You don't even have to prove you know how to operate a shovel under that report in order to get in business.

Under the current site law review process, citizen input to address concerns that they might have living next to a pit whether it is in their own town or neighboring town is limited. Admittedly, it is limited, but it exists. Under the permit by rule process, that opportunity for input is eliminated. I admit it is eliminated under both reports. Now, our hope is under either report that allowing pits to come in under the amnesty provision providing more enforcement staff and less stringent standards will assure overall in this state that we get better compliance and that we have better environmental protection. But, it is a risk.

I would urge you not to take in one fell swoop the full risk of going to 30 acres. I think 15 acres is adequate to test whether this provision will

work. If it does work, we can change it later. If it doesn't work, we've got trouble. I think we are likely to get trouble either way but I would rather take a more cautious approach and assure a little bit better environmental protection.

I would urge you to reject the Majority "Ought to Pass" Report so we can go on to accept the Minority Report.

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

Representative LORD: Mr. Speaker, My Learned Colleagues: Seems as though today must be my day. L.D. 519 originally started from a bunch of gravel pit owners that met up in Frank Carroll's office last Fall. The main purpose of 519 was to try to get to the numerous pits that are in violation, that are unregulated. A lot of these pits (and there are hundreds) I tried to get a count from the state geologist, Walter Anderson and he said, "I can't give it to you Willis, I don't know." I said out of the hundreds — he said, "There are hundreds, there are probably thousands of pits in the State of Maine that are unregulated. A lot of them are out of compliance." Only about 150 of the thousands of pits are permitted and it has been going on now for at least 15 or 20 years and they are still not permitted.

A lot of these pits are small pits, Mom and Pop pits. Probably an old farmer had a little gravel somewhere and he sold a few loads of gravel to the town to help pay his taxes. They had up to five acres and went to continue on and when you get up to five acres, DEP is kicked in. They said, how much is it going to cost us to get this permitted? You heard from Representative Anderson up from an eight acre we get — we had three eight acre pits that were permitted, four of them cost \$10,000 apiece and the other one cost \$15,000. Now, if you have got a 40 foot bank, that isn't very bad, but if you have a ten or twelve foot bank, you might as well give the whole gravel pit to the DEP so they can get their money.

What we have tried to do is get something here that will get these permits and regulate it and get a system by which we have a handle on them. Now, these pits have got to be internally drained, they can't drain into a brook or a lake or anywhere else. These pits have got to be internally drained.

We started out with 40 acres and we compromised down to ten acres. We were going to have the first review at 20 acres and we brought it down to ten acres. We have compromised and we have compromised and we have compromised a lot of good things and the pit owners have agreed to it because they feel that it is necessary and they are willing to do this.

The standards are right here. What the pit owner will do — you put an application in and if the \$250 goes with the application to the DEP, that gives him a year to get the pit that he has into compliance. That means he has got to slope his banks, he has got to seed those banks. What is being done with the banks now? A lot of the banks, nothing is being done. It is an improvement.

You talk about wildlife, you take these banks and seed, then you are going to have some good grass. I might like to recommend it to the Audubon Society that maybe it might be a good idea if they gave the pit owner 100 pounds of alfalfa seed and they could throw that on it and have a lot better feed. You've got no feed there now. You don't have much wildlife habitat on a gravel bank for goodness sake, at least I don't know of any. As far as somebody knowing how

to run a pit, it doesn't take a fellow very long to get into there with a loader and start digging into a bank and lift it up in the air and put it in the truck, for heaven's sake.

I tell you, it is really something, we have worked and we have worked on this. We had a big hearing and we had this subcommittee of the gravel pit owners, of DEP, Maine Municipal, Dave Boulter of the Land Use Regulation Commission was there and anybody that wanted to go there. I was in there and said these guys are never going to get together but they started to work together and they came up with something. This is the result of what we have come up with and it is a compromise. We are compromised down. When it gets to be ten acres, they have to have DEP or if the town wants to take it over, they can take it over. They can take over the control of it and any fees that it has generated, they get the fees. When you get it up to ten acres now, there has to be a review of DEP or the Code Enforcement Officer of the town that says you have done your job, you have graded your banks, you have seeded it down, you have done a good job, go ahead for another 20 acres. So, when you get the 20 acres, they go ahead again, they come in there and look at the job at the pit, if you did a good job, if you did it right, you can go ahead. If they don't do a good job, then either DEP or the Code Enforcement Officer can put a stop on it and stop. When it gets to be 30 acres, they are all done, it goes into the site law.

To me, this is a way of getting something done that hasn't been done all these years in getting some of these pits from being such an eyesore and give some of these people a chance to operate them.

I hope you will vote for the Majority Report.

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

Representative MITCHELL: Mr. Speaker, Men and Women of the House: The reason I am supporting the Minority Report is I think we ought to do a little something to protect our neighborhoods here in Maine from gravel pits.

I was thinking about this bill. I looked at the House and Senate Register the other day and just to give you a feeling of what we are talking about, the current law says that if you have a gravel pit of five acres, you have to go to the site law and get a permit before you can continue. Now, in our House and Senate Register, it says that the Capitol Park across the street here surrounded by this road is a 20 acre parcel. That is two-thirds of the size of the hole that is going to be able to be built in your neighborhood, dug in your neighborhood without any kind of review if you pass this bill. That is two-thirds of the size of the hole if it is privately owned. Probably Capitol Park has some gravel underneath it, it is near the river and it is probably a good place for a pit. Because it is publicly owned, it probably wouldn't be there. If it was privately owned and someone wanted to mine gravel there, the fact that the State House is across the street from it would have absolutely no bearing on it at all because that couldn't be considered in the siting process. So, think about your own neighborhoods and think about things that you want to protect in your neighborhoods when you go and vote for this bill.

One of the things that ought to be considered when you put a gravel pit in a neighborhood is the traffic and there is no provision in this bill to

control traffic at all, but under the site law, there is a traffic provision. So, if the gravel pit is located next to the school, there is going to be no provision made for slowing down the traffic or asking the gravel pit to stop hauling gravel while people are coming to or leaving school.

Dust is a problem with gravel pits. The gravel pit in my district caused a lot of problems and these great clouds of dust went over all the neighbors' homes and they complained to me bitterly about it.

Another problem you are going to have is the problem of noise. They take these rock crushers in and they can start them at six o'clock in the morning and under this law, there is nothing you can do about it. They have some standards of noise that are set by the DEP and there is no review and there is no way to ask the gravel pit not to start work until eight o'clock in the morning, no matter what happens to be next door. Even if it is a hospital, you can't ask them to stop because it is a right you have to go out there and crush gravel and make a 30 acre hole, if you happen to own it.

I became convinced during the public hearing that the problem wasn't the law, it was the DEP and the DEP's failure to manage and execute the law properly. I joined Representative Wentworth because I think he had a reasonable compromise. If I had had my druthers, I would have seen this bill killed. I will give you fair warning now, if this bill passes, you better tell your municipal officials to enact an ordinance quickly because you are going to have no protection at all and someone can come into your community and just dig all these holes and ruin your neighborhood. I suggest that if this all passes that you go tell your folks back home that they need to protect themselves because the DEP and the state certainly isn't going to do it with a bill like this.

The SPEAKER: The Chair recognizes the Representative from Washington, Representative Bowers.

Representative BOWERS: Mr. Speaker, Men and Women of the House: I will try and keep this short. My name is on this bill as a cosponsor. Frankly, this bill and the Majority Report are not what I had in mind at all. I wanted some law or some local ability for a town to manage some of its resources. I wanted towns to be allowed to regulate gravel pits up to 40 acres, if they could show to the DEP that they could do the job right. I didn't want DEP to give up that right to regulate those gravel pits because if the town wouldn't show that they could do it, I didn't want that to happen.

I am seriously concerned that permit by rule would not really do the job that we need to do, as the good Representative from Freeport just said.

My town has almost 20 gravel pits, three of them are licensed. Most of those gravel pits are over five acres and DEP is not doing its job, not at all.

The Minority Report might show a way so that we can generate more revenue so DEP could do the job but I am very concerned about it. I have people in my town that cannot open their windows all summer long because of the dust. Some of these people own gravel pits, some gravel pits in town are run very smoothly, very cleanly, they have good reclamation plans, they are just under the five acres.

I urge you to vote against the Majority "Ought to Pass" Report and I will speak to the Minority Report later.

The SPEAKER: The Chair recognizes the Representative from Old Orchard Beach, Representative

Kerr.

Representative KERR: Mr. Speaker, I would like to pose a question.

If this bill were to pass, does this supersede local zoning?

The SPEAKER: Representative Kerr of Old Orchard Beach has posed a question through the Chair to any member who may respond if they so desire.

The Chair recognizes the Representative from Waterville, Representative Jacques.

Representative JACQUES: Mr. Speaker, Men and Women of the House: I would be glad to answer that question because that was the reason I rose to address the House. I want to make this perfectly clear, a town can adopt ordinances dealing with gravel pits in that town's jurisdiction from one yard all the way up to 100 acres if they choose to.

The town can adopt ordinances dealing with traffic, noise, dust, hours of operation. I think they can adopt ordinances dealing with the size of the gravel that is hauled out, if the town chooses to do so.

If this is the problem that it is, it baffles my imagination that town fathers in a town would completely disregard the wishes of the people and not adopt ordinances dealing with gravel pits from any size to any size, above and beyond what the state regulations would be.

While I am on my feet, one of the reasons that this bill is here is because a great majority of the gravel pits out there are in non-compliance now. There is no way to get them in compliance and here is a news flash for you folks, the reason they can't be in compliance is because we have laid everybody off at DEP. There isn't anybody left to go do this job. So, the gravel pit owners came in and said, look, we understand that there are a lot of gravel pits in non-compliance. We are willing to put up the cash to hire the people to go check these pits. We are willing to put into the law for the first time, for the first time, standards that make sense for ground water protection, for erosion control, and anything else that the town chooses to do above and beyond that. The towns Code Enforcement Officer can enforce the ordinance. The selectmen can enforce the ordinance. They came up and offered the money.

I want to point out to you the key to this bill is an amnesty program. That means people who are violating standards now and have no reason to come forward are going to be encouraged by their fellow pit operators to come forward and immediately start the process of putting these pits into compliance. That is asking a lot from someone who probably would never be caught because there ain't no one out there to catch him.

We are asking them to do that, to come forward and put their pits in compliance. The bad pits, the real bad pits and the terrible pits, along with the ones that won't have to do much to come into compliance, but they are coming up with a do, re, mi. The regulated community is coming up with the do, re, mi.

Representative Mitchell knows full well that this is not going to open up every neighborhood to huge gravel pits because there are some spots where there just isn't any gravel. What amazes me is that you can't build a house in the State of Maine without gravel. You can't pour a cement foundation without gravel. You can't build a shopping mall without gravel. There is not a contractor that cuts wood

anywhere in this state that can get that wood out to the mill without gravel. You can't fix your infrastructure in this state since the railroad has gone to pieces without gravel. The simple fact of the matter is there can be no new economic development or activity without gravel pits. There is no way that you can make a hole pretty or a hole nice but the people who own them came forward and said we are willing to put up the money and come forward and identify our gravel pits and meet some standards in a law that this Majority Report adopts for the first time.

It is not perfect, we understand that, but it is an amnesty program. That means people have to voluntarily come forward when otherwise they would not even be bothered. There are some pits out there that have been operating for 25 years that have never been visited by DEP. They might be an incredible horror show. There are some pits out there that are outstanding that are operated better than we could ever imagine.

I don't think it is fair to say that this Majority Report will allow gravel pits to pop up everywhere with no consideration to the neighbors. I will tell you this, unless we do something to reduce the cost of operating and opening up gravel pits, there aren't going to be any new neighbors in that neighborhood because no one else is going to be able to build their home, build their road and all the economic development grants you want to talk about aren't going to help you unless you can get that natural resource out of the ground. That is the simple fact of the matter.

And yes, a town can adopt ordinances, Representative Kerr, that will control every single aspect of that pit if they think the state law doesn't satisfy their needs.

We heard of the town of Whitefield. They told us the town of Whitefield disregarded the people's concern. We were told because of all the selectmen are either gravel pit operators or related to gravel pit operators. But, the people of the town of Whitefield didn't agree with that. Well, this is a democracy. If someone is not doing what is required of them in that office, you get someone to run against them and you knock them out of office. It just would amaze me that three selectmen would have so much power and so much force over a town that they would completely negate the people's wishes in that town.

The Majority Report allows towns to deal with that problem as comprehensively as they choose. But, you've got to remember the whole key to this process is amnesty and voluntarily coming forward and offering your pit to meet those standards. It provides the money to do it.

The horror show that you heard about may be possible, I will admit that. I don't think it is going to happen because the pit owners understand the minute they enter that program and they do not live up to those standards, DEP will have the personnel to do something about it and they will shut those pits down. When you have equipment that you are making payments on of \$2,000 or \$3,000 a week, you cannot afford to be shut down and have that equipment sitting idle, it just makes no economic sense and there is no economic reason why someone would allow that to happen.

The simple fact of the matter is the Majority Report is ten times more than we have today.

It may not be perfect but it is one far stretch better than we have today.

On motion of Representative Martin of Eagle Lake,
Adjourned at 9:05 p.m. until Friday, June 4,
1993, at eight o'clock in the morning in memory of
John J. Fox.
