

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred And Sixteenth Legislature

OF THE

State Of Maine

VOLUME V

SECOND REGULAR SESSION

House of Representatives
January 5, 1994 to April 14, 1994

ONE HUNDRED AND SIXTEENTH MAINE LEGISLATURE
SECOND REGULAR SESSION
27th Legislative Day
Thursday, March 24, 1994

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

Prayer by Pastor Ken Graves, Calvary Chapel, Bangor.

The Journal of yesterday was read and approved.

SENATE PAPERS

Ought to Pass as Amended

Report of the Committee on **Legal Affairs** reporting **"Ought to Pass"** as amended by Committee Amendment "A" (S-463) on Bill "An Act to Create Statewide Arrest Powers for Municipal Law Enforcement Officers" (S.P. 415) (L.D. 1324)

Came from the Senate, with the report read and accepted and the Bill Passed to be Engrossed as amended by Committee Amendment "A" (S-463) as amended by Senate Amendment "A" (S-487) thereto.

Report was read and accepted. The Bill read once. Committee Amendment "A" (S-463) was read by the Clerk. Senate Amendment "A" (S-487) to Committee Amendment "A" (S-463) was read by the Clerk and adopted. Committee Amendment "A" (S-463) as amended by Senate Amendment "A" (S-487) thereto was adopted and the Bill assigned for second reading later in today's session.

Ought to Pass as Amended

Report of the Committee on **Legal Affairs** reporting **"Ought to Pass"** as amended by Committee Amendment "A" (S-484) on Bill "An Act to Subject Motorists with Prior Out-of-state Operating-under-the-influence Convictions to the Sentencing Provisions of the State's Operating-under-the-influence Laws" (S.P. 669) (L.D. 1837)

Came from the Senate, with the report read and accepted and the Bill Passed to be Engrossed as amended by Committee Amendment "A" (S-484).

Report was read and accepted. The Bill read once. Committee Amendment "A" (S-484) was read by the Clerk and adopted and the Bill assigned for second reading later in today's session.

Divided Report

Majority Report of the Committee on **Utilities** reporting **"Ought Not to Pass"** on Bill "An Act to Protect the Interests of the Town of Otis in Certain Ponds" (EMERGENCY) (S.P. 630) (L.D. 1747)

Signed:

Senators: VOSE of Washington
CLEVELAND of Androscoggin

Representatives: CLARK of Millinocket
HOLT of Bath
ADAMS of Portland
CASHMAN of Old Town
DONNELLY of Presque Isle
MORRISON of Bangor
AIKMAN of Poland
TAYLOR of Cumberland
KONTOS of Windham

Minority Report of the same Committee reporting **"Ought to Pass"** as amended by Committee Amendment "A" (S-493) on same Bill.

Signed:

Representative: COFFMAN of Old Town

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

Reports were read.

Representative CLARK of Millinocket moved that the House accept the Majority **"Ought Not to Pass"** Report.

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

Divided Report

Majority Report of the Committee on **Utilities** reporting **"Ought Not to Pass"** on Bill "An Act to Permit Scrutiny of Books and Records of Nonutility Generators" (S.P. 645) (L.D. 1804)

Signed:

Senators: VOSE of Washington
CLEVELAND of Androscoggin

Representatives: CLARK of Millinocket
HOLT of Bath
ADAMS of Portland
CASHMAN of Old Town
DONNELLY of Presque Isle
MORRISON of Bangor
AIKMAN of Poland
TAYLOR of Cumberland
KONTOS of Windham

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

Signed:

Representative: COFFMAN of Old Town

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

Reports were read.

Representative CLARK of Millinocket moved that the House accept the Majority "Ought Not to Pass" Report.

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

Non-Concurrent Matter

Bill "An Act to Exempt Owners of Shooting Ranges from any Civil or Criminal Action Relating to Noise Pollution" (H.P. 724) (L.D. 983) on which the Majority "Referred to the Committee on Energy and Natural Resources" Report of the Committee on Fisheries and Wildlife was read and accepted and the Bill referred to the Committee on Energy and Natural Resources in the House on March 23, 1994.

Came from the Senate with the Bill and accompanying papers indefinitely postponed in non-concurrence.

The House voted to Adhere.

COMMUNICATIONS

The following Communication:

COMMITTEE ON APPROPRIATIONS AND FINANCIAL AFFAIRS
ONE HUNDRED AND SIXTEENTH LEGISLATURE

March 23, 1994

Honorable Dennis L. Dutremble, President of the Senate
Honorable Dan A. Gwadosky, Speaker of the House
116th Maine Legislature
State House
Augusta, Maine 04333

Dear President Dutremble and Speaker Gwadosky:

Pursuant to Joint Rule 15, we are writing to notify you that the Joint Standing Committee on Appropriations & Financial Affairs has voted unanimously to report the following bills out "Ought Not to Pass":

- L.D. 1167 An Act Creating the Maine Budget and Economic Stabilization Fund
- L.D. 1759 An Act to Encourage Economic Development Through Investment Incentives for Aquaculture
- L.D. 1903 An Act to Authorize a General Fund Bond Issue in the Amount of \$1,500,000 to Improve National Guard Armories
- L.D. 1977 An Act Proposing a Referendum for the Issuance of General Obligation Bonds to Fund Municipal Infrastructure Improvements

We have also notified the sponsors and cosponsors of each bill listed of the Committee's action.

Sincerely,

S/Sen. Michael D. Pearson S/Rep. Lorraine N. Chonko
Senate Chair House Chair

Was read and ordered placed on file.

The following Communication:

COMMITTEE ON ENERGY AND NATURAL RESOURCES
ONE HUNDRED AND SIXTEENTH LEGISLATURE

March 22, 1994

Honorable Dennis L. Dutremble, President of the Senate
Honorable Dan A. Gwadosky, Speaker of the House
116th Maine Legislature
State House
Augusta, Maine 04333

Dear President Dutremble and Speaker Gwadosky:

Pursuant to Joint Rule 15, we are writing to notify you that the Joint Standing Committee on Energy & Natural Resources has voted unanimously to report the following bills out "Ought Not to Pass":

- L.D. 49 An Act to Set Reasonable Dioxin Levels
- L.D. 1455 An Act Regarding Low-level Radioactive Waste

We have also notified the sponsors and cosponsors of each bill listed of the Committee's action.

Sincerely,

S/Sen. Mark W. Lawrence S/Rep. John L. Martin
Senate Chair House Chair

Was read and ordered placed on file.

The following Communication:

COMMITTEE ON HUMAN RESOURCES
ONE HUNDRED AND SIXTEENTH LEGISLATURE

March 22, 1994

Honorable Dennis L. Dutremble, President of the Senate
Honorable Dan A. Gwadosky, Speaker of the House
116th Maine Legislature
State House
Augusta, Maine 04333

Dear President Dutremble and Speaker Gwadosky:

Pursuant to Joint Rule 15, we are writing to notify you that the Joint Standing Committee on Human Resources has voted unanimously to report the following bills out "Ought Not to Pass":

- L.D. 562 An Act to Reestablish the Maine Committee on Aging
- L.D. 1644 An Act to Provide Support for a

Transitional Living Program in
Cumberland County

- L.D. 1929 Resolve, to Effect the Health and Social Services Transition Team's Recommended Reorganization of the Department of Human Services and the Department of Mental Health and Mental Retardation into a Single Department of Health, Children and Family Services
- L.D. 1955 An Act to Promote a Continuum of Quality and Affordable Long-term Care and to Promote Consumer Choice
- L.D. 1969 Resolve, Pertaining to Assisted Living Services and Boarding Care

We have also notified the sponsors and cosponsors of each bill listed of the Committee's action.

Sincerely,

S/Sen. Judy Paradis
Senate Chair

S/Rep. Sharon Anglin Treat
House Chair

Was read and ordered placed on file.

SPECIAL SENTIMENT CALENDAR

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

Recognizing:

Jonesport-Beals High School Cheerleaders for winning the Runner-up Award in the Class D State Competition; (HLS 885) by Representative LOOK of Jonesboro. (Cosponsor: Senator VOSE of Washington)

On objection of Representative LOOK of Jonesboro, was removed from the Special Sentiment Calendar.

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

Representative LOOK: Mr. Speaker, Ladies and Gentlemen of the House: Today I have as special guests 29 students and coaches from the Jonesport-Beals High School. The first group of students are the cheerleaders who placed as runner-ups in the Class D state competition. These nine girls give very active support to both their girls and boys teams.

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

Captain Sandi Carver, Kristi Carver, Jan Beal, Natalie Fagonde, April Smith, Heidi Stanhope, Michelle Mills, Stacy Beal, Rachael Beal, Crystal Alley, Courtney Bryant, Leah Woodward, Amber Smith and Robin Woodward, of the Jonesport-Beals High School Girls Basketball Team, their managers, Nicole Carver, Timmy Lunn and Amy Faulkingham and their coaches, Duanne Carver, Dwight Carver and Suzanne Carver, for winning the Maine State Class D Championship; (HLS 886) by Representative LOOK of

Jonesboro. (Cosponsors: Senator VOSE of Washington, Representative FARREN of Cherryfield)

On objection of Representative LOOK of Jonesboro, was removed from the Special Sentiment Calendar.

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

Representative LOOK: Mr. Speaker, Ladies and Gentlemen of the House: I am pleased and honored to have as my guests today the Jonesport-Beals High Girls Basketball Team. They have recently won the State Championship in the Class D division. The winning game brought to their school its 10th gold ball trophy. Previously, the boys teams had captured 9 of these trophies but the Royalettes are deserving of claiming this 10th glistening gold.

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

Miss Sandi Carver, of Beals, for her outstanding academic and athletic achievements. Her awards include selections on the McDonald's All Star Teams in the C and D Divisions and the Down East Athletic Conference All Star Team; the Owen Osborne Award as Most Valuable Player in the 1994 Eastern Maine Tournament; and Female Athlete of the Year in 1993 by the National Association of Girls and Women in Sports. She was recently awarded a full four-year Basketball scholarship to the University of Maine at Orono; (HLS 887) by Representative LOOK of Jonesboro. (Cosponsors: Senator VOSE of Washington, Representative FARREN of Cherryfield)

On objection of Representative LOOK of Jonesboro, was removed from the Special Sentiment Calendar.

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

Representative LOOK: Mr. Speaker, Ladies and Gentlemen of the House: Again, I am very proud to have the recognition for Miss Sandi Carver from Beals, Maine for her outstanding achievements in both academics and athletics. You have heard the list of awards, but may I repeat them? Being selected on the McDonald's All Star Teams in the C and D Divisions for four years of secondary school, these awards are for a select group of seniors who have excelled in all academic average of above 92 and the All Star Team in the athletics for basketball. The Downeast Athletic Conference selected her on the All Star Teams for all four years of her high school work. The Owen Osborne Award — she was chosen as the Most Valuable Player in the Eastern Maine Tournament and it goes on. She was selected in 1993 in the top five of the All State Teams sponsored by the Maine Sunday Telegram and another one sponsored by the Bangor Daily News. The National Association of Girls and Women in Sports recognized her as the female athlete of the year in 1993. They also declared her as the Most Outstanding Athletic Role Model.

All of this has earned her the honor of recently being granted a full four year scholarship at the University of Maine in Orono to play for four years on the Lady Black Bears basketball team.

Sandi, congratulations!!!

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

Wayne Newell, of Princeton, former Passamaquoddy Representative to the state Legislature, in appreciation of his dedication and commitment in preserving the culture and heritage of Maine Indians; (HLS 895) by Representative SOCTOMAH of Passamaquoddy Tribe. (Cosponsors: Representative TOWNSEND of Eastport, Representative BAILEY of Township 27, Senator VOSE of Washington, Senator LUDWIG of Aroostook)

On objection of Representative POULIOT of Lewiston, was removed from the Special Sentiment Calendar.

The SPEAKER: The Chair recognizes the Representative from the Passamaquoddy Tribe, Representative Soctomah.

Representative SOCTOMAH: Mr. Speaker, Members of the House: It is my pleasure to present this in regard to Wayne Newell. Wayne Newell is a Passamaquoddy Tribal member who was born at the Pleasant Point Reservation and lived there until he went to Indian Township in 1971.

Wayne hold a Master's in Education from Harvard University and is currently a doctoral student at Boston College where he expects to earn his degree by May of 1995. He is also currently serving as a consultant to the Indian Township School in the field of bilingual/cultural education program development. For the past ten years, Wayne has been president of the Northeast Blueberry Company, a tribal business in Columbia Falls, Maine. He was the director of Indian Health Services for Indian Township from 1978 to 1988 when he resumed work at the Indian Township School.

Wayne has made a lifelong commitment to ensure that the culture and language of the Passamaquoddy people is passed on to future generations. He is committed to improving communication between Indian and non-Indian people, especially in developing greater understanding about the proud heritage of the Native American people of Maine. He speaks the Native Passamaquoddy language fluently and uses English as his second language. He believes that it is in knowing your cultural roots which leads you toward meaningful direction in life.

Wayne worked with several M.I.T. and Harvard linguists to develop a modern writing system for the Passamaquoddy language. This system is being used today in several Native communities in Maine and New Brunswick. He is currently active in a community Native singing and drumming group.

Wayne was also appointed by President Jimmy Carter to serve as one of the fifteen Native people on the National Advisory Council on Indian Education. He served for four years in the Maine Legislature as the Tribal Representative, following in the footsteps of his great-grandfather, Lewy Mitchell, who was a Tribal Representative in 1880. He has been a Tribal Council member of both Pleasant Point and Indian Township.

Wayne has been affiliated with the University of Maine System for many years in a variety of roles. He served on the University's Commission on Pluralism and helped to develop the exciting Mawiyane (translated "Let Us Journey Together") partnership

between Indian Township and the University of Maine-Machias. Currently, Wayne is deeply involved in the Native Studies Planning Committee at the Orono Campus.

Wayne Newell is a man recognized by Native and non-Native citizens as a spokesman and role model for both the Passamaquoddy people and the larger community of citizens everywhere.

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

CONSENT CALENDAR

First Day

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

(S.P. 482) (L.D. 1480) Bill "An Act to Reduce Energy Costs and Improve the State's Air Quality" Committee on **Banking & Insurance** reporting "Ought to Pass" as amended by Committee Amendment "A" (S-485)

(H.P. 1278) (L.D. 1726) Bill "An Act to Modify the Workers' Compensation Board Assessment" (EMERGENCY) Committee on **Labor** reporting "Ought to Pass" as amended by Committee Amendment "A" (H-903)

(H.P. 1405) (L.D. 1914) Bill "An Act to Clarify the Opportunity for Small Employers to Purchase Health Insurance" (EMERGENCY) Committee on **Banking & Insurance** reporting "Ought to Pass" as amended by Committee Amendment "A" (H-904)

There being no objections, the above items were ordered to appear on the Consent Calendar of later in today's session under the listing of Second Day.

CONSENT CALENDAR

Second Day

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

(S.P. 705) (L.D. 1902) Bill "An Act Regarding Registration for the Provision of Substance Abuse Counseling Services" (C. "A" S-479)

(H.P. 1110) (L.D. 1506) Bill "An Act to Amend the Laws Governing Municipal Elections" (C. "A" H-901)

(H.P. 1214) (L.D. 1633) Bill "An Act to Amend the Provisions Relating to Mental Examination and Observation of Persons Accused of a Crime" (C. "A" H-897)

(H.P. 1322) (L.D. 1784) Bill "An Act to Amend the Laws Regarding Protective Custody" (C. "A" H-896)

(H.P. 1342) (L.D. 1809) Bill "An Act to Promote the Continued Use of Private Lands for Recreation" (C. "A" H-895)

(H.P. 1377) (L.D. 1864) Bill "An Act to Enable Parents to Retain Custody in Voluntary Placements" (C. "A" H-902)

(H.P. 1438) (L.D. 1964) Bill "An Act to Continue Election Reform Efforts" (Governor's Bill) (C. "A" H-900)

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

BILLS IN THE SECOND READING

As Amended

Bill "An Act Concerning Child Sexual Abuse Laws" (H.P. 919) (L.D. 1243) (C. "A" H-898)

Bill "An Act to Ensure Appropriate and Equitable Penalties for Violation of Electoral Laws" (H.P. 1311) (L.D. 1766) (C. "A" H-830)

Bill "An Act Relating to Access for People with Disabilities" (H.P. 1321) (L.D. 1783) (C. "A" H-894)

Bill "An Act Concerning Municipally Owned and Operated Solid Waste Incinerators" (S.P. 690) (L.D. 1876) (C. "A" S-481)

Bill "An Act to Provide Equity in the Laws Concerning Tax Exemptions for Veterans" (H.P. 1413) (L.D. 1923) (C. "A" H-837)

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

Bill "An Act Creating the York County Budget Advisory Committee" (H.P. 1351) (L.D. 1817) (C. "A" H-872)

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

On motion of Representative MURPHY of Berwick, was set aside.

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

ENACTORS

An Act to Authorize the Artisans School to Grant Degrees (S.P. 691) (L.D. 1877) (C. "A" S-434)

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

On motion of Representative COFFMAN of Old Town, tabled pending passage to be enacted and later today assigned.

UNFINISHED BUSINESS

The following matters, in the consideration of which the House was engaged at the time of adjournment yesterday, have preference in the Orders of the Day and continue with such preference until disposed of as provided by Rule 24.

HOUSE DIVIDED REPORT - Majority (9) "Ought to Pass" as amended by Committee Amendment "A" (H-845) - Minority (4) "Ought Not to Pass" - Committee on Business Legislation on Bill "An Act to License Athletic Trainers" (H.P. 536) (L.D. 720) TABLED - March 22, 1994 (Till Later Today) by Representative HOGLUND of Portland. PENDING - Motion of same Representative to accept the Majority "Ought to Pass" as amended Report.

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

The Bill read once. Committee Amendment "A" (H-845) was read by the Clerk and adopted. The Bill assigned for second reading later in today's session.

HOUSE DIVIDED REPORT - Majority (7) "Ought Not to Pass" - Minority (4) "Ought to Pass" as amended by Committee Amendment "A" (H-855) - Committee on Legal Affairs on Bill "An Act to Assist in Crime Prevention" (H.P. 1041) (L.D. 1393) TABLED - March 22, 1994 (Till Later Today) by Representative DAGGETT of Augusta. PENDING - Motion of same Representative to accept the Majority "Ought Not to Pass" Report.

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

Representative DONNELLY: Mr. Speaker, Ladies and Gentlemen of the House: I would hope that the House would reject the Majority "Ought Not to Pass" Report so we could go on and accept the Minority Report.

In the Minority Report there is an amendment and if we were voting on that right now, I would be able to tell you a little bit more about it. If we were voting on that right now, I would tell you that in that report there is contained flexibility for the courts to suspend licenses, but we are not talking about that right now. If we were talking about that right now, I would tell you that it has a similarity to existing law in what we suspend licenses right now and it is a logical progression from where we are today.

Today if a minor is caught with one bottle of beer in their vehicle while they are driving, their license is suspended. Why you may ask? It is because it is illegal for a minor to possess alcohol - I guess you could say that alcohol is an illegal drug for minors.

What this bill attempts to do is to provide another tool for the State Police and law enforcement agents to suspend licenses of those who traffick and

distribute drugs for profit. A driver's license is not a right, it is a privilege that is given to all of us or those of over the legal age limit set by the state and that privilege should not be extended to those who profit from poisoning children and stealing the hopes and dreams of families.

I would hope that you would join me today in overturning the Majority "Ought Not to Pass" Report and going on and extending the State Police another tool in their fight against crime and the distribution of a poison called illegal drugs. I hope we have an opportunity to discuss fully without a glare from the Speaker the merits of the Minority Report, when it is before us.

Representative Bennett of Norway requested a roll call.

The SPEAKER: The Chair recognizes the Representative from Washington, Representative Bowers.

Representative BOWERS: Mr. Speaker, Men and Women of the House: Back on June 4, 1991, this body voted to opt out of the provisions that the federal DOT appropriations stipulated in 1990 that all states must adopt and enforce license revocation procedures for anyone convicted of violation of the Controlled Substances Act or any drug offense. But, unlike previous attempts at coercion of states, this mandate introduced a state opt-out provision. On June 4, 1991, and I have right here in my folder, a letter from the Governor dated August 13, 1991 to Samuel Skinner, Secretary of the United States Department of Transportation, saying that the legislature had chosen to opt out of this provision.

We have a history of saying that these drug offenses are not related to whether somebody can drive their car or not. If somebody is convicted of a drug crime when they are using their car, they can already lose their car by the Drug Forfeiture Act.

I would encourage you to accept the Majority "Ought Not to Pass" Report.

The SPEAKER: The Chair recognizes the Representative from Caribou, Representative Robichaud.

Representative ROBICHAUD: Mr. Speaker, Ladies and Gentlemen of the House: I would ask you to vote against the pending motion so we can go on and accept the Minority "Ought to Pass" as amended Report.

This bill, as was stated before, would give law enforcement an additional tool. This would allow if someone is trafficking in (I believe the term is) "scheduled drugs" using their vehicle, then at the court's discretion, could find their license forfeited.

This is an appropriate use of removing the right to a driver's license in the State of Maine because we are tying the trafficking of illegal drugs to operation of the vehicle. Also, as my colleague on the Legal Affairs Committee, Representative Bowers stated, the legislature might have taken an Act in 1991, but we are the legislature of 1994. We have a measure in front of us and we have to decide if this is something that we want to give our law enforcement people so they will be able to better protect the public health and the public safety. Is this something that we want to do in an effort to reduce the amount of drugs in our community, illegal drugs, and those who would sell them to our friends, neighbors, and children? That is the decision before us and I believe there is an effective tool in this bill.

I would also take this moment to recall part of our history in this country — we had a famous

criminal figure, I believe his name was Al Capone, and Al Capone was brought down by a little technicality, shall we say. This king pin in the organized crime area was brought down by failing to file his income tax. I consider that a success for law enforcement. If we go on to defeat the "Ought Not to Pass" Report and then accept the "Ought to Pass" as amended Report, we will give law enforcement the ability to bring down those drug dealers in our community by one more tool, taking away their right to drive. Please oppose the pending motion.

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

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

Representative TRUE: Mr. Speaker, Colleagues of the House: Although my name appears on the Majority "Ought Not to Pass" Report, I believe that to be a mistake and so I am speaking on behalf of the Minority Report.

For many years, I taught in the area of Driver Education and I cannot think of anything that is more sacred to the young people, not only in this state but other states, than their license. I can tell you that it seems from the reports that I've read that we don't seem to be making the headway dealing with drugs that we should. It may be because of the fact that we are only slapping wrists rather than doing something that is concrete. Therefore, I would ask you to certainly defeat this motion and go on to approve the Minority Report.

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

Representative DAGGETT: Mr. Speaker, Ladies and Gentlemen of the House: I would suggest to you that we have here again another issue in which the consideration of suspending a license is being linked to an activity that has nothing to do with your ability to drive a car.

We had an earlier issue that again dealt with this major policy issue of whether we wished to pull a license for a non-driving related offense, an offense for which there is already a penalty. It is an illegal act to be caught trafficking in drugs and I would remind you that this is not possession, the bill only affects trafficking.

The other things which can happen is that you can actually have your car taken away from you so there already is substantial penalties, so adding in the license suspension is an additional penalty. You would need to believe that somehow the thought of being convicted of trafficking and of losing your car is not reason to stop trafficking but that somehow having your driver's license suspended is a greater threat. I think if we want to look at a driver's license and the privilege and whether we want to pass a general law that allows the courts to suspend a license for any offense, then perhaps that is what we ought to look at instead of tacking this on to every Tom, Dick and Harry criminal offense that we see happening.

I hope that you will support the Majority "Ought Not to Pass" Report.

I would just repeat what Representative Bowers said earlier — because this is a rural state and we understand how important a driver's license is, we are very reluctant to run around pulling licenses. Several years ago, a Resolution was passed by this legislature to not pull drivers' licenses for this very offense for the reasons that a license is important and it does not have any relationship to trafficking in drugs, so I hope you will support the Majority "Ought Not to Pass" Report.

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

Representative BAILEY: Mr. Speaker, Ladies and Gentlemen of the House: I won't speak a long time on this issue but I would just like to state that in my career in law enforcement, the last 9 years in drug enforcement, people just don't realize the devastating effects that drug dealers have on this state. I personally believe that they prey on the younger folk to get them to do a lot of their dealing for them. There is no question that the driver's license is a very necessary tool for a person to have in this state and the young people would feel lost without a driver's license. They would do anything to be able to keep their driver's license. I personally signed onto the bill because I feel that we can keep a lot of young people from getting involved in drugs if we had this as a tool.

I would urge your support.

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

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

The question I have is, if my memory serves me correctly, a few years ago we passed a law in this state giving State Police officers training to be able to go out there to determine if I am driving under the influence of drugs — we didn't have that capability before that. I have forgotten now just which session it was in, I think it was probably the 114th or somewhere there about, so my question is, wouldn't this just be something that we should do to add on to that bill, that if they can arrest us for driving under the influence of drugs, they should also be available to arrest them for trafficking and take their license for both things and not just one?

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

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

Representative DONNELLY: Mr. Speaker, Ladies and Gentlemen of the House: To answer the good Representative's question, yes. This is logical progression from where the state stands now and I would hope that you would endorse on that.

Let me spell a few things out for you that have been said. Representative Bowers, and reaffirmed by Representative Daggett, pointed out to this body that in 1991, a legislature that I was part of, voted to opt out of a federal law, which would have asked us to make every drug offense a reason to suspend a driver's license. This bill does not do that.

This bill does have the length that the opponents have said needs to be existent. The amendment in the Minority Report, if we were talking about it now and I wish we could go thoroughly through it, links directly to the driver of the vehicle who has an amount of illegal scheduled drugs, which is defined

by law for the amounts of distribution and trafficking. The reason that the simple possession that Representative Daggett talked about is not included in this bill was not my choice. I was very flexible in this bill in working with the Legal Affairs Committee — for one thing, I thought it was a good idea and if you are not flexible, things just don't get passed. Secondly they had a good point, the length of driving a car is clearly established in that.

The point was made — well, it is a rural state and it will be really difficult for people to distribute drugs if they had their driver's license taken away — that was not exactly the point, but it made that point. I think that is the best endorsement we have with this bill today. If living in a rural state and taking someone's driver's license away is going to make it more difficult for them to poison our children, then I think it is a great thing. Boy, I don't think there is anything we could do today to the drug dealers of this state that would be too harsh. This is a small step and if it hinders the further distribution of drugs, then it is a good one.

I would like to read a portion of a letter from the Maine Chiefs of Police Association. I won't read the whole two pages, you have it in front of you. This is from the Chief of the Chiefs and I quote: "Drugs, for the most part, find their way from one point in our state to another by means of motor vehicle transportation. It makes good sense and I think good law to have a license suspension tool in place to deter and/or stop illegal transportation of controlled substances. If the legislature is serious about reducing drug trafficking problems in Maine, they should provide the law enforcement community with every legal tool they can to accomplish this purpose." Then he went on to thank us for our consideration.

I hope that you will join me in defeating this motion so we can go on to make it more difficult for the drug dealers in this state to operate. There are over 860 some odd cases a year that this could affect. It is not something that would have no effect.

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

Representative FAIRCLOTH: Mr. Speaker, Colleagues of the House: I rise in support of the Majority "Ought Not to Pass" Report. I had the experience, certainly not as much as Representative Bailey had in the prosecution of drug cases and the handling of drug cases, but I did have some experience in that regard and was cross-designated to handle federal and state cases.

I would be happy to support this concept if I thought it would do something to fight drugs in this state. I think I have a record that certainly is consistent with that; however, they already have, as others have pointed out, a forfeiture provision where you can actually take somebody's car in many cases for using that car in the course of a drug transaction. I think as a practical matter that very few people are going to look up their 17a M.R.S.A. and say, aha, now they can suspend my license in addition to taking my car, therefore, I will not engage in this conduct whereas I would have before — I just don't think that logic really applies.

I notice that people have raised the comparison to the so-called deadbeat dad law, a name which I don't

like, but it is a license suspension in cases where people don't pay their child support. There is a very dramatic distinction between those two situations. Nobody's license has been suspended yet in the case of the child support law because what they do is they provide warnings. They send out warnings to people and they get a lot of money to help a lot of children so the idea to suspend licenses is to provide incentive for people to pay child support and it works. I don't see how that is going to be effective here. It is just going to be something that is on the books that the average run-of-the-mill criminal, if you will, is not going to be aware of, one way or the other. It doesn't show any real nexus between driver's licenses and these actions. I think we should use the driver's license suspension hammer, if you will, in very rare, limited cases so I would love to support the concept if I thought it would really help us in terms of diminishing drug crimes but I am very skeptical that it would. Therefore, I support the Majority Report.

The SPEAKER: The Chair recognizes the Representative from Washington, Representative Bowers.

Representative BOWERS: Mr. Speaker, Ladies and Gentlemen of the House: I would just like to point out if we follow some of the logic we have heard here today, if a person used their car to go rob a bank, we would have to figure out a way to suspend their driver's license. If a person used their car to go home and beat their spouse, we would have to suspend their driver's license and if a person used their car to go to commit any kind of crime, we should suspend their driver's license. I think we ought to be suspending driver's licenses when somebody is driving to endanger, driving under the influence, drugs or alcohol, there is a clear danger and hazard on the highway.

The SPEAKER: The Chair recognizes the Representative from Bucksport, Representative Swazey.

Representative SWAZEY: Mr. Speaker, Men and Women of the House: I would just like to let the previous speaker know that I would vote for that amendment — sure, why not?

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

Representative BAILEY: Mr. Speaker, Men and Women of the House: I would just like to follow up on the good Representative Faircloth's statement and I recognize that in his position as a federal prosecutor, he didn't see many cases where this would have an effect. But, you ask the local prosecutors on the state level if they feel it would have an impact, I am sure they would say yes because they are dealing with the cases where the young people are constantly being brought into court. There is no question that this state is looking at alternative types of sentencing and these young people feel more about their driver's license than they do anything else when they first get one.

I feel that during the driver ed program if this was brought out to them that dealing drugs is going to mean they will lose their license for five years, there is no question that this is going to have an impact and I think it is an ideal opportunity to use an alternative type sentencing in these cases.

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

Representative ALIBERTI: Mr. Speaker, Men and Women of the House: I urge you to support the

passage of this legislation only because you have heard that song before and not too long ago about the use of this very effective method of licensure, the privilege of driving a car, connected with some of the very serious violations and some of the serious conditions that accompany all society today in which we have been able to do little or nothing about it.

This is the concept that I begged for this select committee and their chairs to introduce as a method of really effectively presenting some of the legal ramifications of violating drugs, alcohol, and even arms.

I wished I had a similar support for the Maine Chiefs of Police Association when I made this same pitch yesterday. That should encourage us to go even further. They would not take a stand in regard to the use of arms but they have taken a fairly strong stand in their communication to us in support of this legislation.

I hope that we do get the support of this illustrious body so that the concept will be one that could be addressed in the future again, especially on the concerns that I had in my legislation yesterday.

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

Representative DONNELLY: Mr. Speaker, Men and Women of the House: Representative Bowers made a statement that was posed sort of like a question about linking this to the dangerous operation of a vehicle. I don't think there is anymore lethal operation of a motor vehicle than to distribute something that is going to kill hundreds of people and that is illegal drugs. I think there is a direct link and it is a very dangerous proposition and anything we can do to stop that distribution should be done today.

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

Representative CLUKEY: Mr. Speaker, Ladies and Gentlemen of the House: I hope you will reject the "Ought Not to Pass" motion so we can go on and pass the bill. It would remain to be seen just how much of an impact this may have. It may not have a tremendous impact but it would just be driving another small nail in the coffin of the drug dealers in the State of Maine. I would like to go on Record as hoping to drive that nail. Hopefully over a period of time, we can drive enough nails to close that cover for good.

Representative BENNETT of Norway requested a roll call on the motion to accept the Majority "Ought Not to Pass" Report.

The SPEAKER: The pending question before the House is the motion of the Representative from Augusta, Representative Daggett, 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. 265

YEA - Adams, Beam, Bowers, Brennan, Caron, Carroll, Cashman, Cathcart, Chase, Cloutier, Constantine, Cote, Daggett, DiPietro, Dore, Erwin, Faircloth, Farnsworth, Fitzpatrick, Gamache, Gean, Gray, Hale, Heeschen, Hognlund, Holt, Jacques, Joseph, Kontos, Larrivee, Lemke, Lipman, Melendy, Michael, Mitchell, E.; Mitchell, J.; Nadeau, O'Gara, Oliver, Paradis, P.; Pfeiffer, Pinette, Poulin, Rand, Ricker,

Rowe, Ruhlin, Saxl, Simonds, Stevens, K.; Townsend, G.; Tracy, Treat, Walker, Wentworth.

NAY - Ahearne, Aikman, Aliberti, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Birney, Bruno, Campbell, Carleton, Carr, Chonko, Clark, Clukey, Coffman, Coles, Cross, Dexter, Donnelly, Driscoll, Dutremble, L.; Farnum, Farren, Foss, Gould, R. A.; Greenlaw, Hatch, Heino, Hichborn, Hussey, Jalbert, Johnson, Joy, Kerr, Kilkelly, Lemont, Libby Jack, Libby James, Lindahl, Lord, MacBride, Marsh, Marshall, Martin, J.; Michaud, Morrison, Murphy, Nash, Nickerson, Norton, Ott, Pendexter, Pendleton, Pineau, Plourde, Pouliot, Reed, G.; Reed, W.; Richardson, Robichaud, Rotondi, Rydell, Simoneau, Skoglund, Small, Spear, Stevens, A.; Strout, Swazey, Taylor, Thompson, Townsend, E.; Townsend, L.; True, Tufts, Vigue, Whitcomb, Winn, Young, Zirnkilton.

ABSENT - Cameron, Clement, Hillock, Ketterer, Kneeland, Kutasi, Look, Martin, H.; Plowman, Saint Onge, Sullivan, Tardy, The Speaker.

Yes, 55; No, 83; Absent, 13; Paired, 0; Excused, 0. 55 having voted in the affirmative and 83 in the negative, the Majority "Ought Not to Pass" Report was not accepted.

Representative BENNETT of Norway moved that the House accept the Minority "Ought to Pass" Report.

On motion of Representative GEAN of Alfred, tabled pending the motion of Representative BENNETT of Norway to accept the Minority "Ought to Pass" Report and later today assigned.

Bill "An Act Regarding Cable Television" (H.P. 1096) (L.D. 1483)

TABLED - March 22, 1994 (Till Later Today) by Representative MARTIN of Eagle Lake.

PENDING - Adoption of Committee Amendment "A" (H-836).
On motion of Representative CLARK of Millinocket, tabled pending adoption of Committee Amendment "A" (H-836) and later today assigned.

Bill "An Act to Increase the County Share of the Real Estate Transfer Tax" (H.P. 464) (L.D. 601) (C. "A" H-854)

TABLED - March 22, 1994 (Till Later Today) by Representative MITCHELL of Vassalboro.

PENDING - Passage to be Engrossed.
On motion of Representative DORE of Auburn, the Bill and all accompanying papers were recommitted to the Committee on Taxation.

Expression of Legislative Sentiment recognizing Andy Bedard, member of the 1994 Mountain Valley High School Basketball Team in Rumford (HLS 877).

TABLED - March 22, 1994 by Representative ERWIN of Rumford.
PENDING - Passage.

On motion of Representative ERWIN of Rumford, tabled pending passage and specially assigned for Friday, March 25, 1994.

Expression of Legislative Sentiment recognizing members of the Mountain Valley High School "Falcons" Basketball Team in Rumford (HLS 879).

TABLED - March 22, 1994 by Representative ERWIN of Rumford.
PENDING - Passage.

On motion of Representative ERWIN of Rumford, tabled pending passage and specially assigned for Friday, March 25, 1994.

HOUSE DIVIDED REPORT - Majority (9) "Ought Not to Pass" - Minority (4) "Ought to Pass" as amended by Committee Amendment "A" (H-843) - Committee on Appropriations and Financial Affairs on RESOLUTION, to Amend the Constitution of Maine Regarding the Rainy Day Fund (H.P. 234) (L.D. 302)

TABLED - March 22, 1994 by Representative CHONKO of Topsham.
PENDING - Motion of same Representative to accept the Majority "Ought Not to Pass" Report.

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

HOUSE DIVIDED REPORT - Majority (8) "Ought to Pass" as amended by Committee Amendment "A" (H-849) - Minority (5) "Ought Not to Pass" - Committee on State and Local Government on Bill "An Act to Separate Peaks Island and Certain Other Islands in Casco Bay from the City of Portland" (EMERGENCY) (H.P. 1082) (L.D. 1448)

TABLED - March 22, 1994 by Representative JOSEPH of Waterville.

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

On motion of Representative JOSEPH of Waterville, tabled pending her motion to accept the Majority "Ought to Pass" as amended Report and specially assigned for Friday, March 25, 1994.

HOUSE DIVIDED REPORT - Majority (9) "Ought Not to Pass" - Minority (4) "Ought to Pass" as amended by Committee Amendment "A" (H-856) - Committee on State and Local Government on RESOLUTION, Proposing An Amendment to the Constitution of Maine to Provide for the Election of a Lieutenant Governor and to Provide for Succession to the Office of Governor (H.P. 1422) (L.D. 1936)

TABLED - March 22, 1994 by Representative JOSEPH of Waterville.

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

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

Representative LEMKE: Mr. Speaker, Ladies and Gentlemen of the House: I urge you to vote against the pending motion so that we can move on to consider the Minority Report.

This legislation provides for the popular election of a Lieutenant Governor to succeed the Governor if

that office is vacated. There is one simple, basic, compelling reason to effect this Constitutional change. It is the most democratic method of succession and that is the reason why almost every state in the United States or territory of the United States has a Lieutenant Governor.

Most of you have or are in the process of receiving a list passed out by Representative Ahearne and you will see on that that it does not matter if a state, big or small, is traditionally Republican or Democratic or whatever its cultural economic history is, whatever the state, you will have to look very hard to find one that does not have a popular elected Lieutenant Governor.

We do not have a case here where as the old saying goes, "As Maine goes, so goes the nation" — it probably would be more appropriate to say in this case, "that as Puerto Rico goes, so goes Maine" except even that wouldn't be appropriate because Puerto Rico has a popularly elected Secretary of State who would succeed.

The overwhelming preference for a Lieutenant Governor elected by the people is because it means if succession is necessary, it will go to an individual with a statewide popular base. That is in accord with our democratic tradition. It is what the federal government by the U.S. Constitution has done for over 200 years. Despite all the bad jokes that we hear every four years about Vice Presidents, it is a good system and a proper system if succession is necessary.

In Maine, succession goes to the President of the Senate, which means that it would go to an individual with a constituency of about 35,000 Mainers out of a total population of one and quarter million or to be exact (I worked it out with Representative Norton who has more knowledge in math, as he demonstrated yesterday, than I do) it would be 35,714, that's how many people are represented by the succession now.

This legislation is not an aspersion about the quality of gubernatorial successors under the present system. Historically, some have been good, some have been bad, some have been indifferent, that's not the point. The point is that the Lieutenant Governor system is better, it strengthens the popular base of government. That is the bottom line.

A second reason to support this change is that it would better assure that the individual who succeeds is more familiar with the duties and demands of the office upon succession.

A third reason that I will not belabor was stated earlier in this session and that is that this would eliminate all questions whatsoever arising out of the question of popular vote for presiding officers in both Houses.

I do not urge this change simply to be in accord with other states. Being different isn't bad, I have been known to be different from time to time. Uniqueness is valuable if it contributes something extra — in this case, it does not. This is not a partisan change, it is neither a liberal nor conservative change but I hope you will agree that it is a change that accords with simple common sense. I, therefore, urge you not to be distracted by a peripheral concern but to vote red on the pending motion.

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

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

To the previous speaker, Representative Lemke, what are the duties going to be of the Lieutenant Governor and secondly, what do you intend to pay the Lieutenant Governor?

The SPEAKER: The Representative from Winslow, Representative Vigue, has posed a question through the Chair to Representative Lemke, who may respond if he so desires.

The Chair recognizes that Representative.

Representative LEMKE: Mr. Speaker, Men and Women of the House: To respond to that question, the experience in the states which have a Lieutenant Governor (which is most of them) is that the duties are defined at the discretion of the Governor, the same process we have on the national level or they are defined later by enabling legislation. About half of the states have done that and about half of the states have not.

I don't want to leave the impression, that is the reason I mentioned the Vice President earlier, that this is a guy that is going to be sitting around waiting for the Governor to die, be impeached or removed and isn't doing anything. In all of the states who have Lieutenant Governors, according to the Book of States, it is a position that turns out to be very valuable. The individual takes up a lot of, not only the ceremonial duties, which I might say Governors are sometimes distracted by, but that individual also is in accord with and works with the Governor or as a liaison for the legislature. I am not trying to avoid the question but I am saying by practice that is developed with the Governor and by enabling legislation of the legislature to answer the first question.

The second question, how much Lieutenant are Governor's paid? That varies by states and that is determined by the legislature and enabling legislation. The variation for a state the size of Maine is in the range of \$15,000 to \$35,000. That also is something which traditionally in a Constitutional Amendment is not included. You can't think of any on the U.S. level or the state level where you do it, that is done by enabling legislation.

I hope I have answered as fully as I can but it really is something that is determined once the people have enacted this by amendment.

The Chair recognizes the Representative from Lisbon, Representative Jalbert.

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

I know the questions on duties and salaries has already been answered but the next question I want to ask the gentlemen is, what happens to the succession if the Lieutenant Governor upon the demise of the Governor takes over, who then follows the succession if, unfortunately, you lose the Lieutenant Governor?

The SPEAKER: The Representative from Lisbon, Representative Jalbert, has posed a question through the Chair to Representative Lemke who may respond if he so desires.

The Chair recognizes that Representative.

Representative LEMKE: Mr. Speaker, Ladies and Gentlemen of the House: The Representative must apologize because he does not have the legislation in front of him but I believe it is the Secretary of State. If I am in error, hopefully someone who has it right in front of them can answer that.

The Chair recognizes the Representative from Lisbon, Representative Jalbert.

Representative JALBERT: Mr. Speaker, Ladies and Gentlemen of the House: That's exactly why I asked that question.

The good Representative from Westbrook said that the President of the Senate is elected only by 35,000 people and takes over as Governor — yet, now he is saying that if unfortunately we lose the Governor and the subsequent Lieutenant Governor, you will have the Secretary of State who is elected by the House and Senate — that's it. There is probably 180 votes who would pick the next Governor.

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

Representative BENNETT: Mr. Speaker, Friends and Colleagues of the House: I think Representative Vigue went right to the heart of the matter here when he asked the question about the duties and the compensation for Lieutenant Governor.

I would have liked to have supported this bill. I cosponsored it with the idea that perhaps we could have worked out some of the concerns I had with the draft but, for one reason or another, we did not do that in committee.

In my view, we should not be creating, particularly in these times, new high level positions in state government with the certain expenditures and the certain staff costs and the cost of the office and what not without spelling out to the people who have to vote on this exactly what it is going to cost them and exactly what the functions of this new position are. One alternative that I had hoped we would have pursued would have been to consider, as is done in other states, popular election of the Secretary of State and even perhaps having that person run on the ticket with the gubernatorial candidate and have that person succeed to the governorship so that we would know we are getting something for the money. To leave it up to a very questionable, perhaps sometimes trying, relationship between the Governor and a proposed Lieutenant Governor to determine the effectiveness of that position and to leave it up to future legislatures to determine what that position is going to cost in terms of compensation and additional staffing, additional office space, etcetera, I think will not give the voters much to choose from when this matter goes before them.

I encourage you to accept the pending motion of "Ought Not to Pass."

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

Representative AHEARNE: Mr. Speaker, Ladies and Gentlemen of the House: Given the unstable nature of the vote today, I think it is imperative that Maine have a clear line of succession established in the event of natural disasters, of accidents that incapacitate that results in the death of our Governor. Most states have an elected Lieutenant Governor to fill in for the Governor when the Governor is out-of-state or becomes incapacitated.

With the current amount of out-of-state travel required by modern Governors to help obtain jobs for our state, to represent the state in meetings with federal officials in Washington, it is vital that we have a second in command who has been elected by the people of Maine to fill in for the Governor. It is also essential that we have established a formal line of succession that will permit an orally transition in the event of some type of disaster or other events

that incapacitate both the Governor and the Lieutenant Governor.

As part of this process, the Lieutenant Governor should be attached with some specific functions such as sharing certain task forces, oversight of certain agencies so as to give him or her specific work to perform when not filling in for the Governor. In addition, the Lieutenant Governor's position will permit the individual to obtain experience that would be useful should the Lieutenant Governor become elected Governor or succeeds the Governor.

I ask you to reject the Majority "Ought Not to Pass" Report and go on and pass the Minority Report.

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

Representative KILKELLY: Mr. Speaker, Ladies and Gentlemen of the House: One of the reasons that I supported this piece of legislation in committee is because I think there is a real difference between the President of the Senate or eventually the Speaker of the House becoming Governor if the Governor were unable to fulfill his or her role and that has to do with the difference in the nature of those positions. I think it makes sense if we are going to have someone who is going to succeed in a position that they ought to have some experience in doing that. We, by design, are a part-time legislature. Even our presiding officers to a great degree are part-time people who have a particular role to play. A Lieutenant Governor would be in a position to work on a daily basis with the Governor and would be in a very logical position to assume the responsibilities of Governor on either a short-term or long-term basis in a very orderly manner. One of the most critical pieces of this legislation is that it would present the people with an opportunity to popularly elect the person. Secondly, it would provide this person with an opportunity to work with the Governor so if there was, again either a short-term or long-term need for that person to assume those duties, would not be going in and learning everything new but taking over and working on a job that they are already familiar with. I think that that makes a great deal of sense.

Regarding the duties and responsibilities being outlined, the current Constitution in terms of the position of Governor, talks about what the qualifications are for the Governor in terms of age and how long the person has been a citizen. Under Compensation it says, "The Governor shall at stated times receive for services a compensation that shall not be increased or diminished during the Governor's continuance in office." There certainly is no dollar amount and that is something that needs to be decided at a later time, if the people determine that they wish in fact for this to be part of our government.

It talks about the Governor being the Commander in Chief or to appoint officers — there is no clear outline of duties, just as there would not be a clear outline of duties in terms of the Lieutenant. That's something that needs to be worked out and, again, there may be a particular issue that the Lieutenant Governor — maybe it is a person who has a strong background in education or someone who has a strong background in environmental issues and they would take on some of those tasks for the Governor.

I would ask you to reject the current motion so we could go on to accept this and give the people of this state — all we are asking is to give the people of this state an opportunity to express their opinion.

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

Representative AHEARNE: Mr. Speaker, Ladies and Gentlemen of the House: To further answer Representative Jalbert's question, it falls from Governor to Lieutenant Governor to the President of the Senate and down to the Speaker of the House.

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

Representative LEMKE: Mr. Speaker, Ladies and Gentlemen of the House: I would like to congratulate the Representative from Lisbon who succeeded in doing something which for 20 years my students haven't done — he caught me not doing my homework and I am glad that the Representative from Madawaska could clarify that with what the actual line of succession is.

I would like to direct two questions through the Chair to the Representative from Norway.

First in regard to the salary of the individual — to my knowledge, referendum items or state constitutions do not specifically include that. I would like him to clarify if he is aware of states where that is specifically done. I don't believe there is a precedent for that.

Secondly, I know the old saying that "a foolish consistency is the hobgoblin of small minds" but it strikes me that the Representative from Norway is being somewhat inconsistent when he has been, up to now, consistently in favor of the popular election of constitutional officers, the Secretary of State, the Attorney General, the State Treasurer — why, if this is the case, is he so inhibited about having the person who will succeed the position of Governor also have that popular base?

The SPEAKER: The Representative from Westbrook, Representative Lemke, has posed a series of questions through the Chair to the Representative from Norway, Representative Bennett, who may respond if he so desires.

The Chair recognizes that Representative.

Representative BENNETT: Mr. Speaker, Friends and Colleagues of the House: I appreciate the opportunity and I also appreciate the uncharacteristic interest in my position on various issues.

I would like to respond by saying, first of all, that I think I made it clear to the Representative from Westbrook and others who have been participating in this debate that my preference would be to have an office such as the Secretary of State popularly elected and have that person either run on a ticket with the gubernatorial candidate or not but have that position succeed the governorship. I think that is a good idea and that is why I cosponsored the bill. Unfortunately, the State and Local Government Committee, when we talked about it, wasn't very supportive of that concept in the committee.

I am not aware of any other states that spell out the particulars of compensation or function within constitutional amendments, I think that is irrelevant. I think what we need to provide the people is a clear sense of what the legislature deems appropriate with respect to this position, what we have in mind for it. It became very clear within the committee that there was a great disparity of views on that issue. It seemed logical to me that we come to some consensus through some kind of process about the creation of the Lieutenant Governor's position, not just to create another position of state government with salaries, perks, benefits, staff and

resources but to determine exactly what the consensus was to do with that position.

I think we have a great burden to show the people of Maine when we send this question out to them to show why we need a position when we seem to have done well without one so far. I am willing to accept that burden if we address specifically what we expect out of the Lieutenant Governor. I also question whether or not there was much interest in committee in working out some of these details because this is traditionally an emergency session and we deal with pressing matters of business that we couldn't have dealt with in the original session. Unfortunately, we found ourselves with such a short time to deal with this issue which I don't consider an emergency but was willing to work on it. So, I believe that we should consider these things, that we should take a look at this position in perhaps the next legislature and come up with some recommendations on these things before we send it to the voters.

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

Representative KILKELLY: Mr. Speaker, Ladies and Gentlemen of the House: Again, I just want to clarify that all this bill does is allow the people of this state an opportunity to decide if they believe that this position is a necessary position or not. If the people of this state do decide that, then we will come back and we will put together the necessary legislation and implement it. If they don't, then we won't. It is just an opportunity for them to decide, the most democratic process that we have, it merely offers them that opportunity.

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.

A question to either Representative Lemke or any of the other supporters of the bill — as I read it rather quickly, it appears to me that this measure would require that a voter cast a single vote for both candidates, Governor and Lieutenant Governor, which seems like somewhat of a curious return to what we used to call "the big box" and I wonder if anyone supporting this measure would correct me if I am wrong?

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 Westbrook, Representative Lemke.

Representative LEMKE: Mr. Speaker, Ladies and Gentlemen of the House: I would be pleased to respond to that.

What it does is what we already have on the national level, when you vote for the President, you vote for the Vice President, it is somewhat confusing when it says single vote. That is what in effect it does, that is the trend in states throughout the country as far as Lieutenant Governor relative to Governor, that they are vote together concurrently.

I hope that answers the question.

I would request 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: A roll call has been ordered. 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 of that motion will vote yes; those opposed will vote no.

ROLL CALL NO. 266

YEA - Adams, Aikman, Anderson, Ault, Bailey, H.; Bailey, R.; Bennett, Birney, Bowers, Carleton, Carr, Cashman, Cathcart, Chase, Chonko, Cloutier, Clukey, Coles, Cross, Daggett, Dexter, Dore, Dutremble, L.; Erwin, Faircloth, Farnsworth, Farnum, Farren, Fitzpatrick, Foss, Gamache, Gean, Gray, Greenlaw, Hale, Hatch, Heeschen, Heino, Hichborn, Hoglund, Holt, Jacques, Jalbert, Johnson, Joseph, Joy, Kerr, Ketterer, Kontos, Lemont, Libby James, Lindahl, Lipman, Look, MacBride, Marshall, Melendy, Michaud, Mitchell, E.; Mitchell, J.; Murphy, Nadeau, Nickerson, O'Gara, Oliver, Ott, Pendexter, Pendleton, Pineau, Pinette, Poulin, Rand, Reed, G.; Reed, W.; Ricker, Robichaud, Rotondi, Ruhlin, Rydell, Saint Onge, Saxl, Simonds, Skoglund, Small, Stevens, A.; Swazey, Taylor, Thompson, Townsend, E.; Townsend, G.; Townsend, L.; Treat, Tufts, Wentworth, Whitcomb, Young, Zirkilton.

NAY - Ahearne, Aliberti, Barth, Beam, Brennan, Bruno, Campbell, Caron, Carroll, Clark, Clement, Coffman, Constantine, DiPietro, Donnelly, Driscoll, Gould, R. A.; Hussey, Kilkelly, Larrivee, Lemke, Libby Jack, Lord, Marsh, Martin, J.; Michael, Morrison, Nash, Norton, Paradis, P.; Pfeiffer, Plourde, Pouliot, Richardson, Rowe, Simoneau, Stevens, K.; Strout, Tracy, True, Vigue, Walker, Winn.

ABSENT - Cameron, Cote, Hillock, Kneeland, Kutasi, Martin, H.; Plowman, Spear, Sullivan, Tardy, The Speaker.

Yes, 97; No, 43; Absent, 11; Paired, 0; Excused, 0.

97 having voted in the affirmative and 43 voted in the negative, with 11 being absent, the Majority "Ought Not to Pass" Report was accepted and sent up for concurrence.

HOUSE DIVIDED REPORT - Majority (11) "Ought Not to Pass" - Minority (2) "Ought to Pass" as amended by Committee Amendment "A" (H-857) - Committee on State and Local Government on RESOLUTION, Proposing an Amendment to the Constitution of Maine to Provide for the Recall of Persons Holding Elective Civil Offices (H.P. 1402) (L.D. 1911)

TABLED - March 22, 1994 by Representative JOSEPH of Waterville.

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

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

Representative LEMKE: Mr. Speaker, Ladies and Gentlemen of the House: I do urge you to vote against the pending "Ought Not to Pass" motion so we can move on to the amended bill.

This legislation corrects a significant omission in Maine's Constitution by providing for the Recall of state elected officials. Many municipalities already provide for Recall and legislation was passed last year that provides municipal discretion under basic guidelines.

Recall is a proven democratic procedure that allows citizens to remove elected officials for abuse of office during their terms of office. There is a handout which attempts at least to answer basic questions. I will not elaborate at length but I will point out that most states have some form of Recall procedure. Many Maine citizens assume that we have it and are surprised to find out that we do not. To anticipate the question of whether this is not a crisis or anybody cares, I can assure you that over the last four years I have had literally hundreds of individuals ask me if we have Recall and express amazement that we have no provision whatsoever in the State Constitution.

Why it is okay on the municipal level but not for higher office is beyond my ability to argue nor would I attempt to justify it to the voters. The argument that is sometimes made that our impeachment provision in the State Constitution is adequate simply does not stand scrutiny. While polls, editorials and citizen comments reflects overwhelming support for a Recall amendment, I candidly believe that opposition is rooted in fear. It is rooted in a fear by some elective politicians that it will be used indiscriminately and unfairly. I can assure you that this legislation is very carefully crafted on the basis of actual use of Recall nationally for about 100 years. There are a whole series of safeguards involving petition signature thresholds, which is extremely high, the reasons for Recall which are stated on both the petitions and ballots - many states do not require it, it would be required here and so on to guard against the frivolous or abusive usage of Recall. It prevents abuse but also abuse of elective politicians.

I stress - an official cannot in this bill be Recalled because of a controversial vote cast. Whether your vote is on whatever, that cannot be used as a reason. The Recall there is the traditional Recall we've always had every two years if the voters like it or don't like it. This bill does not allow that kind of approach.

As one professional politician said, "You have nothing to fear but fear itself" as far as this bill is concerned and is a basic accountability measure, it is not focused on one office, it is for all offices, it is both progressive and prudent and I sincerely believe that its passage would do much to restore the credibility of our state government on the elective level. I, therefore again, urge you to vote against the pending motion, to vote red, so we can enact the Minority Report and ultimately give the people of Maine a chance to be heard on this issue in referendum.

Mr. Speaker, I request 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 Madawaska, Representative Ahearne.

Representative AHEARNE: Mr. Speaker, Ladies and Gentlemen of the House: As part of our efforts to increase citizen involvement in all sectors of government and to restore citizens' confidence in state and local government, this legislation to permit the Recall of state and county officials would serve to empower the citizens of Maine to act as the final judges of the performance of these elected officials. Under this legislation, we as elected Representatives, along with other elected officials, will be held accountable for our actions or lack of actions during our entire tenure of office rather than just at election time at the expiration of our terms.

This legislation is clearly in the best interest of good government and should help to restore public confidence in our elected officials. We here in the legislature talk about good government and restoring of public confidence in government and now we have the opportunity to demonstrate to the people of this state that we truly mean what we have been saying. Failure on our part to enact this legislation will send a clear message to the people that we do not want the people of this state to have the ability to remove those individuals who in the eyes of the public fail to represent the people rather than special interest.

I will vote for this measure because I believe that the people in my district and of the entire state must be given the right to express their displeasure of the actions and/or conduct of their elected officials. If California can permit Recall of officials as they have done since the inception of the California Constitution, there is no reason that Maine citizens should not have the same right as the citizens of California and many other states. If we really intend to restore public confidence and increase public participation in government, we should and must enact this legislation. I hope you join me to reject the Majority Report.

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

Representative JOSEPH: Mr. Speaker, Ladies and Gentlemen of the House: I would ask you to accept the Majority "Ought Not to Pass" Report, but with all due respect to the good Representative from Westbrook, Representative Lemke, who believes fervently in these constitutional amendments as well as good government issues, I understand that. I also supported last year the Recall statute in this body but this a Resolution proposing an amendment to the Constitution. Two nights ago, I argued in favor of a Constitutional Convention and because we seem to have this deluge of Constitutional Amendments to the State and Local Government Committee, I believe that we need a well planned structure of government, be it any of the items that we have considered previously or even in this item.

The reason I voted against this bill this time is that the public has spoken, the people who wrote to you and I, we are now limited as legislators to serve four two-year terms and I believe that because we go back to the public every two years that they will have the opportunity to accept or reject our candidacy for office.

If we are thinking of the Governor, the Governor is limited to two four-year terms and the committee did consider the county officers and the amendment

does include county officers. However, I believe that the ballot box does actually deal with the issues. If there is an emergency situation, Article IV, Part 3rd, Section 4 allows the legislature to expel its own members and to judge that member on an offense and there is a process for that. With considering all of that, it was our feeling that the majority of the committee would vote "Ought Not to Pass."

Again, in deference to Representative Lemke, his research is good, his reasons are good, it is difficult for me to oppose him but in this instance, I feel strongly that we should not amend the Constitution with this Recall provision.

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

Representative LOOK: Mr. Speaker, Men and Women of the House: There is one factor that I want to bring to your attention relating to Recall.

If a person is subject to Recall and they are found innocent of the charges, the stigma is always there. This is always going to be damaging to them. Please remember that as you vote.

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

Representative LEMKE: Mr. Speaker, Men and Women of the House: To respond to the good Representative from Jonesboro about the stigma and how it may preclude an individual's future, I would simply point out that one of the first people Recalled in the United States was the Attorney General of North Dakota, whose name happened to be William Lemke. That individual was subsequently elected to the United States Congress and had a very long and distinguished career, so evidently it was not prejudicial to his career.

I do want to point out again that this legislation is very carefully crafted to prevent exactly the type of fears expressed here from materializing. I would also point out Recall is not used excessively, indiscriminately or prejudicially according to the historical records. In all the time in 100 years, there have been a number of states who had Recall and only one Governor has been Recalled and only a handful of state legislators have been Recalled and that is because most states have sufficient standards within the Recall procedure to prevent that kind of abuse.

So again I have to say, I understand your concerns and I am not into legislative brutalizing after we have had term limits, but this is actually a very prudent, democratic (with a small d) type of legislation.

I would also like to respond to the good Representative from Waterville because I also don't like to disagree with her because we are largely in agreement. She did point out, as well as the Representative from Eagle Lake a couple of nights ago, that one of the reasons we need a Constitutional Convention is because we failed to pass amendments constitutionally in this House. If anybody understands or sympathizes with that, I suppose I would stand forward on that but nevertheless I would like to give the system one more chance to demonstrate that we somehow have the ability to put our own House in order to pass Constitutional Amendments. Perhaps in fact we don't and perhaps again we will demonstrate that, but I certainly urge support to vote against the pending motion.

The SPEAKER: A roll call has been ordered. The pending question before the House is the motion of the Representative from Waterville, Representative Joseph, 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. 267

YEA - Aikman, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Birney, Campbell, Carleton, Cathcart, Chonko, Clark, Clukey, Coles, Constantine, Cote, Cross, Dexter, Donnelly, Dutremble, L.; Erwin, Faircloth, Farnum, Farren, Foss, Gean, Gray, Greenlaw, Heino, Hichborn, Hoglund, Hussey, Jalbert, Joseph, Joy, Kneeland, Larrivee, Lemont, Libby Jack, Lindahl, Lipman, Look, Lord, MacBride, Marsh, Marshall, Melendy, Michaud, Murphy, Nadeau, Nickerson, Norton, Ott, Pendexter, Pfeiffer, Pineau, Pinette, Poulin, Reed, W.; Richardson, Ricker, Robichaud, Rowe, Ruhlin, Rydell, Saxl, Simonds, Spear, Stevens, A.; Stevens, K.; Strout, Swazey, Taylor, Thompson, Townsend, L.; True, Tufts, Vigue, Walker, Whitcomb, Young, Zirkilton, The Speaker.

NAY - Adams, Ahearne, Aliberti, Beam, Bowers, Brennan, Bruno, Caron, Carr, Carroll, Cashman, Chase, Clement, Coffman, Daggett, DiPietro, Dore, Driscoll, Farnsworth, Fitzpatrick, Gamache, Gould, R. A.; Hale, Hatch, Heeschen, Holt, Jacques, Johnson, Kerr, Ketterer, Kilkelly, Lemke, Libby James, Martin, J.; Michael, Mitchell, E.; Mitchell, J.; Morrison, Nash, O'Gara, Oliver, Paradis, P.; Pendleton, Plourde, Pouliot, Rand, Reed, G.; Rotondi, Saint Onge, Simoneau, Skoglund, Small, Townsend, E.; Townsend, G.; Tracy, Treat, Wentworth.

ABSENT - Cameron, Cloutier, Hillock, Kontos, Kutasi, Martin, H.; Plowman, Sullivan, Tardy, Winn.

Yes, 84; No, 57; Absent, 10; Paired, 0; Excused, 0.

84 having voted in the affirmative and 57 in the negative, with 10 being absent, the Majority "Ought Not to Pass" Report was accepted and sent up for concurrence.

Resolve, to Require That Doctors of Chiropractic Be Included as Select Physicians in the Maine State Employees Health Plan (EMERGENCY) (H.P. 1071) (L.D. 1437)

TABLED - March 22, 1994 by Representative PINEAU of Jay.

PENDING - Adoption of Committee Amendment "A" (H-859).

On motion of Representative PINEAU of Jay, tabled pending adoption of Committee Amendment "A" (H-859) and specially assigned for Friday, March 25, 1994.

Bill "An Act to Create the Great Salt Bay Utility District" (H.P. 1336) (L.D. 1799) (C. "A" H-825)

TABLED - March 22, 1994 by Representative KILKELLY of Wiscasset.

PENDING - Passage to be Engrossed.

Representative KILKELLY of Wiscasset moved that the Bill be tabled one legislative day.

The same Representative withdrew her motion to table the Bill one legislative day.

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

Bill "An Act Regarding Access to Property via Discontinued Roads" (H.P. 1238) (L.D. 1665)

TABLED - March 22, 1994 by Representative WHITCOMB of Waldo.

PENDING - Adoption of Committee Amendment "A" (H-809) (Division Requested)

On motion of Representative WHITCOMB of Waldo, tabled pending adoption of Committee Amendment "A" (H-809) and specially assigned for Friday, March 25, 1994. (Division Requested)

SENATE DIVIDED REPORT - Majority (6) "Ought Not to Pass" - Minority (3) "Ought to Pass" - Committee on Banking and Insurance on Bill "An Act to Permit Short-term Health Insurance Policies" (S.P. 716) (L.D. 1938)

- In Senate, Majority "Ought Not to Pass" Report read and accepted.

TABLED - March 22, 1994 by Representative JACQUES of Waterville.

PENDING - Acceptance of Either Report.

On motion of Representative PINEAU of Jay, the Majority "Ought Not to Pass" Report was accepted and sent up for concurrence.

SENATE DIVIDED REPORT - Majority (8) "Ought Not to Pass" - Minority (5) "Ought to Pass" as amended by Committee Amendment "A" (S-466) - Committee on State and Local Government on Bill "An Act to Change the Selection Process for the State Auditor and More Closely Align the Work of the Joint Standing Committee on Audit and Program Review with the Work of the State Auditor" (S.P. 694) (L.D. 1880)

- In Senate, Majority "Ought Not to Pass" Report read and accepted.

TABLED - March 22, 1994 by Representative JOSEPH of Waterville.

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

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

Representative JOSEPH: Mr. Speaker, Ladies and Gentlemen of the House: I would ask that you support the Majority "Ought Not to Pass" Report.

The bill has been changed significantly and only deals with qualifications and criteria dealing with the State Auditor, so it has no effect on the Audit and Program Review Committee.

The amendment replaces the bill and changes the provisions of current law governing the section in terms of the State Auditor. This amendment actually provides for a 7-year term of office for the Auditor and requires the nomination by the Governor and a confirmation by a two-thirds vote of the House and the other body.

The amendment also establishes a limit of a one 7-year term for the State Auditor and this change

would take effect in 1996. With all of that said, it was a feeling of the majority of the members of the committee that it was questionable and did we want to extend the term to 7 years, did we want the nomination to be by the Chief Executive of the State, did we want the confirmation to be by two-thirds of each of the bodies? After all those questions were asked, I guess the answer was no.

The current State Auditor appeared before us, gave several reasons why the Governor should not nominate the State Auditor and one being is that the State Auditor does audit the Executive Branch of government in the departments and agencies. Is that too close a relationship when the Governor would nominate that Auditor even though it would have to be confirmed by the House and the other body? As you deliberate on these questions, I would hope that you would come to the same answers that the State and Local Government Committee did and vote to accept the Majority "Ought Not to Pass" Report.

Representative LIBBY of Buxton requested a roll call.

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

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

Representative ROWE: Mr. Speaker, Ladies and Gentlemen of the House: I am on the Minority "Ought to Pass" as amended Report and I wanted to explain why.

There is chiefly one reason and that is because this was amended by the Special Commission on Governmental Restructuring which issued this report in 1991. I spoke with a couple of members of that commission, members from my party, about this report.

The commission felt that having the Auditor appointed by the Governor with a concurrence of two-thirds in each House would strengthen the positions of Auditor and they felt it would make the Auditor immuned from charges of partisan politics. We have in the bill one term, a seven year term, and this is analogous to members of the Judiciary. At the federal level, we have a Comptroller General which has a similar selection procedure and the term of office for the Comptroller General is a 14 year term and that is to basically make that person immuned from partisan politics and to strengthen the position.

We have had quality Auditors in the past and I know that this bill would take effect at the end of the term of the current Auditor. It would take effect December of 1996.

Again, this is only one of many recommendations made by the Special Commission, which was a bipartisan commission of (I think) very distinguished Maine citizens from around the state. They felt strongly about this recommendation or at least the people I talked to did. I would ask for your consideration and I would ask that you defeat the pending motion so we can go on to accept the Minority "Ought to Pass" as amended Report.

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

Representative ERWIN: Mr. Speaker, Ladies and Gentlemen of the House: As we all know, we have three branches of government and if we allow this bill to pass, we will not have the checks and balances that we now have because the State Auditor will be appointed by one of the branches of the government. I feel very strongly about this that the

Auditor should continue to be selected the way he is presently being selected. Because we have not had a problem with regards to partisan politics, an Auditor is an Auditor.

The SPEAKER: A roll call has been ordered. The pending question before the House is the motion of the Representative from Waterville, Representative Joseph, 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. 268

YEA - Adams, Ahearne, Aliberti, Beam, Bowers, Caron, Carroll, Cashman, Cathcart, Chase, Chonko, Clark, Clement, Cloutier, Coffman, Coles, Constantine, Cote, Cross, Daggett, DiPietro, Dore, Driscoll, Dutremble, L.; Erwin, Farnsworth, Fitzpatrick, Gamache, Gean, Gould, R. A.; Gray, Hale, Hatch, Heeschen, Heino, Hichborn, Hogle, Holt, Hussey, Jacques, Jalbert, Johnson, Joseph, Joy, Kerr, Ketterer, Kilkelly, Kontos, Larrivee, Lemke, Look, Melendy, Michaud, Mitchell, E.; Mitchell, J.; Morrison, Murphy, Nadeau, Norton, O'Gara, Oliver, Paradis, P.; Pfeiffer, Pineau, Pinette, Plourde, Poulin, Pouliot, Rand, Ricker, Rotondi, Ruhlin, Rydell, Saint Onge, Saxl, Simonds, Skoglund, Spear, Stevens, A.; Stevens, K.; Strout, Swazey, Tardy, Thompson, Townsend, E.; Townsend, G.; Townsend, L.; Tracy, Treat, Vigue, Walker, Wentworth, Winn.

NAY - Aikman, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Birney, Brennan, Bruno, Campbell, Carleton, Carr, Clukey, Dexter, Donnelly, Faircloth, Farnum, Farren, Foss, Greenlaw, Kneeland, Kutasi, Lemont, Libby Jack, Libby James, Lindahl, Lipman, Lord, MacBride, Marsh, Michael, Nash, Nickerson, Ott, Pendexter, Pendleton, Reed, G.; Reed, W.; Richardson, Robichaud, Rowe, Simoneau, Small, Taylor, True, Tufts, Whitcomb, Young, Zirkilton.

ABSENT - Cameron, Hillock, Marshall, Martin, H.; Martin, J.; Plowman, Sullivan, The Speaker.

Yes, 93; No, 50; Absent, 8; Paired, 0; Excused, 0. 93 having voted in the affirmative and 50 in the negative, with 8 being absent, the Majority "Ought Not to Pass" Report was accepted in concurrence.

The House recessed until 4:00 p.m.

(After Recess)

The following items were taken up out of order by unanimous consent:

CONSENT CALENDAR

First Day

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

(H.P. 1069) (L.D. 1435) Bill "An Act to Guarantee Equal Access and Nondiscrimination to All Students Enrolled in Approved Equivalent Instruction Programs"

Committee on Education reporting "Ought to Pass" as amended by Committee Amendment "A" (H-910)

(H.P. 1431) (L.D. 1956) Bill "An Act to Revise the Laws of Maine to Incorporate the Office of Rehabilitation Services within the Department of Education" (EMERGENCY) (Governor's Bill) Committee on Education reporting "Ought to Pass" as amended by Committee Amendment "A" (H-909)

There being no objections, the above items were ordered to appear on the Consent Calendar of Friday, March 25, 1994 under the listing of Second Day.

REPORTS OF COMMITTEES

Ought to Pass as Amended

Representative PINEAU from the Committee on Banking & Insurance on Bill "An Act Related to Multiple-employer Welfare Arrangements" (H.P. 1122) (L.D. 1521) (Governor's Bill) reporting "Ought to Pass" as amended by Committee Amendment "A" (H-917)

Report was read and accepted. The bill read once. Committee Amendment "A" (H-917) was read by the Clerk and adopted and the bill assigned for second reading Friday, March 25, 1994.

CONSENT CALENDAR

First Day

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

(H.P. 829) (L.D. 1115) Bill "An Act to Require Insurers to Obtain Written Consent from the Policy Owner before Transferring a Policy to Another Insurer" Committee on Banking & Insurance reporting "Ought to Pass" as amended by Committee Amendment "A" (H-916)

(H.P. 1193) (L.D. 1590) Resolve, to Preserve the Competitiveness of Maine's Existing Business and Industry and to Preserve the Ability of the State to Attract New Investment by Petitioning for Removal from the Ozone Transport Region (EMERGENCY) Committee on Energy & Natural Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (H-911)

There being no objections, the above items were ordered to appear on the Consent Calendar of Friday, March 25, 1994 under the listing of Second Day.

CONSENT CALENDAR

Second Day

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

(S.P. 482) (L.D. 1480) Bill "An Act to Reduce Energy Costs and Improve the State's Air Quality" (C. "A" S-485)

(H.P. 1278) (L.D. 1726) Bill "An Act to Modify the Workers' Compensation Board Assessment" (EMERGENCY) (C. "A" H-903)

(H.P. 1405) (L.D. 1914) Bill "An Act to Clarify the Opportunity for Small Employers to Purchase Health Insurance" (EMERGENCY) (C. "A" H-904)

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

BILLS IN THE SECOND READING

As Amended

Bill "An Act to Create Statewide Arrest Powers for Municipal Law Enforcement Officers" (S.P. 415) (L.D. 1324) (S. "A" S-487 to C. "A" S-463)

Was reported by the Committee on Bills in the Second Reading, read the second time, the Senate Paper was Passed to be Engrossed as Amended in concurrence.

Bill "An Act to License Athletic Trainers" (H.P. 536) (L.D. 720) (C. "A" H-845)

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

On motion of Representative COLES of Harpswell, was set aside.

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

Bill "An Act to Subject Motorists with Prior Out-of-state Operating-under-the-influence Convictions to the Sentencing Provisions of the State's Operating-under-the-influence Laws" (S.P. 669) (L.D. 1837) (C. "A" S-484)

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

On motion of Representative BOWERS of Washington, was set aside.

On further motion of the same Representative, the House reconsidered its action whereby Committee Amendment "A" (S-484) was adopted.

The same Representative presented House Amendment "A" (H-923) to Committee Amendment "A" (S-484) which was read by the Clerk and adopted.

Committee Amendment "A" (S-484.) as amended by House Amendment "A" (H-923) thereto was adopted.

The Bill was passed to be engrossed as amended by Committee Amendment "A" (S-484) as amended by House Amendment "A" (H-923) thereto in non-concurrence and sent up for concurrence.

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

SENATE PAPERS

Ought to Pass as Amended

Report of the Committee on **Judiciary** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (S-501) on Bill "An Act to Expedite the Establishment of Administrative Child Support Orders" (S.P. 488) (L.D. 1499) (Governor's Bill)

Came from the Senate, with the report read and accepted and the Bill Passed to be Engrossed as amended by Committee Amendment "A" (S-501).

Report was read and accepted. The Bill read once. Committee Amendment "A" (S-501) was read by the Clerk and adopted and the Bill assigned for second reading Friday, March 25, 1994.

Ought to Pass as Amended

Report of the Committee on **Judiciary** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (S-499) on Bill "An Act to Clarify Maine Corporate Laws" (S.P. 615) (L.D. 1713)

Came from the Senate, with the report read and accepted and the Bill Passed to be Engrossed as amended by Committee Amendment "A" (S-499).

Report was read and accepted. The Bill read once. Committee Amendment "A" (S-499) was read by the Clerk and adopted and the Bill assigned for second reading Friday, March 25, 1994.

Ought to Pass as Amended

Report of the Committee on **Business Legislation** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (S-490) on Bill "An Act to Clarify and Make Technical Changes to Various Professional Licensing Board Laws" (S.P. 720) (L.D. 1942) (Governor's Bill)

Came from the Senate, with the report read and accepted and the Bill Passed to be Engrossed as amended by Committee Amendment "A" (S-490).

Report was read and accepted. The Bill read once. Committee Amendment "A" (S-490) was read by the Clerk and adopted and the Bill assigned for second reading Friday, March 25, 1994.

CONSENT CALENDAR

First Day

(S.P. 309) (L.D. 942) Bill "An Act to Amend the Adoption Laws" Committee on **Judiciary** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (S-495)

(S.P. 562) (L.D. 1597) Bill "An Act to Provide for Consistent Data Collection" Committee on **Banking & Insurance** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (S-503)

(S.P. 598) (L.D. 1657) Bill "An Act to Amend the Probate Code with Respect to Powers of Fiduciaries" Committee on **Judiciary** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (S-500)

(S.P. 680) (L.D. 1860) Bill "An Act to Amend the Law Pertaining to the Appointment of a Guardian Ad Litem in Contested Proceedings" (EMERGENCY) Committee on **Judiciary** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (S-498)

(S.P. 681) (L.D. 1861) Bill "An Act Concerning Registered Apprenticeship Programs" Committee on **Labor** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (S-489)

(S.P. 687) (L.D. 1873) Bill "An Act to Facilitate Collection of Tolls on the Maine Turnpike" Committee on **Transportation** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (S-494)

(S.P. 692) (L.D. 1878) Bill "An Act to Improve Methods of Dispute Resolution of the Maine Human Rights Commission" Committee on **Judiciary** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (S-497)

(S.P. 707) (L.D. 1904) Bill "An Act to Establish the Maine Surplus Energy Auction Program" (Governor's Bill) Committee on **Utilities** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (S-491)

(S.P. 747) (L.D. 1976) Bill "An Act Relating to Pardons" Committee on **Judiciary** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (S-496)

There being no objections, the above items were ordered to appear on the Consent Calendar of Friday, March 25, 1994 under the listing of Second Day.

ENACTORS

Emergency Measure

An Act to Clarify the Role and Purpose of the Maine State Retirement System (S.P. 466) (L.D. 1458) (C. "A" S-475)

Was reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 116 voted in favor of the same and 0

against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

Emergency Measure

An Act to Modify the Manufacture of Motor Vehicle Registration Plates (H.P. 1217) (L.D. 1636) (C. "A" H-819)

Was reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 120 voted in favor of the same and 0 against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

Emergency Measure

An Act Imposing Real Estate Transfer Tax on Nongovernmental Entities in Transactions Involving Governmental Entities (H.P. 1333) (L.D. 1796) (C. "A" H-814)

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

On motion of Representative DORE of Auburn, tabled pending passage to be enacted and specially assigned for Friday, March 25, 1994.

Emergency Measure

An Act to Amend the Charter of the Berwick Sewer District (H.P. 1360) (L.D. 1839) (C. "A" H-823; H. "A" H-828)

Was reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 120 voted in favor of the same and 0 against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

Emergency Measure

An Act to Correct the Implementation of Recent Changes to the Retirement Laws (S.P. 698) (L.D. 1896) (C. "A" S-474)

Was reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 120 voted in favor of the same and 0 against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

Emergency Measure

An Act to Establish a New Valuation on Sears Island (S.P. 703) (L.D. 1900) (C. "A" S-451)

Was reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 125 voted in favor of the same and 0 against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

Emergency Measure

An Act to Remove the Sunset Provision from the Limitation on Liability for Recycling Activities by Municipalities and Regional Associations (S.P. 712) (L.D. 1927)

Was reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 111 voted in favor of the same and 0 against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

Mandate

An Act to Make Changes to the Public Utilities Commission Laws (S.P. 574) (L.D. 1616) (C. "A" S-465)

Was reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. In accordance with the provisions of Section 21 of Article IX of the Constitution, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 114 voted in favor of the same and 6 against, and accordingly the Mandate was passed to be enacted, signed by the Speaker and sent to the Senate.

Mandate

An Act to Reduce the Property Tax Burden in Androscoggin County (S.P. 641) (L.D. 1788) (C. "A" S-457)

Was reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. In accordance with the provisions of Section 21 of Article IX of the Constitution, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 120 voted in favor of the same and 0 against, and accordingly the Mandate was passed to be enacted, signed by the Speaker and sent to the Senate.

An Act to Establish a Study Group on Energy and the Environment (H.P. 278) (L.D. 356) (C. "A" H-826)

An Act to Reinstate the State Eye Care Program (S.P. 576) (L.D. 1620) (C. "A" S-477)

An Act Concerning Health Insurance (S.P. 582) (L.D. 1626) (C. "A" S-441)

An Act Concerning Level I and Level II Educational Technicians (H.P. 1212) (L.D. 1631) (C. "A" H-811)

An Act to Provide for Uniform Fees Paid to Registers of Deeds for the Filing of Secured Transactions (S.P. 660) (L.D. 1828) (C. "A" S-458)

An Act to Make Allocations from the Maine Turnpike Authority Funds to the Maine Turnpike Authority for the Fiscal Year Ending December 31, 1995 (S.P. 686) (L.D. 1872) (C. "A" S-462)

An Act to Amend the Laws Governing Refuse Disposal Districts (H.P. 1401) (L.D. 1910)

Resolve, Directing the Bureau of General Services to Study the Capitol Complex (S.P. 640) (L.D. 1774) (C. "A" S-467)

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

An Act to Enable the Use of Former Exit 5 on the Maine Turnpike for Access to an Adjacent Liquor Store and Hotel and Conference Center Facility (S.P. 594) (L.D. 1653) (C. "A" S-448)

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

On motion of Representative O'GARA of Westbrook, was set aside.

On further motion of the same Representative, tabled pending passage to be enacted and specially assigned for Friday, March 25, 1994.

An Act Concerning the Payment of Medical Expenses in Controverted Workers' Compensation Cases (S.P. 605) (L.D. 1703) (C. "A" S-471)

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

On motion of Representative COFFMAN of Old Town, was set aside.

On further motion of the same Representative, tabled pending passage to be enacted and specially assigned for Friday, March 25, 1994.

An Act Authorizing the Commissioner of Inland Fisheries and Wildlife to Award 5 Moose Hunting Permits through Public Auction to Fund Youth Conservation Education Programs (S.P. 661) (L.D. 1829) (Governor's Bill) (C. "A" S-437)

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

On motion of Representative Clark of Millinocket, was set aside.

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

Representative CLARK: Mr. Speaker, Men and Women of the House: As I debated in the House some time ago on this bill, I think it is the poorest way to fund anything, to use any kind of lottery, particularly the moose lottery or whatever it may be to fund this good group. I am very much in favor of the group, I just think it is a poor way to do it. I don't think it is the right way the state ought to be going. I think the department could find the money. If it is that important, I think the Department of Fisheries and Wildlife could come up with \$25,000.

Mr. Speaker, I request 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 Bethel, Representative Barth.

Representative BARTH: Mr. Speaker, Ladies and Gentlemen of the House: This bill on its first vote passed overwhelmingly and I hope you will stick to the vote you made then.

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

Representative CLARK: Mr. Speaker, Ladies and Gentlemen of the House: A little bird whispered in my ear that this is a poor way to fund any department of conservation. Yes, it was a good vote the last time but I think you really didn't understand what took place. You know you are going to use the moose herd, even though it is only five, to fund this program, I don't think it is the right way to go, I think the department has the money, they could find the money if they really need to and we ought to be sending a message to the department not to use our moose herd to fund any kind of educational program.

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

Representative LEMKE: Mr. Speaker, Ladies and Gentlemen of the House: Two days ago this was a ludicrous bill and it is still a ludicrous bill. I urge you to vote against it.

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

Representative HEINO: Mr. Speaker, Ladies and Gentlemen of the House: I disagree with the last two Representatives who think this is a ludicrous bill and a poor way to do business. This is done in a number of states with other species of animals. In some areas, auctions brings in as much as \$50,000 or \$75,000 for some of these permits.

The five people that will be hunting these animals most likely are going to be people who are interested in only trophy animals, they won't be the normal road hunter as I am when I hunt moose. They will be going off into the hinterlands looking for the most humongous moose that they can find to qualify for the boon club. I don't have any problem, as I stated before, because the end result of those five moose is going to be the same whether we do this in an auction

fashion or we do it through the regular lottery as we have done in the past.

I hope that you will continue to give this bill the support that you did in the last round.

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

Representative MORRISON: Mr. Speaker, Ladies and Gentlemen of the House: Isn't it a bit of an oxymoron to kill a moose for conservation?

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

Representative TRACY: Mr. Speaker, Ladies and Gentlemen of the House: Stop and consider what this bill is actually doing. The only ones who can afford this is the richest of the rich, it is not going to be the people in Franklin County that I represent or northern Kennebec or lower Androscoggin that work for the minimum wage. This bill is set out for the richest of the rich, not for the people of the State of Maine, so please keep that in mind.

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

ROLL CALL NO. 269

YEA - Aliberti, Ault, Bailey, H.; Bailey, R.; Barth, Beam, Bennett, Birney, Bruno, Caron, Carroll, Cathcart, Clement, Cloutier, Coffman, Coles, Dexter, DiPietro, Driscoll, Dutremble, L.; Erwin, Farnum, Foss, Gould, R. A.; Greenlaw, Hatch, Heino, Hichborn, Hoglund, Holt, Jacques, Ketterer, Kilkelly, Kontos, Larrivee, Libby James, Lipman, Look, Lord, MacBride, Marshall, Melendy, Michael, Mitchell, E.; Mitchell, J.; Murphy, Nadeau, Norton, Paradis, P.; Pendexter, Pendleton, Pinette, Plourde, Plowman, Poulin, Rand, Reed, G.; Reed, W.; Richardson, Rotondi, Rowe, Ruhlin, Rydell, Saint Onge, Simonds, Simoneau, Skoglund, Spear, Stevens, K.; Swazey, Tardy, Taylor, Townsend, G.; True, Tufts, Vigue, Walker, Whitcomb, Winn, Young.

NAY - Adams, Ahearne, Aikman, Anderson, Bowers, Brennan, Cameron, Campbell, Carr, Cashman, Chase, Chonko, Clark, Clukey, Constantine, Cote, Cross, Daggett, Donnelly, Faircloth, Farnsworth, Farren, Fitzpatrick, Gamache, Gray, Hale, Heeschen, Hussey, Jalbert, Johnson, Joseph, Joy, Kneeland, Lemke, Lemont, Libby Jack, Lindahl, Martin, J.; Michaud, Morrison, Nash, Nickerson, O'Gara, Oliver, Ott, Pfeiffer, Pineau, Pouliot, Robichaud, Saxl, Stevens, A.; Strout, Sullivan, Thompson, Townsend, E.; Townsend, L.; Tracy, Wentworth, Zirnkilton.

ABSENT - Carleton, Dore, Gean, Hillock, Kerr, Kutasi, Marsh, Martin, H.; Ricker, Small, Treat, The Speaker.

Yes, 80; No, 59; Absent, 12; Paired, 0; Excused, 0. 80 having voted in the affirmative and 59 in the negative, with 12 being absent, the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

By unanimous consent, all matters having been enacted were ordered sent forthwith.

SENATE DIVIDED REPORT - Majority (10) "Ought to Pass" as amended by Committee Amendment "A" (S-468) - Minority (3) "Ought Not to Pass" - Committee on Taxation on Bill "An Act to Encourage Municipal Investment in Local Economic Development Projects" (EMERGENCY) (S.P. 647) (L.D. 1806) TABLED - March 23, 1994 (Till Later Today) by Representative DORE of Auburn. PENDING - Motion of same Representative to accept the Minority "Ought Not to Pass" Report.

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

Representative DORE: Mr. Speaker, Ladies and Gentlemen of the House: It is rare that the Chairman of a Committee finds himself in a minority of 3 but I was told by Representative Tardy that truth, God, and justice were on our side and we certainly hope that today that that will be the case.

We are making an impassioned argument against the majority position in favor of the Minority "Ought Not to Pass" Report and our argument is based, not on tax policy because this is an economic development tax bill and I have no fault with that, no problem with that, it is that the construction of this bill shelters increased valuations in municipal development zones, so-called mid-zones, to protect school subsidy and municipal revenue sharing. In other words, it adversely impacts upon your school funding formula. It completely turns it upside down whenever a mid-zone is developed.

The signers of the Majority "Ought to Pass" Report could find no way around that. It is true that they have done an amendment that basically protects communities in a School Administrative District impacting one another and they have left communities in an SAD whole. In other words, one town in an SAD doesn't harm another town in an SAD with a mid-zone but it doesn't do anything about the fact that relative to the other communities in the state, all of the other communities in the state, when you develop a mid-zone, you are impacting on the educational funding formula, which we know already has been tremendously harmed by the fact that we haven't been able to fully fund the educational funding formula. So you are going to have to decide in this case between your interests in economic development, which, as you know, the Taxation Committee has done a number of bills advocating economic development and your interest in fairness in school funding.

Those of us on the Minority Report felt very strongly that the Education Committee wasn't comfortable with what we had done and we weren't going to be comfortable with it.

On motion of Representative NADEAU of Saco, tabled pending the motion of Representative DORE of Auburn, to accept the Minority "Ought Not to Pass" Report and later today assigned.

HOUSE DIVIDED REPORT - Majority (9) "Ought to Pass" as amended by Committee Amendment "A" (H-885) - Minority (4) "Ought Not to Pass" - Committee on Legal Affairs on Bill "An Act to Reestablish a Mechanism for Review of Disputed Elections" (H.P. 1418) (L.D. 1932)

TABLED - March 23, 1994 (Till Later Today) by Representative DAGGETT of Augusta.
 PENDING - Motion of same Representative to accept the Minority "Ought Not to Pass" Report.

The SPEAKER: The Chair recognizes the Representative from Caribou, Representative Robichaud.

Representative ROBICHAUD: Mr. Speaker, Colleagues of the House: I would ask you to defeat the pending motion so we could go to accept the "Ought to Pass" Report.

This bill was put in because of what happened last year when we were in a hurry to finish up the end of last year's session and we were debating the election reform, we put in a mechanism to deal with disputed elections for every instance except those races for the House and the Senate. Consequently, that was kind of left up in the air. This bill seeks to fill that void by instituting the same procedure for the House and Senate that we currently endorsed and passed for all the other races in the State of Maine. The only difference, however, is that the House and Senate under the Constitution still remain the final determiners of the disposition of their members so that this mechanism is the technical procedure that we are putting in. By passing this bill, we would be making it uniform with all other elections, all other offices, in terms of dealing with disputed elections. The final decision still comes down to those of us in the chamber when dealing with the final results of a race. This is a very technical bill, it cleans up an oversight from last year and I would ask you to go on to oppose the pending motion so we can support the "Ought to Pass" Report.

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

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

Just for clarification, what does this do to the current Ethics Committee?

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

The Chair recognizes the Representative from Augusta, Representative Daggett.

Representative DAGGETT: Mr. Speaker, Ladies and Gentlemen of the House: This bill does not change anything in regard to the Ethics and Elections Commission. The change actually took place last year and this bill is an attempt to subvert the change that was made last year.

Last year there was a change in that for all elections except the House and the Senate, a disputed election would go to the Supreme Judicial Court. This body turned down the consideration of having a disputed election go to the Supreme Judicial Court for the House and Senate. It required a Constitutional change and this body felt that that was not a reasonable change.

What this bill does is to have a disputed election for the Senate or the House go to the Supreme Judicial Court first and then come to the separate bodies in the legislature and they would then be the final arbiter. I don't believe that it is necessary for us to add that additional step — we didn't wish to change the Constitution last year, we wished these bodies to be the final arbiter.

The other piece that is included in this bill — there was the authorization in last year's

legislation to allow the Senate and House to establish procedures for recount appeals. Now those procedures have not yet been established but this bill takes away that authorization so there would be no authorization for us to establish an appeal and the Supreme Judicial Court would be interjected into the opinion process.

I urge you to continue the decision that was made last year, continue the process, allow us to be the final arbiter and accept the Minority "Ought Not to Pass" Report.

The Chair recognizes the Representative from Lewiston, Representative Aliberti.

Representative ALIBERTI: Mr. Speaker, Fellow Colleagues of the House: I would like to ask the gentle chair on the Committee that just addressed my other question — does this also affect the need for a Constitutional Amendment in any way? I just didn't get that kind of explanation from you whether this, in its present form, would still require a Constitutional Amendment, the bill itself?

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

The Chair recognizes the Representative from Augusta, Representative Daggett.

Representative DAGGETT: Mr. Speaker, Ladies and Gentlemen of the House: This — I am trying to remember the question, it was very hard to hear you — does not require a Constitutional Amendment, if that is answering the question.

The SPEAKER: The Chair recognizes the Representative from Caribou, Representative Robichaud.

Representative ROBICHAUD: Mr. Speaker, Colleagues of the House: I must respectfully disagree with the Representative from Augusta, Representative Daggett's characterization that this bill before us subverts the process put in last year. On the contrary, what it does is it upholds the process we supported last year. What it does is it makes uniform in all elected races the same procedures.

The only reason the House and Senate are different is because of the line in the Constitution that says "the House and Senate shall have final determination over their member" — so all this does is put in the technical procedure that we have already endorsed for all other races. Yes, the final word, the last word, comes down to us sitting in this chamber as to whether or not, if there is a disputed election, someone will be seated as a member of this body or of the other body. It does not necessarily add another step to create a uniform procedure for dealing with these disputed elections. Last year, we passed for all other elections except the House and Senate a provision for the House and Senate to establish its own procedure to deal with disputed elections. That has not been done to date. I believe we have some elections coming up the beginning of June and I think it is very important for us to establish a mechanism to deal with any disputed elections that might arise.

I would urge you, once again, to have a certain level of continuity, not making any changes to the Constitution, but still retaining final authority over the seating of our own members, but creating a uniform policy with regard to procedure of dealing with disputed elections.

I would urge you to oppose the pending motion. Representative Whitcomb of Waldo 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 Waldo, Representative Whitcomb.

Representative WHITCOMB: Mr. Speaker, Ladies and Gentlemen of the House: There was a great deal of confusion as to exactly what we are talking about with this piece of legislation because it addresses the subject of recounts and appeals of recounts. We enacted in law last year, as was mentioned by previous speakers, a change in the process of appeals of recounted elections. We left in law, and I am reading from the revised elections handbook, "a recount" and this is new law, this is the way we changed it, which actually in procedure is no different than before, "is held under the supervision of Secretary of State who shall allow a candidate or candidates two counsels to recount the ballots." That is present law, that is what ended up out of last year's discussion of the subject. That is not what is being addressed by this piece of legislation.

What we are addressing in this piece of legislation is appeals of recounts, disputed ballots resulting from recounted elections. It is correct what the Representative from Augusta said when she indicated that we put in statute last year a sentence that says, "all elections for the House and Senate, each House will establish procedures for recount appeals." Although it was under the assumption that the proponents of this process would take some initiative in establishing a procedure for recount appeals, we are now within (statutorily) less than one month of adjourning and, hopefully, far less time than that from when we leave this body, entering into an election season with no procedure for handling recount appeals for the House and Senate. There has not been a discussion, other than through this piece of legislation, of that process.

We, in statute last year, to answer the question from the Representative from Lewiston, removed the Ethics Commission from this process entirely. I am sure as a result of some of the elections last year there was some discomfort in some decisions of the Ethics Commission so that was taken out of the law. There is no one now with statutory responsibility to look at appealed elections.

We have in law now the right to establish a process but we have not done that. This piece of legislation leaves the statute intact that we passed last year but simply changes the position of one sentence to preserve our Constitutional responsibility to have final determination over our membership. For all other elections, other than our own, we said that the appeal of a disputed recount would go to the Supreme Judicial Court as an arbiter of what the ballot intended to do — all municipal elections, all county elections, all gubernatorial elections, everybody else but us. We preserved for ourselves the right to establish some procedure if we so chose. We have not chosen to do that.

What this one sentence does is, as the Representative from Caribou has said, it provides a uniform process for looking at appeals of recounted

elections. In every other election except ours, the decision of the Supreme Judicial Court is final. For ours, it still comes back to this body, assumably will still go back to the House Elections Committee, which is a standing committee of this body, still with partisan control, and we still would be the final ones to vote on the results of an appealed election as we also vote to seat our own membership.

If someone else has another process in mind, it would be nice to know about it because we have not heard one discussed. It is, as you know, coming close to an election season. It is good enough for gubernatorial candidates, it is good enough for U.S. Senate candidates, it is good enough for municipal candidates, but the process we put into law is not good enough for us and yet we don't have an alternative.

Perhaps someone who opposes this bill could suggest one. If there is an appeal of a disputed election after the recount, it comes back to the House Elections Committee with no rules, none. If you think last year was bad, hang onto your seats.

I would certainly be willing to entertain some other suggestions. This was one that seemed like a reasonable solution while still maintaining our Constitutional right in our responsibility to seat our own membership.

I urge acceptance of the Majority Report.

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

Representative DAGGETT: Mr. Speaker, Ladies and Gentlemen of the House: I would just like to remind you that in order for that change, in order for the Supreme Judicial Court to be interjected last year, it did require a Constitutional Amendment. It is set up now with the Constitution that it is a special case.

We did not feel at the time that we wanted to have the interjection of the Supreme Judicial Court's opinion prior to our opinion.

I would suggest to you that the legislation does not set up any kind of process. If this legislation is not passed, we are the final arbiters, the appeals come here. I will grant that there may be no specific procedure for that to occur now; however, there is the authorization in current law for us to set up a procedure. This bill deletes that language allowing us to set up a process, it does not develop a process. It simply says, before the appeal comes here, it goes to the court first. There is no process here.

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.

As the law is presently written, if there was a dispute in the Primary in particular or in the General Election in November, would we end up having to be called into Special Session to settle any disputes that may arise in either one of those elections as the law is presently written?

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

Representative DAGGETT: Mr. Speaker, Ladies and Gentlemen of the House: Because the House and Senate are the final arbiters, presumably they would need to

be called into session regardless of whether this bill passes.

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

Representative WHITCOMB: Mr. Speaker, Ladies and Gentlemen of the House: In response to the question of the Representative from Rumford, the response that the Representative from Augusta gave you was technically correct except that as the law is presently written, we would have no process for which we would come in to even talk about it.

We would start after a disputed election establishing a mechanism for handling that disputed election.

Let me read to you this proposal as it is before you because perhaps some of you don't have it in front of you at this point in time. What we are voting on tonight is a sentence that says, "the decision of the Supreme Judicial Court is final" and that applies to all other elections, even the Governor or a U.S. Senator except for elections to the House and Senate. We still maintain our Constitutional right and responsibility to have the final determination of our membership. We only establish in law the same mechanism that others have for reviewing disputed ballots. We have no process in place now to do that.

The SPEAKER: The Chair recognizes the Representative from Washington, Representative Bowers.

Representative BOWERS: Mr. Speaker, Men and Women of the House: I hate to say this but I get the feeling that this bill is a very partisan issue.

Last year the Legal Affairs Committee decided against this concept of having another branch of government decide who is going to be seated in this body or the body at the other end of the building. I personally don't want to have this sort of sham of sending an appeal to a recount to the Judicial body and then having it come back here and then having another debate on it, having a whole other finding on it. I don't think that does us any justice. I think the Constitution is pretty clear, that we are the ones who decide it. I think the existing statute allows us to set up procedure for dealing with appeals of recounts so I would urge you to accept the Minority "Ought Not to Pass" Report.

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

Representative BENNETT: Mr. Speaker, Ladies and Gentlemen of the House: Representative Bowers alleged that this is a partisan issue, I would like to request that the Clerk to read the Committee Report.

Subsequently, the Committee Report was read by the Assistant Clerk in its entirety.

The SPEAKER: A roll call has been ordered. The pending question before the House is the motion of the Representative from Augusta, Representative Daggett, that the House accept the Minority "Ought Not to Pass" Report. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 270

YEA - Adams, Ahearne, Aliberti, 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, Hale,

Hatch, Heeschen, Hichborn, Hogle, Holt, Jacques, Jalbert, Johnson, Joseph, Ketterer, Kilkelly, Kontos, Lemke, Martin, J.; Melendy, Michaud, Mitchell, E.; Morrison, Nadeau, O'Gara, Oliver, Paradis, P.; Pendleton, Pfeiffer, Pineau, Pinette, Plourde, Poulin, Pouliot, Rand, Richardson, Rotondi, Rowe, Ruhlin, Rydell, Saint Onge, Saxl, Simonds, Skoglund, Stevens, K.; Sullivan, Swazey, Tardy, Townsend, E.; Townsend, G.; Townsend, L.; Tracy, Treat, Walker, Wentworth, Winn, The Speaker.

NAY - Aikman, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Birney, Bruno, Cameron, Campbell, Clukey, Cross, Dexter, Donnelly, Farnum, Farren, Foss, Greenlaw, Heino, Hussey, Joy, Kneeland, Larrivee, Lemont, Libby Jack, Libby James, Lindahl, Lipman, Look, Lord, MacBride, Marshall, Michael, Murphy, Nash, Nickerson, Norton, Ott, Pendexter, Plowman, Reed, G.; Reed, W.; Robichaud, Simoneau, Small, Spear, Stevens, A.; Strout, Taylor, Thompson, True, Tufts, Whitcomb, Young, Zirkilton.

ABSENT - Carleton, Carr, Hillock, Kerr, Kutasi, Marsh, Martin, H.; Mitchell, J.; Ricker, Vigue.

Yes, 85; No, 56; Absent, 10; Paired, 0; Excused, 0. 85 having voted in the affirmative and 56 in the negative, with 10 being absent, the Minority "Ought Not to Pass" Report was accepted and sent up for concurrence.

Bill "An Act to Simplify the State's Liquor Tax" (S.P. 612) (L.D. 1710) (C. "A" S-456)

TABLED - March 23, 1994 (Till Later Today) by Representative DAGGETT of Augusta.

PENDING - Acceptance of Committee Report.

Subsequently, the Committee Report was accepted. The Bill read once. Committee Amendment "A" (S-456) was read by the Clerk and adopted. The Bill was assigned for second reading Friday, March 25, 1994.

Bill "An Act to Clarify Plumbing Permit Fees" (EMERGENCY) (H.P. 1215) (L.D. 1634) (C. "A" H-876)

TABLED - March 23, 1994 (Till Later Today) by Representative JACQUES of Waterville.

PENDING - Passage to be Engrossed.

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

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

Could someone from the Committee kindly explain what this bill does for me, please?

The SPEAKER: The Representative from Millinocket, Representative Clark, has posed a question through the Chair to anyone on the Committee who may respond if they so desire.

The Chair recognizes the Representative from Portland, Representative Hogle.

Representative HOGLUND: Mr. Speaker, Men and Women of the House: What this does is it is like a housekeeping type bill. There were some things in it that some thought had been there so the Representative had it held.

What it does is clarify the cost of doing plumbing. What you can do is you can do plumbing in your home for fixtures. If you buy a fixture, it is \$4.00 and if you buy several fixtures, it is \$4.00

per fixture. If you do a whole bathroom, it is \$4.00 for a whole bathroom. Does that make it clear?

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

Representative STROUT: Mr. Speaker, Ladies and Gentlemen of the House: I would like to pose a question to anyone who might answer from the committee. Does this correct what we did wrong last year? Specifically, does this do what we did wrong?

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

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

Representative Hوجلund: Mr. Speaker, Ladies and Gentlemen of the House: Yes.

Subsequently, the Bill was passed to be engrossed as amended by Committee Amendment "A" (H-876) and sent up for concurrence.

The following items were taken up out of order by unanimous consent:

SENATE PAPERS

Divided Report

Majority Report of the Committee on Judiciary reporting "Ought Not to Pass" on Bill "An Act to Modify Joint and Several Liability in Medical Malpractice Actions" (S.P. 391) (L.D. 1186)

Signed:

Senator: CONLEY of Cumberland

Representatives: CATHCART of Orono
LIPMAN of Augusta
OTT of York
CARON of Biddeford
FAIRCLOTH of Bangor
SAXL of Bangor
KETTERER of Madison
COTE of Auburn
FARNSWORTH of Hallowell

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

Signed:

Senators: BERUBE of Androscoggin
HANLEY of Oxford

Representative: PLOWMAN of Hampden

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

Reports were read.

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

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

Representative PLOWMAN: Mr. Speaker, Ladies and Gentlemen of the House: I urge you to reject the Majority "Ought Not to Pass" Report.

The bill, "An Act to Modify Joint and Several Liability in Medical Malpractice Actions" sounds very technical, so I would like to at least explain to you what it means.

In a tort claim when someone sues another person, there may be many defendants — in this case, they would be in the medical field so there would be nurses, doctors, radiologists and hospitals. The damages that would be awarded at the end of the lawsuit would be divided into two categories, they would be divided into economic damages and non-economic damages. Economic damages consist of all medical costs including any future costs, loss of income or loss of the earning capacity and loss of property. The non-economic damages are typically considered for pain and suffering.

What we are asking for in this bill is to take the award of non-economic damages, not the economic damages, and to apportion them fairly. When you have three or four defendants or even two defendants, some defendants come out with very little negligence, some less than 25 percent, but if they have a deep pocket, they could pay the whole award. We are looking at changing the joint and several liability statute so that the non-economic damage award, not the economic, that one will be shared with whoever can pay. A nurse anesthetist with 15 percent of the negligence could end up paying a huge amount of the award if for some reason the doctor was bankrupt or already so encumbered that there was nothing left for him. This could happen to a new student out of school still paying on all the equipment, who put out all of his money for the cost it took him to where he is. I don't think that is fair for people to start looking for deep pockets, no matter what the negligence ratio is.

We have a letter in file from the Superintendent of the Bureau of Insurance and I will quote: "As a Superintendent is required to consider perspective claims and expenses when evaluating a medical malpractice rate filing, a law change such as proposed in L.D. 1186 would impact positively on professional liability insurance rates paid by Maine's care providers and institutions. I think that is something we should take into account too when we are looking at making sure that the person who is most negligent pays the greatest share of the bill.

I urge you to defeat the Majority "Ought Not to Pass" Report and go on to accept the Minority "Ought to Pass" Report.

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

Representative COTE: Mr. Speaker, Ladies and Gentlemen of the House: These issues have been discussed by the Judiciary Committee and by the House and the other body almost every year since 1987 and it has never been a partisan issue. During that time, the House and the other body have sponsored several commissions to examine the issue of tort reform, the Trafton Commission, the Duprey Study, and during this time, other states have been involved in similar exercises — for example, Minnesota in 1989 and New York in 1990. All of these studies and reports impact every report out of our committee, since 1987 has said that the provisions ought not to pass.

This year, the Committee Report was the least favorable for the bill, 10 to 3 with regard to those bills dealing with medical malpractice and 11 to 3

with respect to the bills which deal with all civil suits, "Ought Not to Pass." They are bipartisan reports.

The proponents of this legislation have failed to convince the committee that there is a need to change these provisions in our laws. They have not become more legitimate simply because they are trotted out for reconsideration year after year and much has been done in tort reform already. For example, the Collateral Source Rule was abolished, the Statute of Limitations was changed, prelitigations screening panels were introduced, practice parameters were created, rules for the disclosure of experts were instituted, structured payment of large awards were ordered, restrictions on attorneys fees were established, punitive damages were curtailed and all of these were done to the victims, to those who have been injured by others.

What's really left to be done is in the area of health care reform and insurance reform. The real culprit here is the insurance industry, this industry has successfully pitted doctors against lawyers and doctors against patients. The truth is that insurance companies are paying out only 30 cents on every premium dollar in medical malpractice claims. Premium physicians in Maine have followed a downward trend over the last several years.

Finally, the largest insurer in Maine, St. Paul, has made it clear that it will not reduce the rates up-front simply because some type of tort reform gets passed by the Maine Legislature.

I would urge you to defeat this bill, this issue, because it removes the legal doctrine of joint and several liability in non-economic damages in medical malpractice actions. This legal doctrine allows an injured person to recover the full amount of the damages arising from an injury and they can recover those damages regardless of whether one or several persons caused the injury. However, in no case can the injured person ever recover more than an amount determined by the judge or jury to be the full amount of their damages.

This bill inside the Judiciary Committee was a 10 to 3 "Ought Not to Pass" Report and we would urge you to support that report and defeat this bill. Only one member of this body supported this.

Legislation in the committee and the overwhelming majority of members of our committee continued to believe that this doctrine, which comes from the English Common Law, serves the interests of our constituents very well.

Our tort system was inherited from the English Common Law, it has worked well for hundreds of years and it is founded upon a very simple proposition — you should bear responsibility for your own actions. If it is your fault that someone else is injured, you should pay. If that person's injury is his or her own fault, he or she must bear the responsibility himself or herself. If there is a breakdown in this system, I believe it comes from changes in society's expectations. We see an unwillingness to bear responsibility for our own actions throughout society. That unwillingness is more pronounced in other parts of the country than in Maine. Here the same spirit of independence, work ethic, and self-reliance that has been the strength of the people of Maine is also the strength of our tort system. Men and Women of the House, that is not a spirit that needs reforming.

I urge you to join with me and defeat L.D. 1136 by accepting the bipartisan Majority "Ought Not to Pass" Report.

Representative Michaud assumed the Chair as Speaker pro tem.

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

Representative CATHCART: Mr. Speaker, Men and Women of the House: I urge you to accept the Majority "Ought Not to Pass" Report of the Judiciary Committee and point out to you that this is a bipartisan report against this bill.

The bill that removes joint and several liability targets cases where there is more than one party at fault. The current system puts the compensation of the victim as the first priority. That is right. The victim, the injured party, should have the priority here. Removal of this doctrine shifts the priority to protecting the parties who are fault by virtue of their differing degrees of negligence. Victims under this policy may be under-compensated.

Let's think of who is suffering here, it is the victim of the malpractice and that is the person we ought to be protecting.

Let me give you just a few simple statistics about malpractice insurance. According to the Congressional Budget Office, in 1992, medical malpractice costs were less than 1 percent of the total health care costs in this country and that includes awards paid to victims, all their attorney fees, all the attorney's fees for the insurance companies and the defendants and all of the premiums.

Second, according to A.M. Best, an insurance company data base in Maine, between 1988 and 1991, medical malpractice premiums dropped by 22 percent — they are down.

Third, according to A.M. Best also, between 1979 and 1991, malpractice insurers in Maine took in \$238 million in premiums and paid out only \$70 million in claims or 30 cents on every dollar of premiums they earned.

Fourth, from 1989 to 1991, A.M. Best reports that medical malpractice claims paid out to victims in Maine dropped by 67 percent, a huge drop in the claims that were paid in our state. Yet over the past 14 years, medical malpractice insurers in Maine have kept their profit margin at an average ranking of 4th highest in the country. If we restrict an injured person's right to be compensated for their injuries for the suffering they endure, we will only be benefiting an industry which is already doing very, very well.

I urge you to support the Majority "Ought Not to Pass" Report.

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

Representative PLOWMAN: Mr. Speaker, Ladies and Gentlemen of the House: Please note that we are not trying to repeal the joint and several liability provisions, we are making a modest adjustment. I say modest because it will remain a joint and liable statute.

We are looking at not compounding the victims in a lawsuit. There is a victim, there could be another

victim, who for having been part of what is probably a horrible situation and who might have 10 or 15 or 18 or 24 percent and up to 25 percent, then the damages they pay will be based on the percentage of their negligence. They will contribute what they are actually responsible for, just as we have heard about and talked about today. The persons will be paying what they are responsible for.

The other monies will come from the other defendants as they are responsible as well. We are not trying to undo this.

The largest insurer for medical malpractice in the State of Maine is the Medical Mutual Insurance Company, their rates have fallen. They started in 1974 and for those of you who were here when the Maine Employers Mutual started up, you know that the rates were high. They have to be high, you have to build a reserve. You cannot pay out 100 percent of every dollar taken in, you would have no reserve. You have to keep a reserve, so we pay. Yes, the premiums have gone down, the reserve is stable, it would be silly to keep extracting the same premiums after you have set your reserve.

I think we are doing a good job of working the claims if the claims are filed. I think we have panels in place in hospitals, the doctors and the physicians are working to make sure that they do a good job and I think you ought to take into account that we don't want to compound the victims, the victims will be compensated by the defendants to the amount that they are responsible for.

There was some discussion in our committee as to juries filling out forms of who would be more responsible and less responsible. Juries already do that to some extent in cases where you are talking about comparative negligence. This is just one more case where they won't be weighing the negligence factor.

I think it is a good idea and I urge you to defeat the Majority "Ought Not to Pass" Report.

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

Representative FARNSWORTH: Mr. Speaker, Men and Women of the House: I would just like to briefly correct a couple of impressions both by the handout that was just placed on our desks and also by some of the remarks that have been made in opposition to the pending motion.

The doctrine of joint and several liability is a legal doctrine that applies when more than one person causes injury to another. Under this doctrine, a person who has contributed, and only somebody who has contributed to your injuries, is going to be held liable for your damages.

The real purpose of the doctrine is to ensure that the injured person can fully recover. To modify it or to eliminate it is to put the burden of insuring full recovery on the people who caused the injuries.

I would just like to reassure people that only if you are found to have contributed to a person's injury would you be held liable for damages.

Secondly, defendants collectively and any one of them individually is never going to be responsible for anymore than what the injured person's damages are.

Thirdly, the defendants can seek contribution from each other to a portion of the fair share of the responsibility.

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

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

Representative KETTERER: Mr. Speaker, Men and Women of the House: I am one of the members of the Judiciary Committee who signed on the Majority "Ought Not to Pass" Report and I would like to briefly give you the reasons why I signed onto that report.

With respect to joint and several liability, it should be clear to everyone that a plaintiff who has more than one civil defendant to sue, does not get any additional recovery as a result of joint and several liability. The goal, if you are the injured party, is to be made whole. If there are two or three people who act negligently with respect to you, it seems to me that you should not have to forego some portion of your recovery simply because one or more of those defendants are without sufficient funds to meet any jury verdict. There is no double recovery to the plaintiff.

I hope that the constituents who sent you here never have to suffer an injury so that they have to engage in the services of a lawyer to bring a civil action to recover damages. If they do, I can assure you that after going through the medical process and then going through (on top of that) the legal process, those citizens are going to want to make sure that they are made completely whole. When they are unable to be made completely whole because of a lack of the doctrine of joint and several liability, if abolished or modified, they are going to want to ask their policymakers why that is the case and you will have that question to answer.

With respect to insurance availability and insurance affordability, there is no significant body of evidence to indicate that if legislatures throughout the country do away with joint and several liability that insurance will either be more available or the cost will be reduced.

If representatives of the insurance industry were willing to come before the Judiciary Committee and indicate to us that if we pass this bill out and can convince our colleagues in the House and other body to do the same that there would be substantial reductions, I think this bill would have gotten a lot more votes.

We have had plenty of other tort reforms in prior sessions of the Maine Legislature. Chairwoman Cote innumerate a number of them in her presentation, I won't repeat them, we have had substantial tort reform and this is simply a bill that should not be passed into law. It sets back many, many years of the Maine Common Law, it is consistent with Common Law in other states, the injured party is entitled to a full recovery that requires that all joint tort-feasors be held liable. For those reasons, I ask you to accept the Majority "Ought Not to Pass" Report.

Mr. Speaker, when the vote is taken, I ask that it be taken by the yeas and nays.

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

Representative OTT: Mr. Speaker, Men and Women of the House: I was one of the members of the Judiciary Committee that voted on the Majority "Ought Not to Pass" Report. I only have a couple of remarks.

The proponents suggest that the modification of joint and several liability is necessary if we are to have a good tort reform policy. They also claim that

passage of this type of legislation would have a positive effect on professional liability insurance. I was not convinced either at the public hearing or at the workshops that these claims were clearly demonstrated to us. On the contrary, I think you have information sheets on your desks and you have heard previous testimony indicating that in fact the opposite is true that such so-called tort reform measures would have no effect or little effect on any insurance rates.

The doctrine of joint and several liability has been around for a long time and I think it is a well tested doctrine that ensures that injured parties will have someone that can be held accountable for their actions and that can be difficult if there is more than one person who may or may not be, or is at least accused or alleged to have been negligent in a particular medical procedure.

This bill would require, if it were passed, the factfinder engage in an analysis of who was liable and to what percent they may be liable for a particular wrong that was incurred by the plaintiff. It is a difficult concept, it is hard enough for the factfinder, which in most cases would be the juries, to determine liability, let alone determine within that scope of how much liability is being attributed to several people who are the victims and who have been unconscious of the time of an operative procedure could even possibly determine.

Representative Plowman indicates what are non-economic damages and suggested that they may be pain and suffering but there is a whole host of additional damages that are subject to non-economic awards. They include convenience, physical impairment, disfigurement, mental anguish, emotional distress, loss of society and companionship, injury to reputation, humiliation and other non-pecuniary damages. I suggest that you, again, require the factfinders to segregate what is economic damages — in other words, out of pocket pecuniary expenses and what are non-economic damages is a difficult task for the jury.

It has been suggested that this system has been in place for a long time and it currently points the priority to the victim and that changing it through passage of this legislation would shift that focus to protecting the at-fault parties.

I urge you to support the Majority "Ought Not to Pass" Report.

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

Representative CARON: Mr. Speaker, Members of the House: I also am a member of the Judiciary Committee and voted with the Majority "Ought Not to Pass."

This is only one of several bills that came before the committee to modify the joint and several liability provision. There was another group that was before us and that was the one for a similar type thing for architects and I think you can use it by comparison whether it is an architect or a medical malpractitioner, it applies the same way, because they are working together as a group.

One of the examples that we used in the committee or at least one of the questions that I asked at the meeting was, if an architect goes out and bids on a particular school, and he may be receiving \$50,000 to \$100,000 to design the school with an auditorium and he may also be involved with hiring the project manager and oversight of that particular building, he then goes in and because he wants to save some money,

he is receiving the majority of the funds, goes out and hires a project manager that is either incompetent or somebody that he could get for a much lower price. That particular project manager goes out and using the designs by the architect buys improper materials and constructs an auditorium that causes, after a large snowstorm, the roof to fall in. There may be 200 children in that room, you could have some injured, some die — now we come to the part when they get to court, we are going to have the architect coming in and saying, well listen, I wasn't there, I didn't get the materials and I didn't put it in, I only designed the building and hired the project manager, I am only 5 percent negligent. We have a project manager there before the court saying, well listen, I didn't make enough money on this particular job, I couldn't buy any insurance and, by the way, I am judgment proof — what happens then? The majority of the funds went to the architect, we have a man who is judgment proof and it is going to be you and the rest of the citizens of the State of Maine that are going to be burying your children at your costs, taking care of your children for the rest of their life for any injuries that they have. If you don't have the money for it, then the State of Maine will come in and, under all of our good programs that we have, take over taking care of these children.

We have a situation we're built into all the bid packages with architects that they consider the cost of their insurance and their liability and that liability is not just for Workers' Comp, it provides for negligence and liability.

As for non-economic loss in the situation that I just presented to you, we have children, they are not working so we have no lost wages. As a matter of fact, they are a burden to you and it is going to cost you money to raise them for the next 15 to 20 years. When you get into court, if there is no non-economic loss, what are you going to get for that child? What type of damages would you get?

I ask you to support the Majority "Ought Not to Pass" Report.

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

Representative VIGUE: Mr. Speaker, Ladies and Gentlemen of the House: I had no idea that I was going to get up and speak on this particular issue but I have to get up to say a few words.

I get a little uncomfortable when I get a report from the majority of lawyers telling me that this should be "Ought Not to Pass." It's almost like having the chicken coop tended by foxes and it is a little bit scary.

The non-attorneys are on the bill as "Ought to Pass." I think if we seriously are going to look at this, we really have to give it some thought. If we are going to cap or restrict loss on health insurance, we have to start somewhere. I am not saying that this is the area that we want to work on but we have to start looking at some of these restrictions, either restricting what we are going to do for benefits or looking at capping some of the awards.

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

Representative RAND: Mr. Speaker, Men and Women of the House: While it is admirable that we are all interested in wanting to address the health care crisis, the answer in reforming our health care

system lies not in trying to overhaul legal rights which have existed in the Common Law for hundreds of years, the answer lies instead in really looking at the more relevant issues concerning universality of coverage, access and cost controls.

I would just like to point out that I am a non-lawyer and I am very much in favor of the Majority "Ought Not to Pass" Report.

The legal doctrine of joint and several liability is one of the oldest doctrines in Common Law. It was derived hundreds of years ago from time tested principles of court law that reflect the civil justice system's concern over the past few centuries for the need of victim to be made whole for injuries and damages. The system is designed to protect the tort victim from the possibility that in cases involving two or more negligent parties, one will be unable to pay, thereby leaving the victim partially uncompensated. When a victim has no responsibility for his or her own injuries, the law has strongly held that the victim should not pay or suffer from financial hardship. Removal of the doctrine would only serve to unfairly protect negligent people or companies from responsibility for their actions.

The question really we have before us tonight is this, between an innocent victim and a wrongdoer, who should bear the loss? I urge you please to accept the Majority "Ought Not to Pass" Report.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Bangor, Representative Saxl.

Representative SAXL: Mr. Speaker, Men and Women of the House: I just want to correct some misinformation that was given on that Majority "Ought Not to Pass" Report, there are a number of people there who are not attorneys, Representative Cathcart from Orono and myself, Representative Saxl from Bangor, and Representative Cote from Auburn. The three of us are not attorneys and yet we are on the "Ought Not to Pass" Majority 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 pending question before the House is the motion of the Representative from Auburn, Representative Cote, that the House accept the Majority "Ought Not to Pass" Report. Those in favor will vote yes; those opposed will vote no.

The Speaker resumed the Chair.

ROLL CALL NO. 271

YEA - Adams, Ahearne, Aliberti, Beam, Bowers, Brennan, Caron, Carroll, Cashman, Cathcart, Chase, Chonko, Clark, Clement, Cloutier, Coles, Constantine, Cote, Daggett, DiPietro, Donnelly, Dore, Driscoll, Dutremble, L.; Erwin, Faircloth, Farnsworth, Fitzpatrick, Gean, Gould, R. A.; Hale, Hatch, Heesch, Heino, Hichborn, Hognlund, Hussey, Jacques, Johnson, Joseph, Ketterer, Kilkelly, Kneeland,

Kontos, Larrivee, Lemke, Lemont, Libby James, Lipman, Look, Lord, Martin, J.; Melendy, Michaud, Mitchell, E.; Morrison, Nadeau, Norton, O'Gara, Oliver, Ott, Paradis, P.; Pendleton, Pfeiffer, Pineau, Pinette, Pouliot, Rand, Richardson, Rotondi, Rowe, Ruhlin, Rydell, Saint Onge, Saxl, Simonds, Skoglund, Stevens, K.; Strout, Sullivan, Swazey, Taylor, Townsend, E.; Townsend, G.; Townsend, L.; Tracy, Treat, Wentworth, Winn.

NAY - Aikman, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Birney, Bruno, Cameron, Campbell, Carr, Clukey, Coffman, Cross, Dexter, Farnum, Farren, Foss, Gamache, Gray, Greenlaw, Joy, Libby Jack, Lindahl, MacBride, Marshall, Michael, Nash, Nickerson, Pendexter, Plourde, Plowman, Poulin, Reed, G.; Reed, W.; Robichaud, Simoneau, Small, Spear, Stevens, A.; Thompson, True, Tufts, Vigue, Walker, Whitcomb, Young, Zirkilton.

ABSENT - Carleton, Hillock, Holt, Jalbert, Kerr, Kutasi, Marsh, Martin, H.; Mitchell, J.; Murphy, Ricker, Tardy, The Speaker.

Yes, 89; No, 49; Absent, 13; Paired, 0; Excused, 0. 89 having voted in the affirmative and 49 in the negative, with 13 being absent, the Majority "Ought Not to Pass" Report was accepted in concurrence.

Divided Report

Majority Report of the Committee on Judiciary reporting "Ought Not to Pass" on Bill "An Act to Create a Noneconomic Damages Award Act" (S.P. 446) (L.D. 1413)

Signed:

Senators: CONLEY of Cumberland
BERUBE of Androscoggin

Representatives: CATHCART of Orono
LIPMAN of Augusta
OTT of York
CARON of Biddeford
FAIRCLOTH of Bangor
SAXL of Bangor
COTE of Auburn
FARNSWORTH of Hallowell
KETTERER of Madison

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

Signed:

Senator: HANLEY of Oxford

Representative: PLOWMAN of Hampden

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

Reports were read.

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

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

Representative PLOWMAN: Mr. Speaker, Ladies and Gentlemen of the House: I rise to speak and urge you to defeat the "Ought Not to Pass" Report.

Caps are not unusual in the State of Maine, we have caps in tort claims already, we have a \$300,000 cap through the state or your municipality or your county government. We have a \$75,000 cap in a wrongful death case and we have a \$250,000 cap in the liquor liability.

This committee actually considered raising the \$300,000 caps this year. Compelling evidence from the communities across the state on how it would affect their liability premiums, the money it would cost, the fact that it was a mandate and the state had to pick up the cost, were compelling reasons for us to kill a bill to increase the caps. I don't think it is out of line at this point for us to look at a cap for non-economic damages in tort cases.

I ask you to go on to defeat the "Ought Not to Pass" and to accept the Minority "Ought to Pass" Report.

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

Representative COTE: Mr. Speaker, Ladies and Gentlemen of the House: This bill places a \$250,000 cap on non-economic damages in all civil suits. The report of the committee is 11 to 2, only one member of this body joined the Minority "Ought to Pass" Report and the bipartisan majority on the Judiciary Committee urge you to support the "Ought Not to Pass" Report.

Just as with the bill on medical malpractice caps, this bill has been before our committee in every legislature since the 113th. At no time has this proposal received a favorable report from the Judiciary Committee. Again this year we were overwhelmingly unconvinced that a change of this magnitude in our civil justice system was warranted. A cap on damages unfairly punishes those injured by the callousness of others while the alleged benefits of such a cap remain doubtful in that there appears to be no clear evidence that caps will reduce liability insurance premiums in Maine.

We believe that a cap is unconstitutional under the Maine Constitution violating due process and equal rights, granted in most states' constitutions. For all the reasons I have previously stated, I urge you to join with the bipartisan majority on the Judiciary Committee and accept the "Ought Not to Pass" Report on L.D. 1413.

Mr. Speaker, I would request a roll call when the vote is taken.

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 Auburn, Representative Cote, 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. 272

YEA - Adams, Ahearne, Aikman, Aliberti, Ault, Beam, Bowers, Brennan, Cameron, Caron, Carroll, Cashman, Cathcart, Chase, Chonko, Clark, Clement, Cloutier, Colles, Constantine, Cote, Daggett, DiPietro, Dore, Driscoll, Dutremble, L.; Erwin, Faircloth, Farnsworth, Fitzpatrick, Gean, Gould, R. A.; Hale, Hatch, Heesch, Heino, Hichborn, Hoglund, Holt, Hussey, Jacques, Jalbert, Johnson, Joseph, Ketterer, Kilkelly, Kontos, Larrivee, Libby James, Lipman, Look, Lord, Martin, J.; Melendy, Michaud, Mitchell, E.; Morrison, Murphy, Nadeau, Norton, O'Gara, Oliver, Ott, Paradis, P.; Pendleton, Pfeiffer, Pineau, Pouliot, Rand, Richardson, Rotondi, Rowe, Ruhlin, Rydell, Saint Onge, Saxl, Simonds, Skoglund, Spear, Stevens, K.; Strout, Sullivan, Swazey, Tardy, Townsend, E.; Townsend, G.; Townsend, L.; Tracy, Treat, Wentworth, Winn, The Speaker.

NAY - Anderson, Bailey, H.; Bailey, R.; Barth, Bennett, Birney, Bruno, Campbell, Carr, Clukey, Coffman, Cross, Dexter, Donnelly, Farnum, Farren, Gamache, Gray, Greenlaw, Joy, Kneeland, Lemont, Libby Jack, Lindahl, MacBride, Marshall, Michael, Nash, Nickerson, Pendexter, Plourde, Plowman, Poulin, Reed, G.; Reed, W.; Robichaud, Simoneau, Small, Stevens, A.; Taylor, Thompson, True, Tufts, Vigue, Walker, Whitcomb, Young, Zirkilton.

ABSENT - Carleton, Foss, Hillock, Kerr, Kutasi, Lemke, Marsh, Martin, H.; Mitchell, J.; Pinette, Ricker.

Yes, 92; No, 48; Absent, 11; Paired, 0; Excused, 0. 92 having voted in the affirmative and 48 in the negative, with 11 being absent, the Majority "Ought Not to Pass Report" was accepted in concurrence.

Divided Report

Majority Report of the Committee on Judiciary reporting "Ought Not to Pass" on Bill "An Act to Modify the Legal Doctrine of Joint and Several Liability" (S.P. 447) (L.D. 1414)

Signed:

Senators: CONLEY of Cumberland
BERUBE of Androscoggin

Representatives: CATHCART of Orono
LIPMAN of Augusta
OTT of York
CARON of Biddeford
FAIRCLOTH of Bangor
SAXL of Bangor
KETTERER of Madison
COTE of Auburn
FARNSWORTH of Hallowell

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

Signed:

Senator: HANLEY of Oxford
Representative: PLOWMAN of Hampden

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

Reports were read.

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

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

Representative PLOWMAN: Mr. Speaker, Ladies and Gentlemen of the House: I have already explained joint and several liability. This is the same concept only it doesn't apply to medical malpractice, it applies to when your town is sued, when your county is sued, when your state is sued and businesses — we are talking 25 percent. Under 25 percent, you pay your share of the negligence that you were found to have had and the other person, the other entities, pay what they have. This is where it is going to hit in the pocketbook that you all know about, the State of Maine, and the municipalities that you represent.

I urge you to defeat the Majority "Ought Not to Pass" Report.

I request a roll call.

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

Representative COTE: Mr. Speaker, Ladies and Gentlemen of the House: This bill also removes the legal doctrine of joint and several liability for non-economic damages in all civil suits except for environmental action. As I previously stated, this doctrine allows an injured person to fully recover his or her damages when injured by one or more defendants.

Our committee is not convinced that a change as proposed by this bill is advantageous to our citizens, rather we believe our constituents will be disserved if this legislature adopts L.D. 1414.

Please join the overwhelming bipartisan Majority on the Judiciary Committee and vote and accept the "Ought Not to Pass" Report.

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

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

The SPEAKER The pending question before the House is the motion of the Representative from Auburn, Representative Cote, that the House accept the Majority "Ought Not to Pass" Report.

The Chair recognizes the Representative from Township 27, Representative Bailey.

Representative BAILEY: Mr. Speaker, pursuant to House Rule 7, I request permission to pair my vote with the Representative from Bangor, Representative Faircloth. If he were present and voting, he would be voting yes; I would be voting nay.

The SPEAKER The pending question before the House is the motion of the Representative from Auburn, Representative Cote, 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. 273

YEA - Adams, Ahearn, Aliberti, Beam, Bowers, Brennan, Cameron, Caron, Carroll, Cashman, Cathcart, Chase, Chonko, Clark, Clement, Cloutier, Coffman,

Constantine, Cote, Daggett, DiPietro, Donnelly, Dore, Driscoll, Dutremble, L.; Erwin, Farnsworth, Fitzpatrick, Gean, Gould, R. A.; Hale, Hatch, Heino, Hichborn, Hogle, Holt, Hussey, Jacques, Jalbert, Johnson, Joseph, Ketterer, Kilkelly, Kontos, Larrivee, Libby James, Lipman, Look, Lord, Martin, J.; Melendy, Michaud, Mitchell, E.; Morrison, Murphy, Nadeau, Norton, O'Gara, Oliver, Ott, Paradis, P.; Pendleton, Pfeiffer, Pineau, Plourde, Pouliot, Rand, Richardson, Rotondi, Rowe, Ruhlin, Rydell, Saint Onge, Saxl, Simonds, Skoglund, Spear, Stevens, K.; Strout, Sullivan, Swazey, Tardy, Townsend, E.; Townsend, G.; Townsend, L.; Tracy, Treat, Wentworth, Winn, The Speaker.

NAY - Aikman, Anderson, Ault, Bailey, R.; Barth, Bennett, Birney, Bruno, Campbell, Carr, Clukey, Cross, Dexter, Farnum, Farren, Foss, Gamache, Gray, Greenlaw, Joy, Kneeland, Lemont, Libby Jack, Lindahl, MacBride, Marshall, Michael, Nash, Nickerson, Pendexter, Plowman, Poulin, Reed, G.; Reed, W.; Robichaud, Simoneau, Small, Stevens, A.; Taylor, Thompson, True, Tufts, Vigue, Walker, Whitcomb, Young, Zirnkilton.

ABSENT - Carleton, Coles, Heeschen, Hillock, Kerr, Kutasi, Lemke, Marsh, Martin, H.; Mitchell, J.; Pinette, Ricker.

PAIRED - Faircloth (Yea)/ Bailey, H., (Nay).

Yes, 90; No, 47; Absent, 12; Paired, 2; Excused, 0. 90 having voted in the affirmative and 47 in the negative, with 12 being absent and 2 having paired, the Majority "Ought Not to Pass" Report was accepted in concurrence.

By unanimous consent, all matters having been acted upon were ordered sent forthwith.

TABLED AND TODAY ASSIGNED

The Chair laid before the House the following items which were Tabled and Today Assigned:

HOUSE DIVIDED REPORT - Majority (6) "Ought to Pass" as amended by Committee Amendment "A" (H-865) - Minority (4) "Ought Not to Pass" - Committee on Labor on Bill "An Act to Protect the Rights of Employees and to Ensure the Proper Expenditure of Public Funds" (H.P. 1303) (L.D. 1758)

TABLED - March 23, 1994 by Representative RUHLIN of Brewer.

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

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

Representative AIKMAN: Mr. Speaker, Ladies and Gentlemen of the House: I hope you will vote against the pending motion, L.D. 1758, "An Act to Protect the Rights of Employees and to Ensure the Proper Expenditure of Public Funds." The National Labor Relations Act outlines which activities are permissible for employers and employees with respect to union organizing and related activities. Section 8 of the NLRA explicitly permits employers to talk to employees about the employers position in favor or against a union.

This bill will interfere with that fundamental right guaranteed by federal law. L.D. 1758 infringes on an employers First Amendment rights. The First Amendment rights are constitutionally guaranteed and can be restricted only in a very unique circumstance. The federal labor laws have explicitly protected the employees' right to such speech.

It is not good public policy for the State of Maine to pass legislation that interferes with and may be preempted by federal law. The federal labor laws have been carefully crafted to balance the rights and obligations of the employer, the employee, and the labor unions. The State of Maine should not be interfering with this delicate balance of rights and duties.

Mr. Speaker, I request a roll call.

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

Representative RUHLIN: Mr. Speaker, Ladies and Gentlemen of the House: I think I would like to qualify for this body exactly what this proposed legislation will in fact do so there will be no misunderstanding.

This legislation ensures that your tax money, public funds if you will, will go to no organization, community-based or non-profit or medical facility. That is, our state money, our tax money will not be used by those organizations receiving those funds for any purpose to either organize a bargaining unit or negotiations or to work against the organizations of any bargaining unit or organization. The bill is to ensure that our tax monies are not to be used in any way to buy us any non-profit organization, either for or against, any organizing efforts. That is proper, that is proper use of our money.

What we should be doing is, if somebody comes to the State of Maine and says I need your state money to help us deliver health care to these individuals, then use that state money to deliver that health care, do not use it to organize or work against the organization of any bargaining unit. This bill is very, very carefully crafted to maintain an absolute state neutrality in that organizational effort and to ensure that our tax monies are in fact used the way that this legislature voted that they should be used.

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

Representative CARR: Mr. Speaker, Ladies and Gentlemen of the House: I rise tonight in opposition to L.D. 1758 as amended, "An Act to Protect the Rights of Employees and to Ensure the Proper Expenditure of Public Funds."

First of all, the title of this bill is a misnomer, as many of you have already noted. There is nothing in the bill that has anything to do with protecting the rights of employees.

What this bill does is destroy for certain employers that delicate balance achieved over the past 45 years between unions and employers in organizational attempts. Well-meaning as it might sound, this bill, if enacted, would drastically tilt the balance between union and target employers unfairly in favor of the union. The major method used by employers in addressing a union organizational attempt is through meeting with employees, meetings to talk about union techniques, tactics and respond to employee questions and to promises that the union has made. You see, currently many of these targeted employers, community agencies, non-profit organizations and certain health care

providers, are 100 percent state funded and under these terms cannot speak to their employees at all about union organizations. Unions are not affected. Their organizational techniques are at employees homes or where they eat or play or away from the workplace, not on work time. Employers are prohibited from doing this. Union organizers can legally promise anything; employers can promise nothing, but they can respond and comment to promises made by the union. This is done through meetings with employees.

This bill would prohibit that type of meetings by disallowing employers from meeting with employees who are paid by state subsidies. Organization attempts then could proceed uncontested. No wonder the unions want this legislation. We do not legislate against employee meetings regarding safety nor the united way, no recognition awards, no retirement, birthdays, or a host of other work-related or morale enhancing reasons. Why should we ban informational meetings regarding organizational concerns?

I strongly urge you to vote no on L.D. 1758.

The SPEAKER: The Chair recognizes the Representative from China, Representative Chase.

Representative CHASE: Mr. Speaker, Colleagues of the House: I ask you to keep one thing in mind when you are voting on this bill. L.D. 1758, as amended, provides guidelines to ensure that public funds from the State of Maine to non-profit agencies will be used only for the programs and services for which they were intended, as Representative Ruhlin has pointed out to you.

I am sure you are aware that your tax dollars are spent for many federal and state programs that provide specific services for our citizens. I am sure you are aware of specific ones, the weatherization program, the LIHEAP program, Head Start and Medicaid to name a few. Those programs have a purpose and they have beneficiaries. This bill prohibits the use of state funds and federal pass-through for any purpose other than those purposes intended by the programs and certainly not for the unrelated activity of influencing employees, one way or the other, as the good Representative has pointed out to you, regarding union organizations.

Again, public funds for specific purposes should only be used for those programs and services.

I would add that the language of the amendment, which does replace the original bill, was developed by a bipartisan subcommittee of the Labor Committee and that included the Director of the Maine Labor Relations Board, Mark Ayotte. It received a bipartisan Majority Report from the Labor Committee.

With respect to the rights of employers that has just been raised, this bill takes away no right of the employer to disseminate information to employees, to hold meetings with employees, to influence those employees for or against unionization. All the bill does is prevent the employer from using state funds, your tax dollars, the employees' tax dollars, my constituents' tax dollars, for those purposes. The employers are able to do everything within the law as now written, making placards and postcards and giving whatever informational handouts the employer would like to influence employees, the employer simply cannot use your tax dollars that have been targeted for specific purposes for those unrelated purposes.

I urge you to support the Majority Report as amended.

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

Representative CARR: Mr. Speaker, Ladies and Gentlemen of the House: You just heard that there is no prohibition against employers from meeting with employees; however many of these targeted employers are 100 percent funded by the state and, under those circumstances, would then be prohibited from meeting with the employees for informational meetings, the major tactic that employers have in order to address unionization attempts.

Again, I urge you to vote no on 1758.

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

Representative RUHLIN: Mr. Speaker, Ladies and Gentlemen of the House: I want to assure you clearly once and for all because there is some misinformation, I hope it is a misunderstanding and not misinformation, I have the bill here, I have the original bill, I have the amendment and nowhere in that document is there any prohibition for any employer to meet with employees nor is there any prohibition for employees to meet amongst themselves for the purposes of organizing.

What the bill says clearly and simply is that if you as an employer want to have a meeting with your employees to do with their organizing, either for or against it, go ahead and have it but you do it on your time and at your own expense. Just as the employees, if they want to have a meeting to organize together, go ahead and do it on your own time and at your own expense. Do not use our state monies for those purposes, use our state money for the purposes they were given to you for accomplishing. That's what the bill says, it says it very clearly, I really don't understand how anybody could possibly misunderstand that.

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 Brewer, Representative Ruhlin, that the House accept the Majority "Ought to Pass" Report. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 274

YEA - Adams, Ahearne, Aliberti, Beam, Bowers, Brennan, Cameron, Caron, Carroll, Cashman, Chase, Clark, Clement, Cloutier, Coffman, Coles, Constantine, Driscoll, Dutremble, L.; Erwin, Farnsworth, Fitzpatrick, Gamache, Gean, Gould, R. A.; Gray, Hale, Hatch, Heeschen, Hichborn, Holt, Hussey, Jacques, Jalbert, Johnson, Joseph, Ketterer, Kilkelly, Kontos, Libby James, Martin, J.; Michael, Michaud, Mitchell, E.; Morrison, O'Gara, Oliver, Paradis, P.; Pendleton, Pfeiffer, Pineau, Plourde, Poulin, Pouliot, Rand, Richardson, Rotondi, Rowe, Ruhlin, Rydell, Saint Onge, Simonds, Skoglund, Stevens, K.; Strout, Sullivan, Swazey, Tardy, Townsend, E.; Townsend, G.; Townsend, L.; Tracy, Treat, Vigue, Walker, Wentworth, Winn, The Speaker.

NAY - Aikman, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Birney, Bruno, Campbell, Carr, Clukey, Cross, Dexter, Donnelly, Farnum, Farren, Foss, Greenlaw, Heino, Joy, Kneeland, Lemont, Libby Jack, Lindahl, Lipman, Look, Lord, MacBride, Marshall, Murphy, Nash, Nickerson, Norton, Ott, Pendexter, Plowman, Reed, G.; Reed, W.; Robichaud, Simoneau, Small, Spear, Stevens, A.; Taylor, Thompson, True, Tufts, Whitcomb, Young, Zirkilton.

ABSENT - Carleton, Cathcart, Chonko, Cote, Daggett, DiPietro, Dore, Faircloth, Hillock, Hoglund, Kerr, Kutasi, Larrivee, Lemke, Marsh, Martin, H.; Melendy, Mitchell, J.; Nadeau, Pinette, Ricker, Saxl.

Yes, 78; No, 51; Absent, 22; Paired, 0; Excused, 0.

78 having voted in the affirmative and 51 in the negative, with 22 being absent, the Majority "Ought to Pass" Report was accepted.

The Bill read once. Committee Amendment "A" (H-865) was read by the Clerk and adopted. The Bill was assigned for second reading Friday, March 25, 1994.

Bill "An Act to Improve Licensing Procedures at the Bureau of Insurance" (H.P. 1414) (L.D. 1924) (Governor's Bill) (C. "A" H-884)

TABLED - March 23, 1994 by Representative PINEAU of Jay.

PENDING - Passage to be Engrossed.

On motion of Representative PINEAU of Jay, tabled pending passage to be engrossed and specially assigned for Friday, March 25, 1994.

Bill "An Act to Promote Integrity in the Citizens Petition Process" (H.P. 1417) (L.D. 1931) (C. "A" H-881)

TABLED - March 23, 1994 by Representative BENNETT of Norway.

PENDING - Passage to be Engrossed.

Representative BENNETT of Norway presented House Amendment "A" (H-915) which was read by the Clerk.

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

Representative BENNETT: Mr. Speaker, Ladies and Gentlemen of the House: I won't retread well trodden ground.

This amendment would accomplish what Committee Amendment "B" would have accomplished if the House had considered that yesterday. In considering the bill, we never had an opportunity to get to that issue because the Majority Report was adopted but I encourage all of you to take a hard look at this because I think it sets up a better process, one that deals more effectively with the problem in a constitutional way and a much more functional way.

There are basically two components to the amendment. First, instead of an outright prohibition on paying for a signature collected in a citizens initiative process, it would force the organizations that are pushing the referendum to disclose exactly whether or not paying people to collect signatures and if they are what process they are using to collect. If they are paying for a signature it further requires that they actually disclose the payment schedule for the signatures. In other words,

if they are paying 25 cents for the first thousand, then 5 cents additional for the next thousand or whatever it may be, this would require that they publish that schedule so everybody would know, including not only the citizens who may be interested in knowing what an individual may be getting paid for the signature that the person is affixing, but also the workers themselves who may be wanting assurance that they are getting the same rate of pay that somebody in the next town is for this petition process.

There is no reason in this, I think it excludes the availability of participation in a citizen initiative process if we outright ban the collection based on an amount per signature. The reason for that is that you are forcing people to pay by the hour and that is inefficient, it is non-productive and there is no way of monitoring it. These folks are independent contractors who are out gathering petitions, some may be on their lunch hour, some may be doing it after work — they are going to have a hard time blocking off periods of time to go and do this so I think by prohibiting it, as the original bill did, it would make it more difficult for organizers to actually get more citizens involved. This would make disclosure mandatory for the payment system and the rate schedule for signature.

The second thing that this does is it corrects what I think is a more fundamental problem with the current law and that is that you can still pay somebody to actually sign their name. You can essentially buy their vote by giving them a dollar or what have you to sign the petition. That is legal under current law. This bill would prohibit that.

I can't understand why the House would want to prohibit paying someone for the labor involved in collecting petition signatures while allowing people to actually pay for the signature. It doesn't make any sense to me.

I encourage you to take a hard look at this, think about this and please follow my lead in adopting House Amendment "A."

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

Representative KILKELLY: Mr. Speaker, Ladies and Gentlemen of the House: It is interesting to talk about disclosure and who would know what. What cumbersome process would be developed if we have to have people that are paying for signatures run back and forth to the Secretary of State's Office or whatever to say, well, now we are paying 5 cents a signature, now we are getting down to the wire so now we are going to pay 15 cents a signature — oh gee, we're really down to the wire so now we are going to pay a dollar a signature so you need to then change all of those figures and who actually is going to be able to know? Are people going to have to wear sandwich placards that say, "I'm being paid a dollar a signature in order to collect this signature?" Is there going to be a statement at the top of the petition that says "On his particular petition, I am being paid 50 cents a signature to collect your signature?"

If you want to talk about limiting access to the process, let's make it so complicated that nobody can figure it out. Maybe it is less limiting to the process to just say, "This manner of payment is not appropriate. This is not a manner that we approve

of." That makes it very clear, there's no gray areas at all, we do not pay people for a signature.

I believe that that actually provides more access, less confusion and is less cumbersome than what is proposed in this amendment.

As to the issue of being able to pay a person to sign a petition, I find that abhorrent.

One of the things that I mentioned before when we debated this bill is that this bill did come to us late and it came to us because I sat and read my newspaper one night and I read that in a particular petition drive process people were paid up to a \$1.40 for signatures they collected and I was appalled. I came into the legislature and filed a request, it went to Council and it was passed. It came very late, I believe that in the next legislative session, there should be an absolute thorough review of the citizen initiated process so that we can look at any and all aspects that need to be corrected. I do not believe that we have time to deal with that now, we did not have a public hearing on that part of it. Even though I do agree with Representative Bennett that that is an abhorrent practice, I believe that we need to fix what is before us now, come back, deal with it through a public hearing process and really address this issue thoroughly.

I would urge you to vote with me to indefinitely postpone House Amendment "A."

I move that we indefinitely postpone House Amendment "A."

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

Representative BENNETT: Mr. Speaker, Friends and Colleagues of the House: It is interesting to me to hear Representative Kilkelly talk about a cumbersome process. Gathering signatures is a very cumbersome process, perhaps too cumbersome. It is very, very difficult for folks to organize a petition drive and get 10 percent of the vote in the last gubernatorial election during the period that they have. This does not make it any easier. It does just the reverse of what Representative Kilkelly is saying. It is a heck of a lot easier for the leaders of a petition drive to disclose to the Secretary of State and hence as we saw in the very case that she is referring to through the media which will pick up on this and report it widely, particularly outrageous cases where people may be paying \$5, \$10 or \$20 per signature, and whatever one might consider outrageous, the media will report on that.

There is no question that the disclosure will occur and it will become an issue and if ordinary citizens when they are approached to sign the petition, if they know what is worth, perhaps they will share Representative Kilkelly's view that it is outrageous and will not sign the petition on that basis. Why don't we leave that up to the citizens to decide whether than just outright prohibit it in a bill like this.

I do believe that we should take an overall view to this and I think this bill is too narrow. The fact that it doesn't even address in its current form the payment for signature, that I could actually pay somebody to sign it, is an example of not dealing with it comprehensively. Perhaps we should — if the desire is to solve problems rather than just make political statements, perhaps we ought to take a broad view of this and when the next legislature comes back to look at the whole issue.

I request the yeas and nays, Mr. Speaker.

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 Wiscasset, Representative Kilkelly, that House Amendment "A" (H-915) be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 275

YEA - Adams, Ahearne, Aliberti, Ault, Beam, Bowers, Brennan, Bruno, Cameron, Campbell, Caron, Carroll, Cashman, Chase, Clark, Clement, Cloutier, Coffman, Coles, Constantine, Cote, Daggett, Driscoll, Dutremble, L.; Erwin, Farnsworth, Farnum, Fitzpatrick, Gamache, Gean, Gould, R. A.; Hale, Hatch, Heeschen, Heino, Hichborn, Holt, Hussey, Jacques, Jalbert, Johnson, Joseph, Ketterer, Kilkelly, Kontos, Larrivee, Lemont, Libby James, Lindahl, Lipman, Martin, J.; Michaud, Mitchell, E.; Morrison, Murphy, Nadeau, Norton, O'Gara, Ott, Paradis, P.; Pfeiffer, Pineau, Plourde, Poulin, Rand, Reed, W.; Richardson, Rotondi, Rowe, Ruhlin, Rydell, Saint Onge, Simonds, Simoneau, Skoglund, Small, Spear, Stevens, A.; Stevens, K.; Strout, Sullivan, Swazey, Tardy, Townsend, E.; Townsend, G.; Townsend, L.; Tracy, Treat, Vigue, Walker, Winn, The Speaker.

NAY - Aikman, Anderson, Bailey, H.; Bailey, R.; Barth, Bennett, Birney, Carr, Clukey, Cross, Dexter, Donnelly, Farren, Foss, Gray, Greenlaw, Joy, Kneeland, Libby Jack, Look, Lord, MacBride, Marshall, Michael, Nash, Nickerson, Pendexter, Plowman, Reed, G.; Robichaud, Taylor, Thompson, True, Tufts, Wentworth, Whitcomb, Young, Zirkilton.

ABSENT - Carleton, Cathcart, Chonko, DiPietro, Dore, Faircloth, Hillock, Hoglund, Kerr, Kutasi, Lemke, Marsh, Martin, H.; Melendy, Mitchell, J.; Oliver, Pendleton, Pinette, Pouliot, Ricker, Saxl.

Yes, 92; No, 38; Absent, 21; Paired, 0; Excused, 0.

92 having voted in the affirmative and 38 in the negative, with 21 being absent, House Amendment "A" (H-915) was indefinitely postponed.

Subsequently, the Bill was passed to be engrossed and sent up for concurrence.

HOUSE REPORT - "Ought to Pass" as amended by Committee Amendment "A" (H-833) - Committee on Taxation on Bill "An Act to Eliminate the Sales Tax on Snack Foods" (H.P. 560) (L.D. 757)

TABLED - March 23, 1994 by Representative MARTIN of Eagle Lake.

PENDING - Motion of same Representative to indefinitely postpone Bill and All Accompanying Papers.

Representative MARTIN of Eagle Lake withdrew his motion to indefinitely postpone the Bill and all accompanying papers.

The Bill read once. Committee Amendment "A" (H-833) was read by the Clerk.

Representative MARTIN of Eagle Lake presented House Amendment "A" (H-927) to Committee Amendment "A" (H-833) which was read by the Clerk.

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

Representative MARTIN: Mr. Speaker, Ladies and Gentlemen of the House: Basically, it changes the reporting period and makes it one year earlier. If you are going to have a sunset, we would hope that it would not be in the same year in which the sunset would occur so it requires that that information be provided on March 1, 1995.

Subsequently, House Amendment "A" (H-927) to Committee Amendment "A" (H-833) was adopted.

Committee Amendment "A" (H-833) as amended by House Amendment "A" (H-927) thereto was adopted.

The Bill was assigned for second reading Friday, March 25, 1994.

An Act Regarding the Custody of Remains of Deceased Persons (S.P. 553) (L.D. 1577) (C. "A" S-417) TABLED - March 23, 1994 by Representative COTE of Auburn.

PENDING - Passage to be Enacted.

On motion of Representative TREAT of Gardiner, under suspension of the rules, the House reconsidered its action whereby L.D. 1577 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-417) was adopted.

The same Representative presented House Amendment "B" (H-920) to Committee Amendment "A" (S-417) which was read by the Clerk.

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

Representative TREAT: Mr. Speaker, Men and Women of the House: This was one of the more intriguing bills before our committee dealing with who can decide where the bodies of dead persons may be buried and who has control over that.

This amendment deals with questions that various people had about one section of that which gives authority to someone who may not be related to the deceased person to go to a judge and get the ability to bury that body and this clarifies it. If anyone has any questions, I would be happy to try to respond to them.

Subsequently, House Amendment "B" (H-920) to Committee Amendment "A" (S-417) was adopted.

Committee Amendment "A" (S-417) as amended by House Amendment "B" (H-920) thereto was adopted.

The Bill was passed to be engrossed as amended by Committee Amendment "A" (S-417) as amended by House Amendment "B" (H-920) thereto in non-concurrence and sent up for concurrence.

Bill "An Act to Amend the Tree Growth Tax and Open Space Voluntary Withdrawal Laws" (H.P. 1349) (L.D. 1815) (C. "A" H-832)

TABLED - March 23, 1994 by Representative MARTIN of Eagle Lake.

PENDING - Motion of same Representative to Reconsider Passage to be Engrossed.

Subsequently, the House voted to Reconsider.

Report was read and accepted. The Bill read once. Committee Amendment "A" (H-832) was read by the Clerk.

Representative JACQUES of Waterville presented House Amendment "A" (H-914) to Committee Amendment "A" (H-832) which was read by the Clerk and adopted.

Committee Amendment "A" (H-832) as amended by House Amendment "A" (H-914) thereto was adopted.

Under suspension of the rules, the Bill was given its second reading without reference to the Committee on Bills in the Second Reading.

Under further suspension of the rules, the Bill was passed to be engrossed as amended by Committee Amendment "A" (H-832) as amended by House Amendment "A" (H-914) thereto and sent up for concurrence.

On motion of Representative RAND of Portland, adjourned at 7:55 p.m., until 9:00 a.m., Friday, March 25, 1994.