

# 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  
31st Legislative Day  
Wednesday, March 30, 1994

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

Prayer by Father Eugene Gaffey, St. Denis Catholic Church, North Whitefield.

The Journal of yesterday was read and approved.

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SENATE PAPERS

The following Communication:

Maine State Senate  
Augusta, Maine 04333

March 29, 1994

The Honorable Dan A. Gwadosky  
Speaker of the House  
116th Legislature  
Augusta, Maine 04333

Dear Speaker Gwadosky:

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

Upon the recommendation of the Joint Standing Committee on Agriculture:

Gail Goodwin of Danville for reappointment to the Animal Welfare Board.

Frederick W. Hardy of Farmington for appointment to the Northeast Interstate Dairy Compact.

Lincoln O. Orff of Jefferson for reappointment to the Animal Welfare Board.

Joseph Pio of Westbrook for reappointment to the Animal Welfare Advisory Committee.

Laura L. Pruett of Augusta for reappointment to the Animal Welfare Advisory Committee.

Clement H. Smith of Monmouth for reappointment to the Animal Welfare Board.

Arthur C. Verow of Brewer for reappointment to the Animal Welfare Advisory Committee.

Lowell Woodman, Jr. of Monmouth for appointment to the Animal Welfare Advisory Committee.

Lowell Woodman, Jr. is replacing Perry Hopkins.

Sincerely,

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

Was read and ordered placed on file.

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The following Communication:

Maine State Senate  
Augusta, Maine 04333

March 29, 1994

The Honorable Dan A. Gwadosky  
Speaker of the House  
116th Legislature  
Augusta, Maine 04333

Dear Speaker Gwadosky:

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

Upon the recommendation of the Joint Standing Committee on Housing and Economic Development:

Richard J. Borden of Bar Harbor for appointment to the Maine Education & Training Export Partnership.

Donald W. Harward of Lewiston for appointment to the Maine Science and Technology Foundation.

Kenneth Paigen of Bar Harbor for appointment to the Maine Science and Technology Foundation.

Julia K. Schulz of Rockland for appointment to the Maine Education & Training Export Partnership.

Sincerely,

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

Was read and ordered placed on file.

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The following Communication:

Maine State Senate  
Augusta, Maine 04333

March 29, 1994

The Honorable Dan A. Gwadosky  
Speaker of the House  
116th Legislature  
Augusta, Maine 04333

Dear Speaker Gwadosky:

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

Norma M. Rice of Kittery for appointment to the Maine Real Estate Commission. Norma M. Rice is replacing Joanna Dennis.

Peter C. White of East Winthrop for appointment to the Maine Real Estate Commission. Peter C. White is replacing Robert Howe.

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

Was read and ordered placed on file.

**Divided Report**

Majority Report of the Committee on **Judiciary** reporting **"Ought to Pass"** on Bill "An Act to Abolish Secrecy in the Courts on Matters of Public Health or Safety" (S.P. 439) (L.D. 1369)

Signed:

Senator: CONLEY of Cumberland

Representatives: CARON of Biddeford  
KETTERER of Madison  
COTE of Auburn  
LIPMAN of Augusta  
FARNSWORTH of Hallowell  
CATHCART of Orono

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

Signed:

Senators: HANLEY of Oxford  
BERUBE of Androscoggin

Representatives: OTT of York  
SAXL of Bangor  
PLOWMAN of Hampden  
FAIRCLOTH of Bangor

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

Reports were read.

On motion of Representative SAXL of Bangor, the Minority **"Ought Not to Pass"** Report was accepted in concurrence.

**Divided Report**

Majority Report of the Committee on **Human Resources** reporting **"Ought to Pass"** as amended by Committee Amendment "A" (S-508) on Bill "An Act to Strengthen the Coordinated Delivery of Substance Abuse Services in the State" (S.P. 655) (L.D. 1824)

Signed:

Representatives: TREAT of Gardiner  
BRUNO of Raymond  
PENDLETON of Scarborough  
TOWNSEND of Portland  
FITZPATRICK of Durham  
PENDEXTER of Scarborough  
JOHNSON of South Portland  
GEAN of Alfred

Minority Report of the same Committee reporting **"Ought to Pass"** as amended by Committee Amendment "B" (S-509) on same Bill.

Signed:

Senator: HARRIMAN of Cumberland

Representative: BRENNAN of Portland

Came from the Senate with the Minority **"Ought to Pass"** as amended Report read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "B" (S-509).

Reports were read.

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

Representative TREAT: Mr. Speaker, Men and Women of the House: I move that the House accept the Majority "Ought to Pass" Report.

I urge you to support the very last item, the Majority Report of the Human Resources Committee, which would continue the RFP process at the Office of Substance Abuse. What this basically concerns is whether an amount of contract in the amount of over \$10 million should be sent out for bid or whether that amount of contracts should simply be handed out and only basically turned down if there is some kind of malfeasance in the future.

The Office of Substance Abuse is in the process of doing these RFP's right now. We did have them give a really full explanation to our committee as to how the process was working and felt that it was working extremely well, that this was an important way to get new services and to justify the services that we have and essentially to make sure that the state money that we are spending is spent in the best way possible and that the services we are getting are the best possible services.

I would ask that you support the Majority Report.

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

Representative BRENNAN: Mr. Speaker, Men and Women of the House: I would like for a minute to talk about the other side of the lopsided report.

I urge you to vote against the Majority Report so that we can go on and talk about the Minority Report. If the Majority Report passes, we will keep in place a state contracting process that is a duplication of effort, that it is a waste of scarce community resources and allows the Director of the Office of Substance Abuse's small committee extraordinary powers to reshape community services around substance abuse in every one of your communities.

Let me explain. The Human Resources Committee has unanimously endorsed L.D. 1732, which will develop performance space contracting. Performance space contracting is a good idea, it is what the state should be doing in terms of allocating its resources and holding community based agencies accountable for how those resources are spent. In fact, there was a task force this summer that was comprised of Representative Gean, Senator Harriman, Senator Titcomb, Representative Bruno and Representative Kerr. That report concluded that the task force elected to focus primarily on the use of performance space contracts as the most effective method to

increase the accountability for state administered funds for purchased social services. Again, this task force, after careful review, arrived at the conclusion that the best contracting process is performance based contracting.

Unfortunately, the bill before us allows to stay in place a request for proposal process that will force community based agencies to spend scarce resources bidding on contracts that they already hold or bidding on contracts that, in most instances, they will win back.

The rationale for RFP's or Requests for Proposals is that competition is good, yet there is very little evidence to show that the RFP process in fact achieves that goal. In fact, there is considerable more evidence that shows that the RFP process results in community based services in each one of your communities end up spending resources to engage in this process simply to win back contracts they have.

We had testimony before our committee by a provider (and this was related to mental health contracts) that spent \$11,000 of their agency money to bid on a contract that they already had, that by everybody's standards was an exemplary program and just to win back the contract that they already had.

I would submit to you that that is not a good use of state resources or good use of community resources.

Furthermore, the Commissioner of the Department of Mental Health and Retardation came before our committee and asked to suspend the RFP process for the Department of Mental Health and Retardation. The reason for that is that she questioned the value of the process of RFP's and also said that her staff states that they do not have the time and resources to engage appropriately in the RFP process.

The Human Resources Committee voted unanimously to suspend the RFP process in the Department of Mental Health and Retardation when a community agency enters into a performance based contract. The committee approach we have is a good one, it is one that should apply to the Office of Substance Abuse.

I want to stress at this point that I don't oppose the RFP process. I have written RFP's, I have responded to RFP's and used appropriately the RFP as a good way to expand new programs and expand services. However, the bill before us now leaves the state with a contradictory policy, it will allow the Department of Mental Health and Retardation to suspend the RFP process when an agency comes to performance space contracting. That same policy will not apply to the Office of Substance Abuse. Furthermore, the Human Resources Committee, as well as the Task Force Report, has concluded that performance space contracting is the way that we should go. If we do not go to vote on the Minority Report, we will have the Department of Mental Health and Retardation following one policy and we will have the Office of Substance Abuse following another policy. This contradictory policy is unfair and it will allow the Director of those, along with the small committee, to determine how services are delivered in your community. We do not need to have both RFP's and performance based contracting, we do not need to have state agencies and community agencies spending funding on a process that is counterproductive.

I urge you to support the agencies in your community by voting against this amendment and instead allow us to go on to the Minority Report.

The SPEAKER: The Chair recognizes the

Representative from Eagle Lake, Representative Martin.

Representative MARTIN: Mr. Speaker, Ladies and Gentlemen of the House: Speaking as a Representative from Aroostook County, I urge you to adopt the Majority Report. If you have not seen the sheet, I want you to look at it. AMHC is the only agency in Aroostook County at the present time that provides substance abuse counseling. It is the only agency that if you are rejected from DEEP that you can go to for counseling. It is the only agency to my knowledge that refuses to give persons who are going through treatment and counseling to have a work license even though the law had mandated that three or four years ago. On top of all of that, it is done on the basis of \$99 per hour. It is highway robbery that the people in my area and all of Aroostook County are totally subjected to no choices. Once they are in the program after being rejected or being told by DEEP that they need additional counseling — they can be in there for a year or more — with no ability of getting a job because they don't have a work license and they have distances to get to in order to get that job. So, not only do we prevent them from working, we basically tell them to get on welfare in the meantime. At the same time, it is done with people who do not have degrees in counseling because that is what the law allows.

Some of you may or may not know that one of the other things that I do is that I am President of a non-profit rural health delivery system and the board got so upset with this process that they directed the Executive Director to be at the RFP process this week (on Monday here in Augusta). So for the heck of it, I went at lunch time, and to the Representative from Portland when he says there won't be competition, I want to tell them that there were better than 30 agencies represented at the RFP process listening to the Department of Human Services and ODAT as to what was required in order to submit an application.

I am a believer in the free enterprise system even though the Representative from Portland is not. I believe that it will work in this instance. Let's see what happens from the RFP process. If it doesn't work, I will be the first one back here at some point to say that we have got to change it. I do know this, that for the citizens of Aroostook County, the existing process is a sham, it doesn't work, and our citizens are being poorly treated by the process.

I urge you to adopt the Majority Report and I request the yeas and nays.

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

Representative BRUNO: Mr. Speaker, Men and Women of the House: As you heard mentioned earlier, I was that task force that served all summer long and into the fall and close to Christmas on performance based contracting. There is no similarity between OSA and mental health, that's why this bill is so important.

OSA is so far ahead in their performance based contracting that that is why we need this bill in front of you today. Performance based contracting is finally going to allow us to have some accountability in the departments to see what we will get for our dollar. Right now, we pay out these contracts and we don't know how many people we have treated, we don't know what it has cost us, we don't know how many hours of counseling they have — no one can tell us. Under performance based contracting, it comes back to us and they can tell us how many people they have treated, what they have achieved and what has been

the outcome down the road.

You cannot jump from RFP to performance based contracting overnight. OSA has been working on this process since 1989 and we are just getting around to implementation and the sunset date for implementation is 1998. The task force knew that you just can't drop it and run with it. This is a gradual process that will occur.

I urge your support of the Majority Report and let's move onto another problem.

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

Representative DAGGETT: Mr. Speaker, Ladies and Gentlemen of the House: I would like to kind of back us up a little bit on this debate so we can understand what the issue is really about. There have been some other kind of side issues brought in that I don't believe are necessarily completely to bear.

One of the basic problems here is that when we hear the issue of putting something out to bid, we want to believe that social service contracts will respond in a market situation. I would just like to read a passage briefly to you from a book entitled "Non-profits for Hire, the Welfare State in the Age of Contracting. Government in the contracting relationship — one of the most destabilizing factors affecting non-profit agencies and the overall stability of the contracting regime has been the myth that contracting operates according to market principles and is therefore cheaper than public service delivery." The issue is the myth that it operates according to market principles, that is simply not the case. Contracting for social services is indeed far more complex than going out to bid, for example, for paper supplies, printing services or some other commodity. It is an extremely complex and convoluted environment.

I would like to tell you as well that all of these contracts that we are talking about, none of the contracts pay for themselves. If I decided to provide a certain set of social services and to bid on a contract, the state dollars that are available to me will not cover the entire cost of the service, so in order to put a real package together and go out for bid for these contracts that we are talking about, I have to supplement that from some other place. I have to have United Way funds, private fund raising, county commissioners funds, there are a variety of other areas that I have to go out for, these contracts do not pay for themselves and they are not market driven.

One of the issues that came up in front of the committee — the question was asked of the Director of the Office of Substance Abuse — what is our experience with bidding out these contracts? The Director said, "We have no experience, we have not bid one of these out." Technically, the director was correct, the Office of Substance Abuse is a very new creation and in fact has not put one of these out to bid. These have never been put out for bid on a regular basis, it is simply not the way we do business. However, we do have experience in three that I know of — contracts that were put out to bid, social services contracts — I am going to mention the first one to you, all three of them have been a disaster, but I am going to mention one to you because it specifically deals with substance abuse.

This is what happened — a few years ago, a currently held contract was put out to bid, it was

down on the coast, Waldo, Lincoln, down in that area, it went out to bid the first time and only the current provider bid (one bidder), nobody else bid on it. Part of the reason is because it is a very difficult market to get into because the money you get does not pay for the whole services so they are a very limited group of people, agencies, entities that would bid on this. One bid came back in so they put it out to bid a second time. There were some additional bidders, they awarded the bid, the agency that lost it, appealed. The appeal was upheld, they went out for bid a third time. Finally, after a considerable number of appeals, considerable amount of time, the services were established and there were three agencies to provide this. One of those agencies happened to be a brand new bidder, never had done the job before, and got about one-third of the business. It happened to be a hospital (that hospital had never done this before) and totally underestimated the amount of resources necessary and is now not doing the service. So here is a process that took close to three years, there was a period of time of about six months in which clients did not even get any substance abuse services in that area because the contract was in such disarray and now there are still consumers there who do not get substance abuse services because one of the bidders wasn't able to follow through. That information was not available to the committee because it had been done by the agency that existed prior to the Office of Substance Abuse, so they did not hear that, that is a part of our experience in bidding out existing contracts.

I am going to read from the amendment for a moment. The last part of the amendment asks for a report on the request for proposal system and it asks "whether or not the requests for proposal system has a negative or positive impact on consumers" — I can assure you that those consumers who got no service for a considerable length of time would say that there was a very negative impact on them. I think we already know the answer to that.

One of the other questions asked was "whether the request for proposal system has a negative or positive impact on providers" — I believe you have information across your desks which talks about the incredible impact on providers. If their currently held contracts that there is no problem with gets put out to bid, then they are in a position of bidding on work they are doing and performing well.

I would like to address briefly the issue raised by the good Representative from Eagle Lake, Representative Martin. I would not for one minute deny that there are problems with delivery of services and my preference would be that our precious state dollars and treatment dollars be spent in those areas where there is a problem. I would suggest to you that if you feel as the Representative from Eagle Lake feels that there is a problem in Aroostook County, I would prefer the time and money and effort be spent with that contract, not with the contracts around this state that are performing well and because of some arbitrary decision has to be put out to bid. We should use our dollars to address the problems, not the successes.

I want to speak a little further to the issue that was, again, raised by Representative Martin in regard to the unit cost issue, the cost to provide the service. There has been quite a bit made of this, in fact there was a piece that came around our desks a

few days ago that made a comparison of some unit costs. There is an old saying that says "you get what you pay for" and I would suggest that there is a lot more behind a unit cost figure that we don't know what that really includes and what the service is that you are actually being provided. If you want to talk unit cost, let me speak to a unit cost here.

There is a current program here in the state that has a per client cost, I can't give you a unit cost because the numbers are not reported to allow that to happen, but I can give you a per client cost, the per client cost of \$598 and another per client cost of \$228. Now let me tell you a little about this program. This is a crisis program and I am comparing for you the per client cost of a program that was unanimously approved by the Human Resources Committee over the \$228 per client cost that is a non-profit delivered cost. Right here in Kennebec County, the program has been suggested that it is one of the best, if not the best, crisis programs in the State of Maine. This is a program that might have to go out to bid. The \$598 cost, over double, is the cost provided by a state program for crisis services. So I would suggest that we are using a barometer of unit cost in one place and we are ignoring in another so if we want to talk about unit costs, let's talk about unit costs across-the-board. Let's not just pick out substance abuse and say, in this one, we care about the unit costs but with mental health, we don't care. Let's use the same kind of standards. That is one reason why I hope that you will oppose the Majority "Ought to Pass" Report so that we can then accept the Minority Report, which would allow us to save state dollars, it would allow us to focus them on the areas in which there is a problem and not simply spread them all over the place.

The SPEAKER: The Chair recognizes the Representative from Alfred, Representative Gean.

Representative GEAN: Mr. Speaker, Ladies and Gentlemen of the House: Let me give you a little bit of information about this Majority Report.

What the Majority Report does that has any relevance to this debate is that it requires the Substance Abuse Services Commission of the State of Maine to review the RFP process over the next year insofar as how it relates to the developing performance based contract. That process as was mentioned earlier is the product of the Administrative Cost Task Force that was set up a year ago for one reason, to take a look at what seems to be out of control administrative costs that are coming out of community based mental health and substance abuse provider agencies. Now there is a reason to look at that and that goes back to three years ago in the Human Resources Committee when we started requesting that information and we were requesting that information because there is a great deal of talk about low income and working people not being able to access substance abuse and mental health services in this state. The information we were able to gather up in the committee three years ago showed us a couple of interesting numbers. Now you have to remember that these mental health centers have the substance abuse contracts by and large, so you are talking about the same group of people usually. But, we found three years ago, so whoever knows what inflation has done to these numbers, we found the average salary of the 8 largest community mental health centers in the State of Maine was \$85,000. The only people on their waiting list were

poor people and working people with no insurance. We found that the counseling agency in York County, for instance that year, spent \$41,000 on instate travel non-client related. Now think about that a moment — what the heck does that mean? They weren't hauling clients around, they weren't providing referral services — instate travel, non-client related \$41,000, average salary of those directors \$85,000 — there's a pretty good reason to start taking a look at administrative costs only because the communities were all saying that the poor and working people can't get services. If everybody was getting services and they were doing a terrific job, I don't think anybody would care what the heck their salary was or what the their instate non-client related travel was. As long as that was the case, there was a need to look further. We did that, throughout the summer and the fall we tried to gather administrative costs information from providers and found that we couldn't. They simply would not provide it, the contract process doesn't demand it; therefore, we took off on the other and I believe more positive track of developing the performance based contracting process which really does fall under the total quality management program being put forth in this state.

What that says is that we are going to start gathering information and paying for results. We are not going to pay for reams of paper that count widgets and report them to the state and demand that the state send taxpayer dollars to pay for reams of paper with lots of widgets counted on it, the analogy being that of drill bits. In the world at this time, we spend billions of dollars to design, manufacture, distribute and maintain drill bits. Never in the history of mankind did anybody ever want a drill bit, all they wanted was a hole and all we have been doing in state government is supplying a lot of money to deal with drill bits.

For the first time with the RFP process, gathering that information per force because the providers by and large will not provide it, we are going to be able to have enough information to establish what is a reasonable cost for that outcome produced by that service. To get this by accepting the Minority Report would mean that we take three years worth of work and the thousands of dollars to get it this far, we throw it out on the road just because some providers think that this is too cumbersome to be accountable for the tax dollars they receive.

I urge you to support the Majority "Ought to Pass" Report.

The SPEAKER: The Chair recognizes the Representative from LaGrange, Representative Hichborn.

Representative HICHBORN: Mr. Speaker, Ladies and Gentlemen of the House: I hear two words in this debate, one word is accountability and the other is fairness. It seems to me if we want and if we truly believe in effective service and, if we want to make a serious effort to ensure that state expenditures of state dollars are made by cost effectiveness a serious consideration, and if we want to be fair to all of our citizens and if we are to ensure progress and accountability in addressing the dollar costly in a societally disastrous problem of substance abuse, we ought to support the Majority Report of the Human Resources Committee.

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

Representative DAGGETT: Mr. Speaker, Men and

Women of the House: I believe that all of us are in favor of accountability, but the performance based contracting system asks for that and requires accountability.

I am going to read for you again, and I ask your indulgence on this issue because this affects the expenditures of millions of state dollars and it affects many Maine citizens as to whether they are able to get services for substance abuse as well as mental health — this is the issue for substance abuse. I am going to read to you again out of the book "Non-profits for Hire." "If some proposals should be directed at strengthening governmental ties with existing non-profits, others should be directed toward recognizing the innovative potential and responsive variety of the voluntary sector. One approach is consistent with advocacy of performance based contracting wherever possible. Rather than holding contractors to process standards, which is what is in effect now for some contracts, such as what kinds of professional degrees staff members hold which tend to force conformity on providers. Government should strive to hold contractors accountable to outcomes. This approach not only promises to reduce regulatory interference and encourage efficiency, it also offers to protect the community based responsiveness that represents non-profit providers' special assets."

The performance based outcomes, which all of these substance abuse contracts that we are talking about are currently on, would continue. We have spent several years gathering statistics as has been mentioned to you — why would we now put those contracts out to bid when we know whether or not they have been performing? We have the information right now because they are all on performance based criteria. Putting things out to bid automatically across-the-board is diametrically opposed to performance based contracting. You know if the contract is performing because you have certain standards and criteria.

The Majority Report will put all of those performing contracts out to bid, it puts all out to bid whether or not they are doing the job, it simply puts them out to bid. Bear in mind, we have heard people talk about performance based contracting — if that's what they want, then they should leave that in place and they should not be supporting the Majority Report.

I would just like to read to you one other short paragraph. "Ultimately the success of these reformed proposals" (and I want to tell you that there are plenty of ways to deal with contracts that are not performing and there are a handful of ideas within this book) "for contracting regime will depend upon federal and state social policies. Currently, government policymakers extol non-profit agencies and promote contracting but, at the same time, they support policies which have steadily weakened and destabilized to the non-profit sector."

The Majority Report will continue the trend of destabilizing the non-profit sector, it will continue the trend of weakening the non-profit sector at a time when we need to work with these agencies to provide the services that are desperately needed.

I urge you to vote against the proposal on the floor so that we can use our state dollars to focus on the places where there are problems.

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

Representative TREAT: Mr. Speaker, Men and Women of the House: Five quick points in response to what we have heard already.

Number one, this does not send all contracts out to bid, it only sends out contracts of \$100,000, that's \$10 million of state contracts. \$5 million of state contracts are less than a \$100,000 and are not being sent out to bid.

Number two, really good programs will continue to get state dollars because they really are good programs, they simply need to justify themselves over a period of years. Not every program has to justify itself every single year. This is a staggered process over time.

Number three, we have heard a lot about the needs of the providers, we also have to look at the needs of the people getting the services and that is what this is designed to do. It is designed not to hurt the providers but to provide good services for the people needing those services.

Number four, this is the kind of program that the federal government is appreciative of and wants us to do more of because it provides accountability in the way we spend state dollars and federal dollars and this is a federal dollar program as well as a state dollar program. We get a lot of federal matching funds to run our substance abuse programs.

Number five, the Majority Report does have a provision which I believe will address any problems that might come up in the next couple of years as the process plays itself out. We have a report coming back to us on whether there are any difficulties in terms of undue paperwork, costs, whether the program can be merged better with the performance contracting and we think that that will take care of any problems that might arise. We don't think they will arise but if they do, we have a mechanism to take care of them.

I urge your support of the Majority Report.

The SPEAKER: The Chair recognizes the Representative from Durham, Representative Fitzpatrick.

Representative FITZPATRICK: Mr. Speaker, Men and Women of the House: Just two very quick, brief points. The history of state government in Maine is in both substance abuse and mental health but they do not deal with non-performing contracts. Let me repeat that, they do not deal with non-performing contracts. This is the reason you have an RFP bill, this is the reason you have an RFP Commission meeting this summer and this is the reason we are moving towards performance based contracting. Government has not pulled contracts, government has not gone in and looked at contracts to change them because they were non-performing. That is the history, that is fact. The RFP process will lead to accountability, cost effectiveness and an increased quality of services. That is the bottom line, that is what the Majority Report is about and I ask you to support it.

Representative Daggett of Augusta was granted permission to speak a third time.

Representative DAGGETT: Mr. Speaker, Ladies and Gentlemen of the House: I just wish to readdress a couple of issues and I think what Representative Fitzpatrick has said is indeed one of the problems. We have a history of not addressing non-performing contracts. If that is what you really want to address is the contracts where there is a problem, then that is what you need to address.

The Majority Report would suggest if there are three big mental health centers in this state that



are a nuisance that we can address those by stomping on every single one, even the small ones that are really doing a commendable job, that we can put them through the paces along with the big ones and somehow at the end of this process, we will have gotten to those three big guys that we had a complaint about. We are going to chew up those small ones to get to the big ones.

I said this before and I would suggest it again, if there are non-performing contracts and these contracts that are being talked about in this legislation, substance abuse contracts are all currently on performance based criteria. We know whether they can justify themselves or not.

For those of you who are unaware of this sector, this is one of the most heavily regulated, heavily audited groups that there is. There are mandatory state audits and there are mandatory federal audits. Those agencies who are doing the job now, we know full-well what they are doing. If you've got a problem with a few agencies that you think aren't providing the best service, that you think are not dealing with clients who don't have any money, I can tell you that I serve on the Board of Directors of an agency and we take people who do not have money and cannot afford the service. That is a strong mandate in my agency, which is a small agency. Our agency will be in a position of bidding on our own contracts, contracts that have been performing very well and we have been told that we are doing an excellent job — those will go out to bid.

Those people who still might have some concern about voting against the Majority "Ought to Pass" Report should have an opportunity to look at the actual process, the new RFP process, that the Office of Substance Abuse is requiring to be used in this set of bids.

Earlier it was mentioned to you that there has already been a bidder conference; in fact, there has been two bidder conferences to deal with those bidders who were considering bidding on these. The process that is being used in this round, the RFP process, is totally new. It is without quantifiable criteria. In fact, they are trying now to figure out how they are going to deal with all the appeals that they expect on it because it is an extremely different process than before. This is an entirely new concept.

There was also mention made of TQM earlier — this process was never discussed with the providers, they have never had an opportunity to have any input, there was never a chance for them to be participants in deciding what process these will now use to go out to bid — that is indeed a very, very different scenario, so I ask you to please vote against the Majority "Ought to Pass" Report so that we can accept the Minority "Ought Not to Pass" Report.

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

Representative BRENNAN: Mr. Speaker, Men and Women of the House: I want to clarify a couple of points. There has been some discussion about the performance space contracting versus the RFP process. There is nothing and the intent is not to do away with the RFP process, the intent is simply that when an agency comes on to the performance space contracting process, they are no longer then in the RFP loop. RFP's will continue to happen but they won't happen when an agency goes on to performance based contracting.

I also want to agree with Representative Bruno that the Office of Substance Abuse is further along in developing performance based contracting and all we are simply saying is that when an agency comes onto performance based contracting, which everybody agrees is what we should be doing and is a good thing to do, we then no longer duplicate the process of also having RFP's. So all that is being proposed is that there is a bridge process between the RFP process and performance based contracting. There is nothing in there that is going to eliminate the RFP process.

Secondly, it was alluded to previously that there was over 30 bidders at a conference earlier this week — I want to point out that those 30 bidders represented 6 different counties in the state, not just one county.

Lastly, it was alluded to that possibly this bill has something to do with economic policy. This bill doesn't have anything to do with economic policy and free enterprise, what it has to do is the most effective way to deliver services to people. I just want to give you a quick example. If you are an agency providing counseling services in the community and you have worked with somebody from two to three to four months developing a relationship, then the next week they show up and say, sorry, we just lost our bid to the state and now the new agency is two miles down the road, please go see them. That is not an appropriate way to deliver services nor is it an appropriate way for "the state to hold agencies accountable."

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

ROLL CALL NO. 293

YEA - Adams, Ahearne, Anderson, Ault, Bailey, H.; Bailey, R.; Birney, Bowers, Bruno, Cameron, Caron, Carr, Cashman, Chonko, Clark, Clement, Cloutier, Clukey, Coffman, Coles, Constantine, Cross, Dexter, DiPietro, Donnelly, Driscoll, Dutremble, L.; Erwin, Faircloth, Farnum, Farren, Fitzpatrick, Gean, Gould, R. A.; Greenlaw, Hale, Hatch, Heeschen, Heino, Hichborn, Hoglund, Holt, Hussey, Jacques, Jalbert, Johnson, Joseph, Joy, Kerr, Kneeland, Kontos, Larrivee, Lemont, Libby Jack, Libby James, Lindahl, Look, Lord, MacBride, Marshall, Martin, J.; Melendy, Michaud, Mitchell, J.; Morrison, Murphy, Nadeau, Nickerson, Oliver, Ott, Pendexter, Pendleton, Pfeiffer, Pineau, Pinette, Plourde, Pouliot, Rand, Reed, G.; Reed, W.; Richardson, Rotondi, Rydell, Saxl, Simonds, Simoneau, Skoglund, Small, Spear, Strout, Sullivan, Swazey, Taylor, Thompson, Townsend, E.; Townsend, G.; Treat, Tufts, Vigue, Walker, Wentworth, Winn, Young, Zirnkilton.

NAY - Aliberti, Barth, Bennett, Brennan, Carleton, Carroll, Daggett, Dore, Gamache, Gray, Lemke, Marsh,

Michael, Mitchell, E.; Nash, Norton, O'Gara, Paradis, P.; Plowman, Poulin, Ricker, Robichaud, Rowe, Saint Onge, Stevens, A.; Stevens, K.; Tardy, Townsend, L.; Tracy, True, Whitcomb.

ABSENT - Aikman, Beam, Campbell, Cathcart, Chase, Cote, Farnsworth, Foss, Hillock, Ketterer, Kilkelly, Kutasi, Lipman, Martin, H.; Ruhlin, The Speaker.  
Yes, 104; No, 31; Absent, 16; Paired, 0; Excused, 0.

104 having voted in the affirmative and 31 in the negative, with 16 being absent, the Majority "Ought to Pass" Report was accepted.

The Bill read once. Committee Amendment "A" (S-508) was read by the Assistant Clerk and 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" (S-508) in non-concurrence and sent up for concurrence.

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**Divided Report**

Eight Members of the Committee on Aging, Retirement and Veterans on RESOLUTION, Proposing an Amendment to the Constitution of Maine to Establish a Contractual Obligation for Members of the Maine State Retirement System (S.P. 653) (L.D. 1822) report in Report "A" that the same "Ought to Pass" as amended by Committee Amendment "A" (S-515)

Signed:

Senators: TITCOMB of Cumberland  
McCORMICK of Kennebec

Representatives: WENTWORTH of Kennebunkport  
CATHCART of Orono  
CLUKEY of Houlton  
JALBERT of Lisbon  
HATCH of Skowhegan  
TUFTS of Stockton Springs

One Member of the same Committee on same RESOLUTION report in Report "B" that the same "Ought to Pass" as amended by Committee Amendment "B" (S-516)

Signed:

Senator: WEBSTER of Franklin

Four Members of the same Committee on same RESOLUTION report in Report "C" that the same "Ought Not to Pass"

Signed:

Representatives: JOY of Island Falls  
BARTH of Bethel  
BIRNEY of Paris  
VIGUE of Winslow

Came from the Senate with Report "A" "Ought to Pass" as amended read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (S-515).

Reports were read.

On motion of Representative ZIRNKILTON of Mount Desert, tabled pending acceptance of any Report and later today assigned.

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**Divided Report**

Majority Report of the Committee on Banking and Insurance reporting "Ought to Pass" as amended by Committee Amendment "A" (S-537) on Bill "An Act to Clarify the Maine Banking Code as it Pertains to Service Corporation Serving Credit Unions" (S.P. 555) (L.D. 1591)

Signed:

Senators: McCORMICK of Kennebec  
CAREY of Kennebec  
KIEFFER of Aroostook

Representatives: PINEAU of Jay  
CARLETON of Wells  
KUTASI of Bridgton  
CAMPBELL of Holden

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

Signed:

Representatives: HALE of Sanford  
TRACY of Rome  
ERWIN of Rumford  
RAND of Portland  
JOSEPH of Waterville  
TOWNSEND of Canaan

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

Reports were read.

On motion of Representative PINEAU of Jay, tabled pending acceptance of either Report and later today assigned.

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**Divided Report**

Majority Report of the Committee on Business Legislation reporting "Ought to Pass" as amended by Committee Amendment "A" (S-454) on Bill "An Act to Increase Access to Primary Care by Redefining the Practice of Advanced Nursing" (S.P. 390) (L.D. 1185)

Signed:

Senators: CIANCHETTE of Somerset  
MARDEN of Kennebec  
BUSTIN of Kennebec

Representatives: ST. ONGE of Greene  
CAMERON of Rumford  
HOGLUND of Portland

CLEMENT of Clinton

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

Signed:

Representatives: VIGUE of Winslow  
REED of Dexter  
LIBBY of Kennebunk  
THOMPSON of Lincoln  
WINN of Glenburn

Came from the Senate with the Majority **"Ought to Pass"** as amended Report read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (S-454) as amended by Senate Amendment "B" (S-513) thereto.

Reports were read.

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

**Divided Report**

Majority Report of the Committee on **Appropriations and Financial Affairs** reporting **"Ought to Pass"** as amended by Committee amendment "A" (S-539) on Bill "An Act to Authorize a General Fund Bond Issue in the Amount of \$10,299,667 to Improve the Academic Facilities of the University of Maine System" (S.P. 718) (L.D. 1940) (Governor's Bill)

Signed:

Senators: PEARSON of Penobscot  
FOSTER of Hancock  
TITCOMB of Cumberland

Representatives: CARROLL of Gray  
HICHBORN of LaGrange  
MICHAUD of East Millinocket  
KERR of Old Orchard Beach  
POULIOT of Lewiston  
CHONKO of Topsham  
MacBRIDE of Presque Isle  
RYDELL of Brunswick

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

Representatives: FOSS of Yarmouth  
REED of Falmouth

Came from the Senate with the Majority **"Ought to Pass"** as amended Report read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (S-539).

Reports were read.

On motion of Representative CHONKO of Topsham, the Majority **"Ought to Pass"** Report was accepted. The SPEAKER: The Chair recognizes the

Representative from Presque Isle, Representative MacBride.

Representative MACBRIDE: Mr. Speaker, Ladies and Gentlemen of the House: I just wanted to inform you that I am supporting it; however, Committee Amendment "A" reduces the price to \$5 million.

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

The bill read once. Committee Amendment "A" (S-539) was read by the Assistant Clerk and 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" (S-539) in concurrence.

**Divided Report**

Majority Report of the Committee on **Appropriations and Financial Affairs** reporting **"Ought to Pass"** as amended by Committee Amendment "A" (S-535) on Bill "An Act to Authorize a General Fund Bond Issue in the Amount of \$20,000,000 for the Remediation and Closure of Municipal Solid Waste Landfills" (S.P. 696) (L.D. 1894) (Governor's Bill)

Signed:

Senators: PEARSON of Penobscot  
TITCOMB of Cumberland

Representatives: CARROLL of Gray  
HICHBORN of LaGrange  
MICHAUD of East Millinocket  
KERR of Old Orchard Beach  
POULIOT of Lewiston  
CHONKO of Topsham  
RYDELL of Brunswick

Minority Report of the same Committee reporting **"Ought to Pass"** as amended by Committee Amendment "B" (S-536) on same Bill.

Signed:

Senator: FOSTER of Hancock

Representatives: FOSS of Yarmouth  
REED of Falmouth  
MacBRIDE of Presque Isle

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

Reports were read.

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

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

Representative REED: Mr. Speaker, Ladies and Gentlemen of the House: I hope that you will not support this motion. At issue here is not whether or not the state should continue the program of landfill closure and remediation as obvious by the fact that

there are two "Ought to Pass" Reports.

At issue here is a level of debt and which level is appropriate. Since that is the issue, I am hopeful and assured in my own mind that the presiding officer will grant me a measure of latitude to talk for a moment about debt.

What is debt service in the state budget? It is in fact the state's credit card bill, which comes due and payable on a regular basis and is not discretionary. We have made a commitment, we must pay it. Information from the Fiscal Office would show you, as it has shown me, that in fiscal 1988, our level of debt service was slightly under \$40 million, \$39.5 to be correct. In fiscal 1995, it will be nearly \$75 million, an increase of 88 percent in a very short time.

You should also know and I hope to deliberate upon the fact that in fiscal 1994 and 1995, we will retire almost \$104 million in debt. On the other hand, in those same two fiscal years, we will issue previously authorized but unissued \$60 million in debt providing then for a net reduction in our debt service (our credit card bill) of \$42.8 million. Why should that be important to us? Well, last night we engaged in considerable sincere and sometimes heartrending debate about General Purpose Aid and the effects that our fiscal situation put us in. To coin a phrase from a state entity that we are all aware of to the supporters of General Purpose Aid, just imagine what you could do if you had \$75 million more dollars to apply to that which you hold in such high regard.

There are in this body I think those for whom a reduction in tax burden is an important goal. With \$75 million you could provide, if you chose to do so, a tax credit, a return if you will, to every individual tax filer in the state of \$150, not an insignificant sum.

If, however, your primary goal is not General Purpose Aid or tax rebates or returns but is perhaps then a reduction in overall state spending — if that is your goal, then I ask you for a moment to consider this — the Department of Agriculture, the Department of the Attorney General, the Department of Audit, the Department of Conservation, the Department of Defense and Veteran Services, the Department of Economic and Community Development, the Department of Environmental Protection, the Department of Marine Resources, the Department of Labor, the Department of Public Safety, the Maine State Library, the Maine State Museum, the Tree Growth Tax Reimbursement Program and the Circuitbreaker Program — all of those programs, the General Fund appropriations to all of those entire departments and programs is somewhat less than \$75 million. If you wish to reduce spending, eliminate the debt and think what you could do.

I realize in this House, men and women of good faith, for whom debt reduction and tax rebates are not the highest priority and to those of you for whom social spending is a high priority, think of this: the Bureau of Children's Welfare Services, the Bureau of Adult and Elder Services, the Bureau of Health, Supplemental Social Security income spending, programs for the blind and visually impaired, the low cost drugs for the elderly program, the Head Start program, the Bureau of Vocational Rehabilitation, the WEET program, precious social services, long-term care, family services and the Governor Baxter School — the General Fund amounts appropriated to all of those programs, worthy, necessary programs, could be

doubled if you had \$75 million more to spend. You would still have \$5 million left over. That's why debt is important and that is why there is a difference of opinion on this issue.

I hope you will think about the things that I have shared with you this morning and think about also a message that is conveyed to us by a marketing interest in the state and in the nation, when they promote their products, they say to us, you have to know when to say when. The message they are conveying there is that an abuse of their product can be harmful. Ladies and gentlemen of the House, abuse of unbounded debt is like pernicious anemia, it just eats away at your ability to do things. You lose your strength. It is a fiscal Pacman, it eats up whatever you want to do, whether it is reduced spending or increased programs, we must control our debt and I hope you will take some moments to think about what you could do, what is it you want to do that you could do with \$75 million. I hope that you will reject the pending motion and support a more moderate motion, the Minority Report.

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

Representative LORD: Mr. Speaker, My Learned Colleagues: There is no question but probably we would need this \$20 million to do a job. I understand that the total figure of closure is between \$120 and \$150 million. However, it appears that we are going to have \$87.3 in bond issues. Of the 8 bond issues that appears we are going to be voting on in June, this would be the second highest in the pack.

If you go back a few years, we have had three bond issues, actually five bond issues, but in 1987, we had a total of \$13 million in bond issues for this job; in 1989, 6 and in 1993, 10, which was \$29 million. Now as of February 23rd, there was \$5.5 of unissued bond in regards to this project and there was a cash balance of \$3,326,889 which would give us, if you went with the Minority Report, over \$18 million.

What bothers me a little bit — of course we don't know the reactions of people on these bond issues, but I have always found it better to take a half a loaf than no loaf at all. I am wondering if we maintain this \$20 million, will the people approve it? If we get nothing, then I think the communities are going to be in a real tough place and sometimes maybe a half a loaf is better than no loaf at all.

The SPEAKER: The Chair recognizes the Representative from East Millinocket, Representative Michaud.

Representative MICHAUD: Mr. Speaker, Ladies and Gentlemen of the House: I hope that you will support the Majority "Ought to Pass" Report from the Appropriations Committee. Although I don't like to see the state's indebtedness continue to grow, it is the state's responsibility in the way the laws are currently written to have a cost sharing to close municipal landfills, so we do have to pay that share whether we want to or not. There are (right now) approximately 50 towns that are waiting to be reimbursed from the state because they have already closed or capped their landfills.

I might also add that the state has to pay the interest, so once a municipality closes their landfill, when interest accrues, the state has to reimburse the municipality for that interest. So, it will become costly the longer we wait to pay the

state's share.

There are approximately 278 landfills that remain to be capped by the end of this year and that is not only because of state law but also because of federal law as well.

I would hope that you would go along with the Majority Report. It is my understanding that there is another bill in the Energy and Natural Resources Committee that will deal with expediting the manner in which the state will reimburse municipalities for repayment of their cost for closing their landfills. This is a bill that the state has to pay and must pay and the longer we wait, the more costly it will be to the state because we have to pay interest as well as the total cost of closing the landfill.

I hope you go along with the Majority "Ought to Pass" Report.

The SPEAKER: The Chair recognizes the Representative from LaGrange, Representative Hichborn.

Representative HICHBORN: Mr. Speaker, Ladies and Gentlemen of the House: Capping solid waste landfills is a problem facing many towns and cities all over the State of Maine. The state is putting increasing pressure every day on these communities to act and to act now. This places a serious financial burden on those communities. The state is obligated to pay a share and we can no longer dodge the responsibility of providing, at least in part, for that share.

It has been stated that the estimated cost of the total program is going to be between \$120 and \$150 million. This is only the beginning and this is no time to neglect the responsibility that we as legislators have here in helping these towns and cities in the State of Maine.

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

Representative MACBRIDE: Mr. Speaker, Ladies and Gentlemen of the House: I hope you will not support the Majority Report so you can go on and support the Minority Report.

I think there is a real concern as to whether the people of the state will accept this year a large package of bonds. I think that they are concerned about the money that the state is spending. I think it would be much more important, from the point of view of municipalities, to have half that amount bonded than it would be to have that full amount turned down.

I urge you to vote against the Majority Report so that you can go on and accept the Minority Report.

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

Representative STROUT: Mr. Speaker, Men and Women of the House: I am going to urge you today to support the Majority Report. We have put the demands on the municipalities to close their landfills and many of us at the present time going through that process.

If the State of Maine would relax a little bit on some of our requirements to close our landfills, maybe we could get along with \$10 million over the next 8 to 10 years. The problem I see with it is that at the rate of interest today, I think we would be much better off to put a \$20 million bond issue out now than you are a \$10 million and come back in two years with a \$40 million bond issue to pay this debt off.

Some Representatives have mentioned here this

morning that the people are going to make that decision and that is correct. I don't think any of us want to go in debt anymore than we have to but I can tell you this, that unless the state comes up with their share to help us out, we are not going to do what they tell us to do.

This may come out in the press tomorrow as one municipal manager that says that we aren't going to do what the state is telling us. The fact of the matter is that we don't have the money to do it. If you don't start doing it sometime to get some of those towns paid back and help us that are in the process of doing that, I don't know what the answer is.

If we are going to have those environmental statements that say we have got comply, and April 9th is coming along here from the federal government and says we have to be closed by January of 1995, I can tell you this, there's a lot of those towns that aren't closed aren't going to be closed at the end of this year. It is not because they don't want to, it is because they don't have the funds to do it with. I am willing to take the chance with the \$20 million and the reason being is that I am going out there and try to sell it because my philosophy is, that the rate of interest right now is better than it is going to be two to four years down the road.

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

Representative COLES: Mr. Speaker, Men and Women of the House: I helped write the original law which provided for the state assistance for landfill closing in municipalities in 1987. At that time, we estimated that the cost of closing existing landfills in the state and cleaning up the pollution remediating would be between \$150 and \$200 million. Unfortunately, those estimates were accurate.

At the moment, there is over \$10 million of municipal expenditures which are awaiting reimbursement by the state, so if we recommend less than \$20 million in bond issues, if we go with the Minority Report, we won't even be covering existing reimbursement requirements.

In addition, because of these high costs, the state DEP and the towns of the state and the Energy and Natural Resources Committee are recommending to you (you should see it in a day or two) a bill which is intended to substantially reduce the cost of capping landfills.

Another factor to keep in mind is, if towns cannot meet, cannot close and cap their landfills in accordance with the federal law, their liabilities and fee tip may increase substantially.

Another point to keep in mind — the cost of remediating of cleaning up pollution, the groundwater that has been polluted by a dump, is far more expensive than the cost of closing or capping a landfill to prevent that pollution, so the longer we delay in closing and capping landfills, the greater the liabilities we have. It is not just a rate of interest, the cost increases almost geometrically, so if we refuse to pay now, we are going to pay two, three or four times as much in the future.

It seems to me that our job on bond issues is to recommend to the people of the State of Maine what we believe is the best policy, even if that means increasing the level of debt. We are sent here to learn about issues, to look to the future and to make recommendations to the people on bond issues. If the people decid not to accept our recommendations, fine,

that is their right, but we should not recommend less than we believe is essential or we will be failing in our own duty. If in fact we want to minimize the cost of closing landfills and cleaning up the groundwater pollution it results in, we have got to start spending this money now.

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

A vote of the House was taken.

Representative Coles of Harpswell requested a roll call.

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

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

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

ROLL CALL NO. 294

YEA - Adams, Ahearne, Aliberti, Anderson, Ault, Bailey, H.; Bowers, Brennan, Bruno, Cameron, Campbell, Caron, Carroll, Cashman, Chase, Chonko, Clark, Clement, Cloutier, Coles, Constantine, Cote, Cross, DiPietro, Dore, Driscoll, Dutremble, L.; Erwin, Faircloth, Farnum, Fitzpatrick, Gean, Gould, R. A.; Hatch, Heeschen, Hichborn, Hogle, Holt, Hussey, Jacques, Jalbert, Johnson, Joseph, Kerr, Kneeland, Kontos, Larrivee, Lemke, Libby James, Lipman, Look, Marsh, Martin, J.; Melendy, Michaud, Mitchell, E.; Mitchell, J.; Morrison, Murphy, Nadeau, Norton, O'Gara, Oliver, Paradis, P.; Pendleton, Pineau, Plourde, Poulin, Pouliot, Rand, Reed, W.; Ricker, Rotondi, Rowe, Rydell, Saint Onge, Saxl, Simonds, Simoneau, Skoglund, Stevens, K.; Strout, Sullivan, Swazey, Tardy, Townsend, E.; Townsend, G.; Townsend, L.; Tracy, Treat, True, Vigue, Walker, Wentworth, Winn, The Speaker.

NAY - Aikman, Bailey, R.; Barth, Bennett, Carleton, Carr, Clukey, Daggett, Dexter, Donnelly, Farren, Foss, Gamache, Gray, Greenlaw, Heino, Joy, Lemont, Libby Jack, Lindahl, Lord, MacBride, Marshall, Michael, Nickerson, Ott, Pendexter, Pfeiffer, Plowman, Reed, G.; Richardson, Robichaud, Small, Spear, Stevens, A.; Taylor, Thompson, Tufts, Whitcomb, Young, Zirkilton.

ABSENT - Beam, Birney, Cathcart, Coffman, Farnsworth, Hale, Hillock, Ketterer, Kilkelly, Kutasi, Martin, H.; Nash, Pinette, Ruhlin.

Yes, 96; No, 41; Absent, 14; Paired, 0; Excused, 0. 96 having voted in the affirmative and 41 in the negative, with 14 being absent, the Majority "Ought to Pass" Report was accepted.

The Bill read once. Committee Amendment "A" (S-535) was read by the Clerk and 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" (S-535) in concurrence.

**Divided Report**

Majority Report of the Committee on Labor reporting "Ought to Pass" as amended by Committee Amendment "A" (S-512) on Bill "An Act to Extend Penalty Sanctions to Employee Health Benefit Plans" (S.P. 671) (L.D. 1843)

Signed:

Senators: HANDY of Androscoggin  
LUTHER of Oxford

Representatives: ST. ONGE of Greene  
RUHLIN of Brewer  
CHASE of China  
CLEMENT of Clinton  
SULLIVAN of Bangor

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

Signed:

Senator: BEGLEY of Lincoln

Representatives: LIBBY of Buxton  
COFFMAN of Old Town  
AIKMAN of Poland  
LINDAHL of Northport  
CARR of Sanford

Came from the Senate with the Reports read and the Bill and accompanying papers recommitted to the Committee on Labor.

Reports were read.

On motion of Representative PARADIS of Augusta, the Bill and all accompanying papers were recommitted to the Committee on Labor in concurrence.

**Divided Report**

Nine Members of the Committee on Business Legislation on Bill "An Act to Clarify Agency Relationships in Real Estate Transactions" (S.P. 616) (L.D. 1714) report in Report "A" that the same "Ought to Pass" as amended by Committee Amendment "A" (S-551)

Signed:

Senators: CIANCHETTE of Somerset  
MARDEN of Kennebec

Representatives: WINN of Glenburn  
ST. ONGE of Greene  
REED of Dexter  
THOMPSON of Lincoln  
HOGLUND of Portland  
LIBBY of Kennebec

VIGUE of Winslow

Two Members of the same Committee on same Bill report in Report "B" that the same "Ought Not to Pass"

Signed:

Representatives: CAMERON of Rumford  
CLEMENT of Clinton

One Member of the same Committee on same Bill reports in Report "C" that the same "Ought to Pass" as amended by Committee Amendment "B" (S-552)

Signed:

Senator: BUSTIN of Kennebec

Came from the Senate with Report "A" "Ought to Pass" as amended read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (S-551).

Reports were read.

Representative HOGLUND of Portland moved that the House accept Report "A" "Ought to Pass."

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

**Divided Report**

Majority Report of the Committee on Taxation reporting "Ought Not to Pass" on Bill "An Act to Create an Income Tax Stabilization Program" (S.P. 744) (L.D. 1973) (Governor's Bill)

Signed:

Senators: CAREY of Kennebec  
BALDACCI of Penobscot

Representatives: DORE of Auburn  
HOGLUND of Portland  
NADEAU of Saco  
TARDY of Palmyra  
SIMONEAU of Thomaston  
DiPIETRO of South Portland  
RAND of Portland  
FARNSWORTH of Hallowell

Minority Report of the same Committee reporting "Ought to Pass" as amended by Committee Amendment "A" (S-545) on same Bill.

Signed:

Senator: SUMMERS of Cumberland

Representatives: MURPHY of Berwick  
SPEAR of Nobleboro

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

Reports were read.

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

The SPEAKER: The Chair recognizes the Representative from Nobleboro, Representative Spear.

Representative SPEAR: Mr. Speaker, Ladies and Gentlemen of the House: This is a bill that has created a lot of discussion and I would like to make a few statements before we vote on this bill.

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

We can all ask ourselves a lot of questions and one of them could be, what can we do to stimulate the economy here in the State of Maine? I believe that this bill and this proposal is a step in the right direction. Other states have made it work and a lot of them are considering such action, such as Delaware, New Hampshire, Massachusetts, New York and New Jersey. These states I just mentioned are in the northeast corridor, states that we are competing with and we need to get on a level playing field.

In order to attract new businesses to Maine, we need to have some attractive economic tools. One of those tools, I believe, could be an attractive income tax rate. I also think a lot of the people here in this state think we are putting a cap on spending and that is not so. What this bill does is it levels the amount for the income tax for a period of five years or income tax revenues. It levels the income tax revenues. Hopefully, this is an incentive to bring more jobs to this state.

The income tax brings in approximately one-third of the total state revenues. By capping the growth in the income tax, it allows the remaining two-thirds of state revenues (specifically in the sales and corporate tax) to continue to grow. Therefore, it is not a cap on spending, we will have more money there to help develop the programs we want here in the State of Maine.

A lot of people get confused and they say they do not want send checks back to the people of the State of Maine. Ladies and gentlemen, this doesn't send any money back to the people of the State of Maine. What this does is it reduces the income tax rate.

There are a number of reasons why I think we should support this bill and, as we think about this, number one, let's remember that the citizens in the State of Maine are overtaxed compared to other residents in other states.

Second, this bill strengthens the competitiveness of Maine in our national economy.

Three, Maine needs a major economic stimulus to help boost consumer confidence.

Four, we here in the State of Maine need to let the businesses know that we take seriously the goal of creating economic opportunity. Once again, what this bill does is it will level off the income tax so the people understand this, the surplus at the end of the fiscal year and future years will level off to \$611 million. Anything above that in the income tax will be pushed ahead to January 1st to reduce the income tax rate for the following year. That is what we mean by stabilizing this income tax level.

Ladies and gentlemen, I think this is a good economic tool for the State of Maine and I wish you would consider it when you vote on this bill and I would urge you to vote against the "Ought Not to Pass" Report.

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

Representative MURPHY: Mr. Speaker, Ladies and Gentlemen of the House: This bill is An Act to Create the Income Tax Stabilization Program and it is very important to the State of Maine for one reason and that reason is to retain and attract jobs in the state. This bill proposes to stabilize individual income tax receipts until a reduction of 20 percent is achieved in the future.

What this bill actually does is it starts with a rate adjustment — first it has a target revenue and for fiscal year 1993 and 1994, that target revenue is \$582,100,000 on income tax only and that is only personal income tax. For fiscal year 1995 and every year after that, it would be \$606,100,000. Once these figures are reached on the income tax level, all the money that comes in beyond that amount would be used to reduce the individual rates of income tax, the percentage of your income that you would have to pay for income tax. It would start with the top rate and go right down to the lowest rate and it would reduce them by a percentage equally. Every single one of those brackets would be reduced equally. By doing this, it would also put control over state spending over the next five years. Hopefully in the next five years, we will be able to bring our rates down 20 percent. Once the rates are down, 20 percent is gone and this places a cap on personal income tax. It doesn't actually return any money to the people out there, it creates a reduction so they don't have to pay it in. What it does do is it puts more money in their pocket. They will have more money to spend; therefore, like most of us, they will spend it and it will create more sales tax, corporate tax and whatever. So, this is really a good bill for businesses.

There are articles in the newspapers and one is that the recovery here in the State of Maine has been derailed because of high taxes and this will put more money back into the pockets of the people to spend. We are in the ten top states for high income tax. It has been a proven fact that the states who raised their taxes during 1991, in the past three years, has had the slowest recovery. I don't have to tell you that we raised taxes, and I don't have to tell you that I voted for them either because I am sure most of you will remind me of that, but at that time I think we did the right thing, although I do think it has hurt our recovery. I believe now is the time that we have got to do something to get that recovery back and to create jobs in this state. Instead of sending them over the Kittery bridge, we've got to start bringing them over the Kittery bridge.

As you are all aware, yesterday there were over 700 pink slips sent out at the Portsmouth/Kittery Navy Yard and that is certainly going to hurt Maine, not only for the people in the State of Maine who work there, but the people in the State of New Hampshire who work there and we do not get income tax from these people any longer.

This bill encourages the government to become more productive, it strengthens competitiveness of Maine in the national economy so I urge you to vote against the "Ought Not to Pass" Report so we can go on and pass this bill and begin to help the people of the State of Maine to lower income tax and to create more jobs and bring jobs into this state.

The SPEAKER: The Chair recognizes the Representative from Old Orchard Beach, Representative Kerr.

Representative KERR: Mr. Speaker, Ladies and

Gentlemen of the House: In looking at L.D. 1973, which is the Governor's bill, it is typical, it sounds good and feels good, but what this bill establishes is a statutory ceiling or revenue target for individual income collections. If we are using that figure for 1994, it would be in the area of \$582 million and \$606 million for the subsequent year. All individual income tax revenues in excess of the target amount is deposited into this revenue targeting fund, which on an annual basis will be used to reduce individual income tax rates until such time an accumulative reduction of 20 percent of the 1993 rate is achieved. The only exception to applying excess individual income tax revenues to reduce rates will be in those years when the total General Fund revenue exceeds those of the prior year by 8 percent requiring the lowering of the sales tax rate (and that, if you will recall, was done in Chapter 10, Section KKK-1).

I sat in on the debate during the public hearing on this bill and I would like to share some of the comments that were made then. The people who supported the bill said that this bill may reduce individual income tax rates, and when they referred to that, if in fact the income tax exceeds the budgeted year's revenue. The people also discussed that it may indirectly reduce the General Fund expenditures. It may provide the stimulation to Maine's economy and it may help control state spending.

I would just like to address a few things on the cons of this bill because I think we are really and truly getting a con job. When they talk about the \$6.5 million, let's remember that presently the General Fund revenues for 1995, they were talking about the \$6.5 million, that \$6.5 million is predicated on this legislature pushing forward under the Governor's proposal \$1.5 million of General Fund operating capital revenues. Those were the gimmicks that I thought we learned from in the past, but again, if this budget is passed, the Governor's supplemental, there is a push of \$1.5 million. I don't believe any of us want to see that happen, so if you deduct the \$1.5 from the \$6.5, now we are looking at about a \$5 million surplus in this particular account.

It reduces the unappropriated surplus at the end of the future fiscal year. On your desks you have hand-out. There was a question I posed to the committee that if in fact individual incomes tax collections exceeded the target (and I went back to June of 1993) and I hope that everyone that is sitting will just take and look at the hand-out because I think we have to learn from what took place in the past before we move forward and in June of 1993 on the second line where it says "individual income tax," the total budget for that particular year was \$567 million. What was actually collected was \$585 million. The third line from the end it says "variance" — the variance at that particular time was \$18.7 million. As one of the good Representative's spoke in support of this bill said that, yes, this is one-third of the revenues that are collected in our budget, so in this particular year of June, you can see the individual income tax was up, but the sales tax was down. That is the other third. All the other items when you are looking at the cigarettes, the insurance, the property tax, income on investment, harness racing, the lottery — they were also down. The bottom line, if in fact



this bill was in place back in 1993, we would be looking at a shortfall of \$6.3 million. That's the reality, \$6.3 million if this bill had been in place in 1993.

On September 15, 1993, the state tax assessor would have had to return \$18.8 million; therefore, there would no money left to replenish the Rainy Day Fund, the Property Tax Relief Fund or to replenish the State Contingency Account, Fame, insurance revenue or the general operating capital reserve. Not only couldn't we have replenished them in 1993, again, there would be a shortfall of \$6.3 million. Some may say that there is enough money in the lapse account to cover that — we don't budget for lapsed balances. So, if in fact (again) this had been in place in 1993, there would have been a shortfall.

Moving forward until the budget of 1994/1995 — we talk about gimmicks, I want to share some of those with you in case you have forgotten, some of these one-time revenues that we produced in the budget. Maine people repurchased the Turnpike that they already owned for \$16 million. There was also a \$10 million payroll push. We also provided a \$6.5 million pull for the insurance premium, another \$8 million to the Maine State Retirement Administration costs and as we all were so concerned about General Purpose Aid (and myself included in that) we dedicated \$2.3 million from the Long Fall Dam contract. We also at that particular time, as we all know, debated the reamortization of the Maine State Retirement System. We reamortized that from a 23 year period to a 35 year period. During that reamortization, it is true that the payments will be decreased in the next few years and then all of a sudden there is this massive zoom that is going to shoot to the sky. So if this bill is passed and we are planning to look to the future in how to create jobs in this state which are badly needed and how to keep expenditures in somewhat control of revenues, this bill doesn't accomplish that. If revenues don't grow next year, there will be a major problem in state government because of that list that I gave you, it amounts to almost \$45 million. So if revenues don't grow by \$45 million, there is going to be a shortfall again.

This bill doesn't provide for what would happen if revenues don't grow next year. I would like to remind you that these are the types of bills that frustrate our constituents. It is the tease and illusion that continues to happen to state government.

I remember when I ran and got elected four years ago, I walked into a situation that was prior to election where everything was hunky-dory, everyone was happy, things were in place. For those of us who served in that time, we were faced with shortfalls that started off with a \$100 million and continued to grow. For those of us who leave this institution, we should at least stabilize that. This bill does not do that, this bill gives false hope and the most prudent thing to do is to support the "Ought Not to Pass" Report based on the information I provided you. These are real numbers that I provided you with.

Remember again that this is one-third of the revenue that is brought in. I think you are toying with a very delicate situation where you are touching with the tax structure of this state. I think if one is going to revue it, you should revue the whole tax structure.

When I met and talked with businesses throughout the state, their complaints weren't entirely around

the tax issue, they were concerned about Workers' Comp, electric rates and property tax. That is what people are concerned about.

I would urge you to support the pending motion.

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

Representative DIPIETRO: Mr. Speaker, Ladies and Gentlemen of the House: I want to be a lot shorter than my predecessor, I think Representative Kerr was trying to make too many points about this bill and I agree with him on most of them, but I only have four points that I would like to talk to you about.

First, I think all of us would like to be able to go home and tell our constituents that we stood here today and tried to get them a 20 percent reduction in their income tax. I think that would be a wonderful thing for all of us to do but let's face reality. Here a couple of months ago we put our names on the line that if we had an increase in our sales tax that we would drop the sales tax from 6 percent to 5 percent — ladies and gentlemen, we cannot be all things to all people, we just cannot do it. We can't give them a reduction in sales tax, a reduction in income tax, we cannot do it. We can do it if we decide that we want to cut many programs, then we would have no problems, but you have go to face reality, if you want to provide the services, you have got to have the revenues to do so.

It is wonderful for the Governor to come in and tell us that this is what he wants to do but you've also got to realize that this does not take effect until 1995 and Lord knows where the Governor will be then, but he is putting the burden on those who will be here to find out how to do it. If the Governor and the legislature in 1995 find they cannot do it, then the problem becomes theirs all over again.

The other point I have is I hear the people who do not support this talk about jobs — well, if you want to talk about jobs, there are a lot of other ways we can do it. If we are really honest and sincerely interested in people coming to the State of Maine, there are two things we have to do and I being a small businessman will tell you that it is Workers' Comp, Workers' Comp, Workers' Comp. That's the thing we have to take care of. People are leaving the state because they cannot afford Workers' Comp. It has probably been abused, which we all know it has, but we have got to take care of Workers' Comp, number one.

Number two, in the Taxation Committee, we are trying to create jobs in this state by giving tax credits. We will give tax credits to big business, we give tax credits to small business, we give tax credits to mediocre business, we are trying. We have got to send a message out to the rest of the country that the State of Maine is looking for new businesses to come here and how do we do it? By giving them something, we have got to give them something that nobody else has offered them.

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

Representative GRAY: Mr. Speaker, Ladies and Gentlemen of the House: I, too, was at the hearing on this bill and several things came to my attention, one was that the State Tax Assessor didn't speak for this bill. Most of the bill has been described by Representative Kerr so I won't get into what really upsets me about the whole facade here. All of you know that I am probably the most conservative voter

in this body and for my Governor to put a bill like this out; he owes the people I represent an apology. And, if he was really interested in reducing the tax burden on this state, he would pay his bills and reduce my property taxes.

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

Representative MURPHY: Mr. Speaker, Ladies and Gentlemen of the House: I agree with much of what has been said here, we all know what gimmicks we have used in the past to balance the budget and I guess we are all guilty and should equally share that guilt. Most of us voted for those budgets, at least two-thirds of us did and I will take my guilt along with the rest of you.

It is true, this is not a cure-all for the State of Maine but this will do is part of the pie. All our taxes are quite high and it is a proven fact that the top ten tax states that raise taxes lost jobs. Family income went down and the ones who avoid raising taxes, their income went up and their unemployment rate is way down. In some states, it is down to 2.1. Wisconsin, 4/10ths of a percent; Virginia, 1.8; Utah, 7/10ths; Idaho, 1 and their whole average of those is 6/10ths of one percent. The jobs gained in those states was 653,000 and we lost 3,000 — I would think that would tell us something that we are just not doing right.

I, too, have talked to members of industry out there and this is one of their problems because when they want to expand in Maine, the CEO's say your tax rate is too high and I just don't happen to want to live there. Pratt-Whitney had that problem when they wanted to hire engineers so they stayed in Connecticut and worked for Pratt-Whitney in North Berwick and didn't have to pay our income tax because that is why they refused to move to Maine. There were 30 of them at that time. I would like to have had those 30 down in our area paying property tax, buying homes so the contractors could be building new homes and that would have created a lot of jobs and a lot of spinoffs.

To me, and I firmly believe this, that is true. This past month our individual income taxes went up and our sales tax went down but when we put more money back into the pockets of the people, they will be spending it and our sales tax will go up and then our income tax will go down. They will be spending that money for goods, goods that we produce in Maine to create jobs. To me, it is just plain common sense. I realize that it is only my personal opinion but I firmly believe this, it is just good business sense and good common sense that we put more money back in the pockets of the people of this state and they are going to spend it for goods made in Maine, buying cars, which creates more sales tax, buying all other goods here and it is going to create jobs.

I just wish you would take these things into consideration when you vote here today and vote in favor of this bill and vote against the motion on the floor.

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

Representative FOSS: Mr. Speaker, Ladies and Gentlemen of the House: I want to speak against the Majority "Ought Not to Pass" Report also because I know there has been a lot of testimony this morning that we can't possibly do it because we need the revenues in Augusta. I think legislators can always find reasons and excuses to keep all the tax revenue

they can get. I think Maine is in a position now that we can't afford not to cut taxes, jobs go where the taxes are lower. The big picture is, if we don't send a message to job creators that we can control spending and cut taxes in Maine, then they will simply not bring their jobs to our state. I think we need to show business that we mean business here.

I state for you an article in the Lewiston paper of March 18th. The title is "State on Verge of Cutting Taxes" and they outline 19 states that are proposing tax cuts right now. They are competing with us for the jobs we want. Some of them are our neighbors, let me go through them. Arizona, \$100 million income tax cut; California cutting business taxes and income taxes; Connecticut repealing local property taxes and adjusting income tax levels; Georgia, Iowa, Kansas, Maryland, Massachusetts, Minnesota, Mississippi and New York. New York does not have the most conservative Republican Governor as we all know — Mario Cuomo in New York is proposing cutting taxes to draw jobs to the New York State. Ohio, Pennsylvania, South Carolina, Washington, Wisconsin and New Jersey is in the process of cutting income taxes by 30 percent. Those are the people competing with us for jobs and if we don't send a signal that we can do it and control state spending, then we are not open for business.

Mr. Speaker, I request a roll call.

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

Representative DORE: Mr. Speaker, Ladies and Gentlemen of the House: You may have noticed that I did not get up to be the first member to speak on this bill, even though I Chair the Taxation Committee. That's because so many people wanted an opportunity to get up and talk about their frustrations with this bill and I thought, I can relax today and let people have their fun. I was waiting for this particular moment towards the end of the debate (and I really don't care what gets said after that) for my opportunity to speak about this income tax, this so-called income tax reduction bill.

When I went on Taxation my first term in 1987, the then Chair of the Committee, Jack Cashman, said to me, "You're going to notice that when tax bills get debated, the room clears out and everybody leaves because these matters are dry and they involve many people and frequently they are partisan." I want to point out to you in this case that it is not partisan and it hasn't been partisan in the other body either if you care to go get the roll call down there when it was debated down there last night. Certainly here it has not been partisan and I don't expect it will be and I am going to tell you why.

Four years ago when I ran for reelection, I ran by telling people, here's the bad news and here's the worse news. The bad news is that we are going to increase your taxes and the worse news is that we are going to cut your services and that's because I can count \$400 million fast that we are in trouble by. Well, it turned out to be \$1.2 billion as the Governor informed us in the weeks just after the election. His popularity plummeted to an 18 percent rating, you may or may not remember that, polls were coming out at the time.

What does that have to do with this income tax proposal? It has a lot to do with it because I won that election writing letters to people telling them we are going to increase your taxes and cut your services. I won that election by 70 percent of the

vote. People will take the truth very well. In fact, they would rather hear the truth and they know when a recession is coming because they are unemployed and they are running out of money and they are holding onto their cars and all that other bad stuff. That's why we don't get the sales taxes in when they get nervous about jobs or they are losing their jobs.

Two short years ago, many of you got elected by saying that this has been a circus down here and we are not going to do anymore gimmicks. We had about \$1.2 billion worth of gimmicks — you know, pushes and pulls. Representative Kerr gave you a listing of some that we are doing this year and what Representative Kerr didn't tell you is that last year when you all voted on this budget, you participated in something rather interesting — you didn't reject all the gimmicks but you went down by half. Instead of \$1.2 billion in gimmicks, you went down to around \$600 million in gimmicks so just so you know you can pat yourself on the back and say, we're really working on not solving the problem with chicanery around here, we are really working on some serious solutions and we are eliminating some of the insurance pushes and pulls and all that other nonsense and trying to get serious about it but we can't eliminate all of it because the revenues are still really terrible. People know that because if you go to your home district — like in Auburn we have lost over 80 positions in the school department so we know that the recession is still on and we can't raise property taxes anymore, you know. The state is sending less money than they used to send for education in terms of the percentage of the education budget.

About 50 percent of the people here are not going to run for reelection between the House and the other body, somewhere in that neighborhood. I will be running for reelection, I hope to be here again, I am not going to tell anybody that the news is great, just that it is gradually getting better. I think that would be an accurate portrayal of what is going on, but we will find out come election day whether they want to hear from me again. But, next year there is going to be a new Governor and about 50 percent new legislators and what this bill does is that this hands them a real, red hot potato and says, I got a good roll call and I got out of here, and now you've got to deal with the fact that you are probably going to have to go back to doing gimmicks.

I would like to point out to you what we've done. As Representative DiPietro said, a number of business got tax credits, but what those credits are, they are lost revenues. There is a little bit of a feeding frenzy going on and you are going to see some bills surfacing in the next few weeks that will be about breaks for business for this and lowering job credit things and increasing time and stuff like that and it will be, you know, a couple hundred million dollars worth of job credits that some people are real excited for because either they are running for Congress or they are running for Governor and everybody is shaking the money tree, so you've got to watch that come by because it can. Some of this stuff is really good to do and you want to encourage business and you want to encourage development but when they show up at the last 11th hour like this, you've got to ask yourself, if this was such a great idea, how come we weren't thinking about it in January? Where was this bill in January? This is

going to cost us some money, so I tend to take a rather jaundiced view of what is coming our way.

We just passed a snack tax elimination bill because Representative Murphy was right, it's a very frustrating tax, it is going to get eliminated in two years, that's \$10 million that we have got to come up with. When we signed the \$300 million tax increase a few years ago, the Governor said, gee, this is my tax increase proposal for \$300 million because we have a \$1.2 billion shortfall and I think a reasonable thing is that 25 percent of it gets taken care of in tax increases and 75 percent in cuts and gimmicks — mostly 25 percent in cuts and 50 percent in gimmicks back then, if you take a look at it. When we did that temporary tax increase, the Governor said, even though it is my \$300 million proposal, there is absolutely no way I am going to sign this bill unless you put on the bill, that when revenues go up by x-percent, we are going to eliminate the sales tax. Well, you can just forget that with this bill because the income tax revenues rising means that we are to defer off when we get rid of that sales tax. Now I am not necessarily saying that I prefer to get rid of the sales tax to lowering the income tax but I think this is a serious proposal and we ought to take a serious time to talk about the implications of which you would prefer to do.

We have in this state over 2,000 uninvestigated cases of child abuse if anybody thinks we haven't done enough cutting back.

Last year we removed the income tax surcharges, last year we cut the circuitbreaker program by 50 percent and this year in the Supplemental Budget request, there is an additional 22 percent cut in the circuitbreaker and that gets to my point about why call this the income tax lowering bill when it is really the property tax increase bill of the century?

Do what you want to do, but know that when you go home, if you think this is a gimmick, you can say, I just couldn't do this, it was a gimmick and I couldn't sell it and it is dishonest to tell you that things are going to get a lot better when we've got a bunch of pushes that we have got to pay off before we can do serious talk about cutting taxes. It is not that we are in a horrible recession, we are on the way out, but it is a gradual process. To eliminate the revenue in the middle of the gradual process, it's chicanery, absolute chicanery, and I hope that you will do the responsible thing and I hope that you will vote to accept the Majority "Ought Not to Pass" and I hope that you will remember this is not a partisan issue. This is about facing the economic reality that we have been in for the last four years and digging ourselves out of the hole.

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

Representative SIMONEAU: Mr. Speaker, Ladies and Gentlemen of the House: I only rise because several people have asked my why I am on the Majority "Ought Not to Pass" Report. I want to make it very clear that I am absolutely committed to the concept of the reduction in taxes. Since I have been here, I think I have made it very clear that I am committed to jobs creation and I will continue to be committed to those things.

I have to keep reminding myself of something that I read a long time ago. It came from a landmark Supreme Court case dealing with taxes and Oliver Wendell Holmes — I believe it is carved either on

the Treasury Department Building or the IRS building in Washington. He said, "taxes are what we pay for civilization." It goes with the turf and that is where we are right now.

I voted in the majority because I have not had one constituent advocate this bill or this type of a cut, not a one.

The Clerk, Mr. Mayo, will know who I am talking about when I say that I stopped in the local Pickwick Store the other night and Mr. Bartlett pulled me aside. Mr. Bartlett is a person who hates to pay taxes, he is very vocal and he pulled me aside in front of about a dozen people and said, "Are you going to vote for that blank, blank, blank tax increase?" I said, "What blank, blank, blank tax increase?" He said, "The Governor's tax increase." I said, "Mr. Bartlett, he is talking about a tax decrease." He said, "Don't try to kid me, Dick, you make that tax decrease, you are going to increase my taxes at the local level." Mr. Bartlett had seen right through it.

Now it is nice to say tax decrease but think about this for a second — let's say we cut the taxes at the state level by 50 percent, all of them, what is the next logical step? You've got to cut your budget by 50 percent, all of it. You would have to cut your education costs, which is 52 percent of your budget, by 26 percent. How are you going to continue to fund civilization — the property tax? That is what I think we are facing here.

The local people also remember something else and I believe the number was \$168 million that was refunded to them in the form of small checks. They laughed about it back then and they are still laughing about it. They said, why didn't those people over there then, and why don't you people over there now, if you've got the extra money, do what you have to do, reduce our debt, reduce our spending and then reduce our taxes.

The reason I voted against this bill was not because I am opposed to reducing taxes, but let's do it in the proper sequence. We've got a tough nut to crack here. Let's get our revenues under control, get our spending under control, match them, then reduce the spending and reduce the taxes. That is what I am committed to, reduce that gap and get things back on balance.

The SPEAKER: The Chair recognizes the Representative from Nobleboro, Representative Spear.

Representative SPEAR: Mr. Speaker, Ladies and Gentlemen of the House: I just want to make a couple of more points.

I think we might be missing one point as we go along here. In my opinion, this is not a gimmick, this will only work if there is an actual surplus in the income tax revenues. It is not on budgeted figures, it is an actual surplus which will be moved ahead to reduce the income tax rate.

Then there was a point brought up that we are getting these mixed up with our sales tax if our revenues increase enough so we drop our sales tax, would we be dropping both at once? That is not true. In the bill itself, you can read that in any fiscal year where the General Fund revenues exceed 8 percent of the prior year's revenues, the sales tax reduction mechanism will take effect, then that will lower our sales tax to 5 percent. If that should happen, if our general revenue should increase 8 percent, that would put the sales tax back to 5 — if that should happen, there would be no rate adjustment

in that year to the individual's income tax. So, to a comment (and I think it was from Representative Kerr earlier) that this does take into consideration that they would not both happen in the same year.

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

Representative DORE: Mr. Speaker, Ladies and Gentlemen of the House: I am awfully glad Representative Spear brought that little twist in the bill up because that surfaced after the administration realized after their initial meeting with us that they had forgotten about the fact that they had required the sales tax item in the original tax increase. They had just completely forgotten — oh, that's right, it is in the law, we made a promise to these people about lowering their sales tax. So, then they had to go back and redraft and fix the bill up. If you read it, you will know how awkward it looks. It looks awkward because it is awkward because they had forgotten about the promise about the sales tax. I didn't forget about the promise because when I vote yes for a \$300 million tax increase, I remember how tough it is and what promises we make during it.

Another thing I would just like to bring up as we are winding down, I hope, and maybe we aren't, maybe we are just winding up, I'm ready to roll, and that is that Representative Foss referred to the fact that everybody in all these other states were lowering their taxes, but what she failed to mention was that a number of these states also have local income tax, local sales tax, local property tax, and state property tax. New York being one of my favorites — huge hotel taxes — I want to encourage them to lower their taxes but I think Representative Foss and I should meet sometime and discuss what some of the multiple tax levels some of these have and how they are are trying to address these problems. You have got to address it on the state level because they have got a lot of other local and county taxes in addition, kinds that we don't necessarily have.

I would like to point out one other thing in relation to something that she referred to and that's that everybody wants to know when the big Goliath in Augusta is going to stop chewing up all the money, over 51 percent of the money we chew up goes to education. Over 50 percent of the money we chew up goes back to the local communities. This big Goliath is us back home. The rest of it goes to things that are fixed for the state, to run that building over there, to run the Department of Education, which is as far as I am concerned once I lost all my local teachers I could eliminate tomorrow, to run the mental health system in this state, to run the corrections system in this state, to run Correction's in this state, to run DHS in this state and investigate the child abuse cases that everybody wants investigated so we can throw those bums into the jails for \$30,000 a year a piece, to run the State Department of Transportation and keep our highways — this is just endless, endless, endless. We run a state with this money, that's what we do with it. Anybody whose got any questions about what it goes into, it runs this state. If you go down to Popham Beach in the summer, there are lifeguards there, awfully nice to have them, I'm glad they are there. But I would just like to point out to you that over 50 percent of this money goes back to your local towns and I think what this bill ought to be called is a bill to increase geometrically your

property taxes.

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

Representative FOSS: Mr. Speaker, Ladies and Gentlemen of the House: You can cloud the issue by talking about other taxes in these other states but the bottom line is that Maine has one of the highest tax burdens in the country, some say 5th, some say 6th, we are in the top ten. That is the bottom line for Maine taxpayers. It doesn't matter whether the taxpayers of New York City pay city and county taxes, that's all factored in. Based on the ability to pay, Maine has one of the highest tax burdens in the country.

I would also like to address the other issue of child protective workers as if that were not a consideration for some of us for advocating this tax cut — the child protective workers have been a number one priority for many of us, they are also in the current budget at a reduced level. That will continue to be a priority for the State of Maine and for many of us. To suggest that a tax cut like this will take away child protective workers is merely clouding the issue.

The SPEAKER: The Chair recognizes the Representative from Old Orchard Beach, Representative Kerr.

Representative KERR: Mr. Speaker, Ladies and Gentlemen of the House: I hate to bore you but I just feel compelled to reiterate a few things about what this bill will do.

In this bill it refers to \$6.5 million that will be rebated through this individual income tax. Remember, \$1.5 million of that is the operating capital reserve account which was originally supposed to be paid off in 1994, was pushed to 1995, and is now in the Governor's proposal pushed to 1996 to pay it off. That is a gimmick, make no mistake about it.

I also gave you an example of about \$45 million worth of gimmicks that we had in the budget that was passed a year ago. I want to make sure that everyone understands — if revenues do not increase by that \$45 million, there will be a shortfall, make no mistake about that either.

I also passed out June of 1993's General Fund revenues. If in fact this bill was passed back then, and as you all look the individual income tax account is up \$18.7 million, sales tax is down, which is the other third and the rest of the tax structure is down, there would have been a shortfall of \$6.3 million.

In the past, when the Governor sent back checks a few years ago, maybe more thought should have been given to either paying off our debt service or putting money into the Rainy Day account. Today we have about \$600,000 in that account, we are allowed to have up to \$60 million in that account. I don't think we are on the right course yet, I think it is going to take a little time, a little more work on our part and on this Governor's part because they just reprojected revenues to the tune of about \$12.7 million, expenditures are above the \$15 million mark. There are new programs involved in this supplemental budget — is that the direction we are going to be heading?

The State of Maine does need jobs. I don't think that this bill, if in fact you go with the \$6.5 million or the \$5 million, is going to create a whole lot of jobs. We need stability in state government, that is what we need. Again, I would urge you to

support the pending motion.

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

Representative FARNUM: Mr. Speaker, Ladies and Gentlemen of the House: I look around and I hear people saying, don't cut taxes. This last summer I went to San Diego, California and I had a chance to talk with Massachusetts Representatives, both Houses, and they said that Massachusetts cut its taxes and when they cut their taxes, business on 128 started coming back.

I had a chance at the ALEC Convention to talk with the Governor of Michigan (it was a miracle, but I did it) and he said they cut taxes in Michigan and the business that was leaving Detroit and the rest of Michigan started coming back.

Look at Maine (I didn't talk to the Governor about this one) and I looked at Lewiston and Auburn and saw two businesses there leave the state, one was Libby's. I have known Libby's for years and years and years. They went to Iowa, I believe, and the shoeshop went to somewhere else in the state or vice versa.

I look at the Berwick area and it is even more disastrous. Pratt-Whitney downsized because of taxes. I looked at another business which was in South Berwick, they wanted to expand, they looked at Maine and New Hampshire, but they are moving to a place, a million dollar plant, just 12 miles away from the original site in South Berwick. Taxes — when are we going to stop? The more you raise taxes, the more businesses leave. When businesses leave, it means less employees, less wages and less money to pay taxes. Think about it.

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

A vote of the House was taken and more than one-fifth of the members present and voting having expressed 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 Dore, 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. 295

YEA - Adams, Ahearne, Aliberti, Bowers, Brennan, Bruno, Cameron, Carroll, Cashman, Cathcart, Chase, Chonko, Clark, Clement, Cloutier, Coffman, Coles, Constantine, Cote, Daggett, DiPietro, Dore, Driscoll, Dutremble, L.; Erwin, Faircloth, Fitzpatrick, Gamache, Gean, Gould, R. A.; Gray, Hale, Hatch, Heeschen, Hichborn, Hoggund, Holt, Hussey, Jacques, Jalbert, Johnson, Joseph, Kerr, Ketterer, Kontos, Larrivee, Lemke, Lord, Marsh, Martin, J.; Melendy, Michael, Michaud, Mitchell, E.; Mitchell, J.; Morrison, Nadeau, Oliver, Paradis, P.; Pendleton, Pfeiffer, Pinette, Plourde, Poulin, Pouliot, Rand, Richardson, Ricker, Rotondi, Rowe, Rydell, Saint Onge, Saxl, Simonds, Simoneau, Skoglund, Small, Stevens, A.; 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, R.; Barth, Bennett, Birney, Campbell, Carleton, Caron, Carr, Clukey, Cross, Dexter, Donnelly, Farnum, Farren, Foss, Greenlaw, Heino, Joy, Libby Jack, Libby James, Lindahl, Lipman, Look, MacBride, Marshall, Murphy, Nash, Nickerson, Ott, Pendexter, Plowman, Reed, G.; Reed, W.; Robichaud, Spear, Taylor, Thompson, True, Tufts, Whitcomb, Young, Zirnkilton.

ABSENT - Bailey, H.; Beam, Farnsworth, Hillock, Kilkelly, Kneeland, Kutasi, Lemont, Martin, H.; Norton, O'Gara, Pineau, Ruhlin.

Yes, 93; No, 45; Absent, 13; Paired, 0; Excused, 0. 93 having voted in the affirmative and 45 in the negative, with 13 being absent, the Majority "Ought Not to Pass" Report was accepted in concurrence.

**Non-Concurrent Matter**

Bill "An Act to Define Responsibilities of the Commission on Biotechnology and Genetic Engineering" (H.P. 1015) (L.D. 1361) which was passed to be engrossed as amended by Committee Amendment "A" (H-877) in the House on March 23, 1994.

Came from the Senate with the Bill passed to be engrossed as amended by Committee Amendment "A" (H-877) as amended by Senate Amendment "B" (S-554) thereto in non-concurrence.

The House voted to Recede and Concur.

**PETITIONS, BILLS AND RESOLVES REQUIRING REFERENCE**

The following Bill was received and, upon the recommendation of the Committee on Reference of Bills, was referred to the following Committee, Ordered Printed and Sent up for Concurrence:

**Taxation**

Bill "An Act to Demonstrate the Value the State Places on a Strong, Competitive and Sustainable Paper Industry" (H.P. 1466) (L.D. 1993) (Presented by Representative COLES of Harpswell) (Cosponsored by President DUTREMBLE of York and Representatives: AHEARNE of Madawaska, ALIBERTI of Lewiston, ANDERSON of Woodland, BAILEY of Township 27, BAILEY of Farmington, BARTH of Bethel, BEAM of Lewiston, BENNETT of Norway, BRUNO of Raymond, CAMERON of Rumford, CARROLL of Gray, CASHMAN of Old Town, CATHCART of Orono, CHONKO of Topsham, CLARK of Millinocket, CONSTANTINE of Bar Harbor, DAGGETT of Augusta, DEXTER of Kingfield, DONNELLY of Presque Isle, DORE of Auburn, DRISCOLL of Calais, DUTREMBLE of Biddeford, ERWIN of Rumford, FAIRCLOTH of Bangor, FARNUM of South Berwick, GOULD of Greenville, GWADOSKY of Fairfield, HEINO of Boothbay, HICHBORN of LaGrange, HOGGLUND of Portland, HUSSEY of Milo, JACQUES of Waterville, JOSEPH of Waterville, KERR of Old Orchard Beach, KETTERER of Madison, KILKELLY of Wiscasset, KNEELAND of Easton, KONTOS of Windham, LARRIVEE of Gorham, LEMONT of Kittery, LIBBY of Buxton, LINDAHL of Northport, LIPMAN of Augusta, LORD of Waterboro, MARSH of West Gardiner, MARTIN of Eagle Lake, MELENDY of Rockland, MICHAUD of East Millinocket, MITCHELL of Freeport, O'GARA of

Westbrook, OTT of York, PARADIS of Augusta, PFEIFFER of Brunswick, PINEAU of Jay, PINETTE of Fort Kent, PLOURDE of Biddeford, PLOWMAN of Hampden, POULIN of Oakland, POULIOT of Lewiston, REED of Falmouth, ROTONDI of Athens, RUHLIN of Brewer, RYDELL of Brunswick, SIMONDS of Cape Elizabeth, SWAZEY of Bucksport, THOMPSON of Lincoln, TOWNSEND of Eastport, TRUE of Fryeburg, VIGUE of Winslow, WALKER of Blue Hill, WINN of Glenburn, YOUNG of Limestone, ZIRNKILTON of Mount Desert, Senators: BEGLEY of Lincoln, BUSTIN of Kennebec, CAHILL of Sagadahoc, CAREY of Kennebec, CARPENTER of York, CIANCHETTE of Somerset, CONLEY of Cumberland, ESTY of Cumberland, FOSTER of Hancock, GOULD of Waldo, HANDY of Androscoggin, HARRIMAN of Cumberland, LAWRENCE of York, LUDWIG of Aroostook, LUTHER of Oxford, MARDEN of Kennebec, O'DEA of Penobscot, PARADIS of Aroostook, PINGREE of Knox, SUMMERS of Cumberland, VOSE of Washington) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.)

**ORDERS**

On motion of Representative DAGGETT of Augusta, the following Joint Order: (H.P. 1467)

ORDERED, the Senate concurring, that the Joint Standing Committee on Legal Affairs report out a bill to the House to establish fairness in the placement of on-line lottery machines by specifying an appeals process for applicants who are denied on-line licenses.

Was read and passed and sent up for concurrence.

**SPECIAL SENTIMENT CALENDAR**

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

Recognizing:

Joseph Nicholas, director of the Passamaquoddy-Maliseet Bilingual Program at the Pleasant Point reservation, in appreciation of his years of dedicated service and commitment in preserving the language, culture and heritage of the Passamaquoddy Tribe of the Abnaki Nation of American Indians; (HLS 913) 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 KERR of Old Orchard Beach, was removed from the Special Sentiment Calendar.

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

**REPORTS OF COMMITTEES**

**Ought to Pass as Amended**

Representative DORE from the Committee on **Taxation** on Bill "An Act to Increase the County Share of the Real Estate Transfer Tax" (H.P. 464) (L.D. 601) reporting "**Ought to Pass**" as amended by Committee Amendment "B" (H-996)

Report was read and accepted. The bill read once. Committee Amendment "B" (H-996) was read by the Clerk and adopted and the bill assigned for second reading later in today's session.

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**Ought to Pass as Amended**

Representative GOULD from the Committee on **Energy & Natural Resources** on Bill "An Act to Amend Certain Laws Pertaining to the Department of Environmental Protection, Bureau of Hazardous Materials and Solid Waste Control" (H.P. 1302) (L.D. 1757) reporting "**Ought to Pass**" as amended by Committee Amendment "A" (H-995)

Report was read and accepted. The bill read once. Committee Amendment "A" (H-995) was read by the Clerk and 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-995) and sent up for concurrence.

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

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Recessed until 2:00 p.m.

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(After Recess)

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**Divided Report**

Majority Report of the Committee on **Human Resources** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (H-986) on Bill "An Act to Improve Access to Pharmaceuticals for Rural Health Center Patients" (H.P. 558) (L.D. 755)

Signed:

Senators: PARADIS of Aroostook  
HARRIMAN of Cumberland

Representatives: TREAT of Gardiner  
BRENNAN of Portland  
CARR of Sanford  
PENDLETON of Scarborough  
TOWNSEND of Portland  
FITZPATRICK of Durham  
JOHNSON of South Portland

GEAN of Alfred  
BRUNO of Raymond

Minority Report of the same Committee reporting "**Ought to Pass**" as amended by Committee Amendment "B" (H-987) on same Bill.

Signed:

Representative: PENDEXTER of Scarborough

Reports were read.

On motion of Representative TREAT of Gardiner, the Majority "**Ought to Pass**" Report was accepted.

The Bill read once. Committee Amendment "A" (H-986) was read by the Clerk.

Representative CARROLL of Gray asked for a ruling from the Chair if Committee Amendment "A" (H-986) was germane to the Bill.

Subsequently, the Bill was tabled pending a ruling of the Chair.

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**Divided Report**

Majority Report of the Committee on **Marine Resources** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (H-973) on Bill "An Act to Rejuvenate the Lobster Population in the Gulf of Maine" (H.P. 1262) (L.D. 1689)

Signed:

Senators: VOSE of Washington  
PINGREE of Knox  
GOULD of Waldo

Representatives: MITCHELL of Freeport  
COLES of Harpswell  
LEMONT of Kittery  
CONSTANTINE of Bar Harbor  
SKOGLUND of St. George  
SWAZEY of Bucksport  
FARREN of Cherryfield  
HEINO of Boothbay

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

Signed:

Representatives: TOWNSEND of Eastport  
LOOK of Jonesboro

Reports were read.

On motion of Representative MITCHELL of Freeport, the Majority "**Ought to Pass**" Report was accepted.

The Bill read once. Committee Amendment "A" (H-973) was read by the Clerk and adopted. The Bill was assigned for second reading later in today's session.

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**Divided Report**

Majority Report of the Committee on **Appropriations**

**& Financial Affairs** reporting **"Ought to Pass"** as amended by Committee Amendment "A" (H-970) on Bill "An Act to Authorize a General Fund Bond Issue in the Amount of \$7,000,000 for Training Equipment for the Maine Technical College System" (H.P. 1442) (L.D. 1968)

Signed:

Senators: FOSTER of Hancock  
PEARSON of Penobscot  
TITCOMB of Cumberland

Representatives: RYDELL of Brunswick  
CARROLL of Gray  
HICHBORN of LaGrange  
MICHAUD of East Millinocket  
KERR of Old Orchard Beach  
POULIOT of Lewiston  
CHONKO of Topsham  
FOSS of Yarmouth  
MacBRIDE of Presque Isle

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

Signed:

Representative: REED of Falmouth

Reports were read.

On motion of Representative CHONKO of Topsham, the Majority **"Ought to Pass"** Report was accepted.

The Bill read once. Committee Amendment "A" (H-970) was read by the Clerk and 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-970) and sent up for concurrence.

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**Divided Report**

Majority Report of the Committee on **Legal Affairs** reporting **"Ought to Pass"** as amended by Committee Amendment "A" (H-971) on Bill "An Act to Allow Firearms Dealers, Importers and Manufacturers to Comply with the Brady Handgun Violence Prevention Act" (EMERGENCY) (H.P. 1450) (L.D. 1979) (Governor's Bill)

Signed:

Senators: HANDY of Androscoggin  
CAREY of Kennebec

Representatives: LEMKE of Westbrook  
BOWERS of Washington  
GAMACHE of Lewiston  
TRUE of Fryeburg  
ROBICHAUD of Caribou

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

Signed:

Senator: HALL of Piscataquis

Representatives: BENNETT of Norway  
DAGGETT of Augusta  
MICHAEL of Auburn  
STEVENS of Sabattus  
NASH of Camden

Reports were read.

On motion of Representative DAGGETT of Augusta, the Minority **"Ought Not to Pass"** Report was accepted and sent up for concurrence.

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**CONSENT CALENDAR**

**First Day**

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

(H.P. 1454) (L.D. 1982) Bill "An Act Regarding the Department of Corrections" Committee on **Audit & Program Review** reporting **"Ought to Pass"** as amended by Committee Amendment "A" (H-993)

There being no objections, the above item was ordered to appear on the Consent Calendar of Thursday, March 31, 1994 under the listing of Second Day.

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**CONSENT CALENDAR**

**Second Day**

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

(S.P. 700) (L.D. 1898) Bill "An Act to Authorize a General Fund Bond Issue in the Amount of \$21,000,000 to Provide Funds for Improved Access to State Facilities for Disabled Citizens and Employees, for Safety Improvements at the Baxter School for the Deaf and for Long-term Lease Cost Savings" (Governor's Bill) (C. "A" S-538)

(H.P. 1275) (L.D. 1723) Bill "An Act to Increase the Jurisdiction of the Loring Development Authority of Maine" (C. "A" H-974)

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 Paper was Passed to be Engrossed as Amended and sent up for concurrence.

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(H.P. 1155) (L.D. 1554) Bill "An Act to Prohibit Discrimination in the Assignment of School Attendance Areas" (EMERGENCY) (C. "A" H-966)

On motion of Representative KONTOS of Windham, was



removed from the Second Day Consent Calendar.

The Report was read and accepted. The Bill read once. Committee Amendment "A" (H-966) was read by the Clerk.

Representative KONTOS of Windham presented House Amendment "A" (H-1002) to Committee Amendment "A" (H-966) which was read by the Clerk and adopted.

Committee Amendment "A" (H-966) as amended by House Amendment "A" (H-1002) thereto was adopted.

The Bill was passed to be engrossed as amended by Committee Amendment "A" (H-966) as amended by House Amendment "A" (H-1002) thereto and sent up for concurrence.

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**BILLS IN THE SECOND READING**

Resolve, Authorizing Aroostook County to Issue Bonds for the Northern Maine Development Commission, Inc. (EMERGENCY) (S.P. 772) (L.D. 1992) (Governor's Bill)

**As Amended**

Bill "An Act to Amend the Laws Governing the Required Qualifications to Practice Law in the State" (H.P. 1153) (L.D. 1552) (C. "B" H-957)

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

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**ENACTORS**

**Emergency Measure**

An Act to Promote Managed Care and to Otherwise Facilitate the Cost-effective Delivery of Health Care in the State (S.P. 560) (L.D. 1596) (S. "A" S-517 to C. "A" S-502)

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.

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**Emergency Measure**

An Act Regarding Maine's Comprehensive Early Intervention System for Infants and Children, from Birth to under Age Six (S.P. 663) (L.D. 1831) (C. "A" S-510)

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. 103 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.

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**Emergency Measure**

An Act Related to Periodic Justification of Departments and Agencies of State Government under the Maine Sunset Act (H.P. 1368) (L.D. 1851) (H. "A" H-817 to C. "A" H-801; S. "A" S-506)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 105 voted in favor of the same and 0 against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

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**Emergency Measure**

An Act to Amend the Law Pertaining to the Appointment of a Guardian Ad Litem in Contested Proceedings (S.P. 680) (L.D. 1860) (C. "A" S-498)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 110 voted in favor of the same and 0 against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

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An Act to Expedite the Establishment of Administrative Child Support Orders (S.P. 488) (L.D. 1499) (Governor's Bill) (C. "A" S-501)

An Act to Provide for Consistent Data Collection (S.P. 562) (L.D. 1597) (C. "A" S-503)

An Act to Amend the Probate Code with Respect to Powers of Fiduciaries (S.P. 598) (L.D. 1657) (C. "A" S-500)

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

An Act to Clarify Maine Corporate Laws (S.P. 615) (L.D. 1713) (C. "A" S-499)

An Act Concerning Registered Apprenticeship Programs (S.P. 681) (L.D. 1861) (C. "A" S-489)

An Act to Facilitate Collection of Tolls on the Maine Turnpike (S.P. 687) (L.D. 1873) (C. "A" S-494)

An Act to Improve Methods of Dispute Resolution of the Maine Human Rights Commission (S.P. 692) (L.D. 1878) (C. "A" S-497)

An Act to Enhance the Effectiveness of the Office of the Public Advocate (S.P. 693) (L.D. 1879) (C. "A" S-445; S. "A" S-514)

An Act to Clarify and Make Technical Changes to

Various Professional Licensing Board Laws (S.P. 720) (L.D. 1942) (Governor's Bill) (C. "A" S-490)

An Act to Establish an Alternative Form of Telecommunications Regulation in the State (S.P. 726) (L.D. 1947) (Governor's Bill) (C. "A" S-492)

Resolve, Concerning Reauthorization of the \$6,500,000 Unissued Balance of the \$9,520,000 Bond Issue for Construction and Renovation of Juvenile Correctional Facilities (S.P. 673) (L.D. 1845) (C. "A" S-522)

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

An Act to Amend the Adoption Laws (S.P. 309) (L.D. 942) (C. "A" S-495)

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

On motion of Representative JACQUES of Waterville, was set aside.

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

An Act to Clarify the Licensing Authority of the Department of Public Safety (S.P. 614) (L.D. 1712) (C. "A" S-518)

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

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

On further motion of the same Representative, under suspension of the rules, the House reconsidered its action whereby L.D. 1712 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-518) was adopted.

The same Representative presented House Amendment "A" (H-933) to Committee Amendment "A" (S-518) which was read by the Clerk and adopted.

Committee Amendment "A" (S-518) as amended by House Amendment "A" (H-933) thereto was adopted.

The Bill was passed to be engrossed as amended by Committee Amendment "A" (S-518) as amended by House Amendment "A" (H-933) thereto in non-concurrence and sent up for concurrence.

An Act to Establish the Maine Surplus Energy Auction Program (S.P. 707) (L.D. 1904) (Governor's Bill) (C. "A" S-491)

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

On motion of Representative MARTIN of Eagle Lake, was set aside.

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

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

#### 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.

An Act to Encourage Effective Use of State Resources (EMERGENCY) (H.P. 1354) (L.D. 1820) (C. "A" H-818)

TABLED - March 28, 1994 (Till Later Today) by Representative GEAN of Alfred.

PENDING - Passage to be Enacted.

Subsequently, this being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 107 voted in favor of the same and 0 against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

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

HOUSE DIVIDED REPORT - Majority (10) "Ought Not to Pass" - Minority (2) "Ought to Pass" as amended by

Committee Amendment "A" (H-899) - Committee on Utilities on Bill "An Act to Amend the Charter of the Passamaquoddy Water District" (H.P. 503) (L.D. 661)

TABLED - March 28, 1994 (Till Later Today) by Representative CLARK of Millinocket.

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

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

Representative SOCTOMAH: Mr. Speaker, Men and Women of the House: For the Record, I would like to thank Representative Clark for sponsoring L.D. 661 and all those who have worked diligently with the bill, "An Act to Amend the Charter of the Passamaquoddy Water District", if passed, would have exempted the Passamaquoddy Water District from paying property taxes. That would have been more in line with other districts in the way they are treated.

Presently the water district pays taxes to the city of Eastport and the town of Perry but not to the tribe; therefore, it was difficult for the voting representatives from that area to sponsor this particular legislation. However, they have been

responsive to other tribal issues. Thank you.

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

An Act to Revise the Duties of the Superintendent of the Pineland Center (EMERGENCY) (H.P. 1445) (L.D. 1972) (Governor's Bill) (C. "A" H-870)  
 TABLED - March 28, 1994 (Till Later Today)  
 Representative CARROLL of Gray.  
 PENDING - Passage to be Enacted.

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

Representative CARROLL: Mr. Speaker, Ladies and Gentlemen of the House: If you would indulge me, I would like to have somebody explain what this bill is going to do. It is my understanding that the Superintendent's position at Pineland is on the layoff list for December of this year. What is the rationale behind this bill, what is the implication for other staff at Pineland and are we keeping the top and laying off at the bottom? I would like to have some answers if I could.

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

The Chair recognizes the Representative from Gardiner, Representative Treat.

Representative TREAT: Mr. Speaker, Men and Women of the House: The purpose of this bill is to provide the Commissioner of the Department of Mental Health and Mental Retardation with a chance to basically streamline the management structure at that department. It is essentially getting rid of a position, a senior position, the Bureau Director position, that is currently vacant and is combining that position with the Superintendent of Pineland's position, which is filled at the moment, and is partially funded by Medicaid dollars.

This will make the management structure over at the Department of Mental Retardation part of the department consistent with what is going on at the Mental Health part of the department. At the same time, it will enable the Commissioner to basically give the Associate Commissioner additional duties which will basically make the whole process more efficient. As I understand it, it is not going to be increasing the management structure, it is reducing it and it has nothing to do with any layoffs that may occur at lower levels in terms of direct care staff.

The committee thought it was a good idea, we are asking for a report back from the department because we think it could be organized better than it is now and this is somewhat of an interim approach.

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

Representative CARROLL: Mr. Speaker, Ladies and Gentlemen of the House: I thank the Chair for that explanation. I just need to say if it is an interim approach and this position is already scheduled for elimination in December, it would seem to me that given the staff that now exists at that department and the administration at Pineland Center, that this is just a stopgap approach that has no fiscal impact, it does nothing but confuse what the role is for that individual and I wish you would consider maintaining the status quo in allowing the duties of the

Superintendent, which is going to be overwhelming as they continue their downsizing efforts, to concentrate on his role and responsibilities only.

I would request a Division.

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

Representative TREAT: Mr. Speaker, Men and Women of the House: I would encourage you to go along with the unanimous committee report. We really don't see problems with this, we do think that the Superintendent of Pineland will actually have diminishing responsibilities since we are downsizing Pineland. We know that it a very important time for the Superintendent to be there so we are not interested in phasing out that position at this time. We are interested though in streamlining the department and making it work better and I believe this bill will in fact do that.

The SPEAKER: The Chair will order a vote. The pending question before the House is passage to be enacted. This being an emergency measure, a two-thirds vote of all the elected members is necessary. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

Representative Pendexter of Scarborough requested a roll call.

The SPEAKER: 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 desire for a roll call, a roll call was ordered.

The SPEAKER: The Chair recognizes the Representative from Scarborough, Representative Pendexter.

Representative PENDEXTER: Mr. Speaker, Ladies and Gentlemen of the House: I do encourage you to support the enactment of this bill.

If I may make an analogy that the same thing happened in the Department of Mental Health where we made the Superintendent of AMHI directly responsible for the Bureau's activities and it has worked extremely well, especially as we are moving on to intercommunity services and moving away from institutionalization. I think it really is a good move to have the Superintendent of an institution that is moving out into the community to also be in charge of the Bureau of that particular activity of developing community of services. The department asked for this, the Superintendent of Pineland supports this, and there really is no opposition and it does save a little bit of money in the budget, so I do ask you to support this bill.

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

Representative CARROLL: Mr. Speaker, Ladies and Gentlemen of the House: The roles and the duties of the Superintendent of Pineland clearly have increased in the whole push over the last 18 months to downsize. There is an increasing role and responsibility for that individual in that position to maintain the integrity of that institution as we continue that process.

It would seem to me that to spread that role out, to make that individual responsible, not only for that institution and all the problems that are going on, but in trying to develop community programs, puts

a lot of onus on one individual and changes the whole perplexity of the problem. I think it only makes sense to maintain the status quo.

Clearly there are people in central office in this department who can (in the next 9 months) continue to function and develop those community relationships and community programs without putting excess burdens on the people at Pineland when the Superintendent, the administrator of that institution, is trying to split his time between that facility and traveling around the state to do it. Whether they did it in Mental Health or not doesn't make it right, doesn't make it a proper decision and I would urge you to defeat this bill.

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

Representative BRUNO: Mr. Speaker, Men and Women of the House: This bill was a unanimous committee report. My committee has looked long and hard at Pineland. I happen to work in the same town that Pineland is located, I know the effect this has on the people that work there.

This bill will just flatten out the management structure and make it a little bit more so the current Superintendent of Pineland will be more involved in mental retardation programs. He will be working out in the community finding places for the residents of Pineland to live. There is also an Associate Superintendent of Pineland who will assume the duties of running the facility in New Gloucester.

I urge you to support the unanimous committee report and enact this bill.

Representative Carroll of Gray was granted permission to speak a third time.

Representative CARROLL: Mr. Speaker, Men and Women of the House: I need to say only one time and I will try to make this as quickly as I can.

It seems to me an inappropriate position for this legislature to take to maintain positions at the top while we continue to lay off direct care workers at that institution.

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

Representative TREAT: Mr. Speaker, Men and Women of the House: To clarify, I have already said this one time and it was true the first time and it is going to be true this time, this reduces the upper management, it does not increase it. Therefore, this is not an example of increasing management and decreasing direct care. That is not what this bill does. This bill decreases upper management positions.

The SPEAKER: A roll call has been ordered. The pending question before the House is passage to be enacted. This being an emergency measure, a two-thirds vote of all the elected members is necessary. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 296

YEA - Adams, Aikman, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Beam, Bennett, Birney, Bowers, Brennan, Bruno, Cameron, Campbell, Carleton, Caron, Carr, Cashman, Chase, Clement, Clukey, Coffman, Coles, Constantine, Cross, Dexter, DiPietro, Donnelly, Dore, Dutremble, L.; Faircloth, Farnsworth, Farnum, Fitzpatrick, Foss, Gamache, Gean, Greenlaw, Hatch, Heeschen, Heino, Hoglund, Holt, Johnson, Joy, Ketterer, Kneeland, Kontos, Larrivee, Lemont, Libby Jack, Lindahl, Lipman, Look, Lord, MacBride, Marsh,

Marshall, Martin, J.; Michael, Murphy, Nash, Ott, Pendexter, Pendleton, Pfeiffer, Pineau, Pinette, Plourde, Plowman, Poulin, Rand, Reed, G.; Reed, W.; Robichaud, Rowe, Simonds, Simoneau, Small, Spear, Stevens, K.; Tardy, Taylor, Thompson, Townsend, E.; Townsend, L.; Tracy, Treat, Tufts, Vigue, Wentworth, Whitcomb, Young, Zirnkilton, The Speaker.

NAY - Ahearne, Aliberti, Carroll, Cathcart, Chonko, Clark, Cloutier, Cote, Daggett, Driscoll, Erwin, Farren, Gould, R. A.; Gray, Hale, Hichborn, Hussey, Jacques, Jalbert, Joseph, Kerr, Lemke, Libby James, Melendy, Michaud, Mitchell, E.; Mitchell, J.; Morrison, Nadeau, Nickerson, Norton, O'Gara, Oliver, Paradis, P.; Pouliot, Richardson, Ricker, Rotondi, Ruhlin, Rydell, Saint Onge, Saxl, Skoglund, Stevens, A.; Strout, Sullivan, Swazey, Townsend, G.; True, Walker, Winn.

ABSENT - Hillock, Kilkelly, Kutasi, Martin, H..

Yes, 96; No, 51; Absent, 4; Paired, 0; Excused, 0.

96 having voted in the affirmative and 51 in the negative, with 4 being absent, a two-thirds vote of all the members elected to the House being necessary, the Bill failed passage to be enacted and sent up for concurrence.

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Bill "An Act to Provide for Greater Efficiency within the Department of Agriculture, Food and Rural Resources" (H.P. 1191) (L.D. 1588) (C. "A" H-944)

TABLED - March 28, 1994 (Till Later Today) by Representative TARDY of Palmyra.

PENDING - Passage to be Engrossed.

On motion of Representative TARDY of Palmyra, under suspension of the rules, the House reconsidered its action whereby Committee Amendment "A" (H-944) was adopted.

The same Representative presented House Amendment "A" (H-981) to Committee Amendment "A" (H-944) which was read by the Clerk and adopted.

Committee Amendment "A" (H-944) as amended by House Amendment "A" (H-981) thereto was adopted.

The Bill was passed to be engrossed as amended by Committee Amendment "A" (H-944) as amended by House Amendment "A" (H-981) thereto and sent up for concurrence.

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

TABLED - March 28, 1994 (Till Later Today) by Representative CLARK of Millinocket.

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 specially assigned for Thursday, March 31, 1994.

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Expression of Legislative Sentiment recognizing Yvette Farris, of Belgrade (HLS 903).

TABLED - March 28, 1994 by Representative PARADIS of Augusta.

PENDING - Passage.

Subsequently, the Legislative Sentiment was passed

and sent up for concurrence.

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HOUSE REPORT - "Ought to Pass" Pursuant to Joint Order (H.P. 1456) - Committee on Banking and Insurance on Bill "An Act Regarding Access to Chiropractic Services" (H.P. 1461) (L.D. 1986)

TABLED - March 28, 1994 by Representative PINEAU of Jay.

PENDING - Acceptance of the Committee Report.

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

Representative PINEAU of Jay presented House Amendment "A" (H-998) which was read by the Clerk and adopted.

The Bill was passed to be engrossed as amended by House Amendment "A" (H-998) and sent up for concurrence.

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

TABLED - March 28, 1994 by Representative HOGLUND of Portland.

PENDING - Passage to be Engrossed. (Roll Call Ordered)

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

Representative Hوجلund: Mr. Speaker, Ladies and Gentlemen of the House: I would like to move that we indefinitely postpone this bill and all its accompanying papers.

I talked to the sponsor and the athletic trainers and they feel like they would rather work on it all summer long and come in next year with a better bill.

Subsequently, the bill and all its accompanying papers were indefinitely postponed. Sent up for concurrence.

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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 28, 1994 by Representative JACQUES of Waterville.

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

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

Representative JOSEPH: Mr. Speaker, Ladies and Gentlemen of the House: I would urge you to consider the Majority "Ought to Pass" Report. This piece of legislation separates Peaks Island from the City of Portland. It follows similar pieces of legislation except for two or three small items, one of those having an emergency preamble, it has a mandate preamble. As they requested to have a referendum to separate themselves from the City of Portland, they

would like to have this referendum at an early as possible date. That referendum date would be November 2, 1994. The question on the referendum would be: "Do you favor the separation of Peaks Island, House Island, Pumpkin Knob, Ram Island and Ram Island Ledge and the surrounding waters from the City of Portland and their incorporation as a separate town?"

This piece of legislation differs from others that you have considered in this body because they do want to become an independent town. For those of you who have not visited Peaks Island, I need to say that the size of this island is 720 acres, approximately 2 miles long and 1 1/2 miles at its widest point. The year-round population of Peaks Island is 700. The seasonal population is 3,000 to 5,000 people and there are 700 dwellings. They have 92 students in K through 5 and 62 students in 6 through 12. They have fire protection currently and they have 15 volunteers and two officers for shifts in the Police and Public Safety. They use Casco Bay Lines and water taxi to communicate between the island and Portland. They have 900 registered voters, 620 of those voters voted in the 1992 Presidential Election.

They have similar organizations that you have in many small towns in this state, such as American Legion, the Fifth Maine Regiment Community Center, Maine Memorial Association, Lions Club, PTO, Senior Citizens Center, Cub Scouts, Brownies and Little League, the Peaks Island Music Association and the Evergreen Association. They have churches and 11.9 miles of public road, so you see Peaks Island, as an island that is currently part of the City of Portland, resembles many of the small towns in the State of Maine.

As well, Peaks Island has a tax base so that it would be economically feasible for them to be an independent community. There are 336 towns in the State of Maine with a state valuation less than the estimate \$90 million state valuation that Peaks Island has.

I would urge you to consider favorably for this piece of legislation to allow the Peaks Island registered voters to vote in a referendum whether or not they could separate themselves from the City of Portland and become an independent community. As you consider this referendum vote, it is not a guarantee that they would be successful. We know that there are opponents of this and we also know that there are proponents. We have heard that there are 50 percent of the people who would favor this but like in any election, it is not a guarantee, so therefore, I would urge your consideration of this legislation.

The SPEAKER: The Chair recognizes the Representative from Blue Hill, Representative Walker.

Representative WALKER: Mr. Speaker, Colleagues in the House: Inherent in the legislature is granting Peaks Island the right to vote is the assumption that we agree to grant Peaks Island the right to secede. I don't agree. I find the words "right to vote" misleading. At first glance, it would seem that to vote against this bill would be unamerican but the citizens of Peaks Island do have the right to vote. They may vote in any city, state or national election, just as we all do. All citizens in the State of Maine have the right to vote.

The question then before us today is not whether citizens can or cannot vote, but whether we feel a neighborhood should secede from a parent community. This is a policy issue that could affect all of our

communities all across Maine.

Again, as with the other secession bills that we dealt with this session, I worry about precedence and so should you. Please vote no.

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 Jonesboro, Representative Look.

Representative LOOK: Mr. Speaker, Ladies and Gentlemen of the House: This is another of the secession bills. Peaks Island is a much larger island than we have dealt with before. The population of Peaks Island is much higher and their desire to be independent is certainly to their advantage, there's no question about it.

But let's stop and think — if we were in the same situation, wouldn't we like independence? Wouldn't we like the idea of governing our own, having a smaller community? More and more we are finding in our civilization that these people are happier in a small community, they are closer knit, they understand the issues and I hope you will understand this and give them the right to determine how they really want to be.

The question of process has been brought up in relation to the islands — let me assure you that in the process of looking at all these islands, we were very thorough in the requirements that we made of them and in developing the subsequent bill that you will hear later. It is not much different than what we have required of the islands already, so please be assured that the people on Peaks Island are very much qualified to conduct their own business and I hope you will grant them that right to have a referendum to determine their own destiny.

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

Representative ROWE: Mr. Speaker, Ladies and Gentlemen of the House: I won't stand up long, I stood up on the earlier island secession bill and made several comments so I will try not to be redundant.

I agree that Peaks Island is different than the other three small islands in that there are more people there and it is a real community. Indeed, the people on Peaks Island are not all wealthy people, many of them are not wealthy. That's just like all the communities or at least most of the communities in mainland Portland. Each of the different parts of Portland could stand alone as a community and could operate as a town. The median household income in the City of Portland, as you know, is lower than the state average, it is not a rich city, so although we are talking about a community, it is a community among many communities in a large city, it is a city which is the largest in the state.

I ask you to oppose this bill for the same reasons that you opposed the earlier bill. I believe it is motivated in large part by property taxation. Indeed, the mainland voters have no say whatsoever in this process. It has been presented again in an ad hoc manner. You have heard before about a process

and indeed our committee, the State and Local Government Committee, has worked the process and you will be seeing a bill out of the committee that deals with the process. This particular bill has not been through that process nor does this bill comply with some of the standards that are in the process bill.

Separation is a very important issue to secession and I think it is terribly important that we wait until we have approved a standard process and that we ensure that all secession bills around the state comply with the process and, indeed, if the secessionists on Peaks Island want to bring a bill back once the process is in place, we can deal with it then. I would suggest that to deal with it now would be inappropriate and I would ask for your continued support in defeating the pending motion.

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

Representative ADAMS: Mr. Speaker, Ladies and Gentlemen of the House: Once again, it is not easy to stand in opposition to one's own friends and neighbors, members of the House who perhaps you not only sit near but work with and who in the course of our short compass of time here, you come to love and respect as individuals. It is even more difficult when perhaps you share a city with some of those people and when you are well aware of the divided opinion that exists, not only in your own delegation, but certainly upon this one island that, again, presents its case to us today.

It is for reasons of conscience and for those reasons that also make us communities but I do respect the islanders right to make a choice about their own fate and, indeed, to take it one step further that not only to just present their opinion to this body but to have that chance to make their own opinions known in a vote this fall after a very carefully established process that has been spoken about in public hearings, far more than once, in fact three times for this one particular body of land.

I think it is important to remind us once again, as do the sheets of paper handed out by my friend and colleague, Representative Hoglund of Portland, that Peaks Island is a bit of a different place than the islands that you heard from not so many weeks ago. It is important to remember that the Harbor Islands of Casco Bay that happen to be in Portland are far more like cousins than they are like brothers and sisters. They have similar problems, but very different personalities and possibly very different answers are necessary to deal with all those problems.

I would gently disagree with my friend, Representative Rowe of Portland, who refers to an ad hoc process by which these citizens of Peaks Island have presented their case to this legislature, as I say, three times over a period of about three years. The process is not ad hoc, it is a process through which every single one of us presents every single bill that reaches this floor or that does not reach this floor. By all the standards that we apply to those bills, public hearings, public comment, public input and the follow through necessary to carry the individual opinions of individual islanders to us in our hallways and at home. These islanders on both sides of this issue have indeed done that.

It is the third time for the citizens of Peaks Island, both pro and con on this issue, to bring it to this legislature. The original bill passed now over a year ago concerning Long Island, in fact originally had been the vehicle for the presentation

of Peaks Island's case, which was withdrawn in that process. Long Island survived through that process, carried through, made its choice in a public vote and has gone its own way picking up with itself and its right to make that choice, all the burdens that come with the choice as well as the responsibilities and rights that go with being independent and paying your own way in this world. No one who lives on Long Island will tell you that that was an ad hoc or easy process, no one who remained back in Portland will tell you it was ad hoc or an easy process and on one who lives on Long Island now will tell you that it came without a price to their pocketbook and, in some cases, to their heart. The choice was made overwhelmingly, deliberately and the burdens picked up with the rights.

Given that, I am not sure how much more we can actually expect of this small part of the City of Portland that happens to be an island can be expected to do under any other bills that can be presented to us. Every time we have in those three visits that this bill has made to us set new standards, made new objections and sent the islanders home again to do their homework, they met those new standards, they have met those new obligations and returned again after full discussion of the case at home with their case to us once again, better informed, better argued and no more easy for the third time than it was the first.

I am not so sure what we can ask further of any people who are trying their level best to use the guaranteed access to the process to seek some method of finding an end to their long struggle that they have been in. I believe the time has come to settle the issue, not to stifle discussion. To settle the issue, I have concluded in my own conscience, that it is best, finally and at last, to simply let them put it to a vote, the outcome being far from decided, far from certain, as you could obviously understand by speaking to both sides of this issue as represented by the islanders in our hallways.

Peaks Island is a very different place than the small islands that you heard about before. Opinion on this subject is far from unanimous but it is different than any other Harbor Island that happens to be now part of the City of Portland in that it has a year-round school, two year-round churches, as has been told over 300 towns in the State of Maine, existing towns, who have been doing well in some cases for hundreds of years, have lesser valuation than the town of Peaks Island proposes to carry with it than the island of Peaks Island now has.

By a quick count and by no means complete, there are over a hundred towns smaller in population already existing in the State of Maine than Peaks Island already is. I come from one such town, which will be 160 years old this year. Of the population of about 700 or 800, you will find that there are about 600 registered voters there, 530 of those (about) participated in the 1992 Presidential Election, a turnout of voters to possible voting population that any town in this state would be proud of should it happen in our own community. These are people on this island who have demonstrated that they care, who know that they will discuss the issue fully and fairly and who will decide it carefully, if I know anybody on that island and if you can make any judgment whatsoever about their character and thoughtful process by the visits they paid us in the hallways.

I looked at some length at their proposed town budget set before us in the form of this document from a certified public accountant agency that they hired to inspect their plans to see if in fact upon the basis of the figures in the ledger sheet alone it would appear that they would be able to make it on their own giving nothing more than "they start with today." It would point out that in the budget that they were able to assemble using only the figures that they now have today, expecting no additional money from any other source, they would be able from everything from police protection to the library to provide equal or exceed the level of services now being received. The library budget alone "provides the same level of service as we now enjoy, having an additional part-time person, to increase library hours of service." The public works budget in fact provides for three full-time employees, additional funds are provided in the capital improvement budget for rebuilding those few miles of roads mentioned on the island. The fire department budget in fact would increase by \$42,000 over the current level of funding; in fact providing \$41,000 for new needed equipment and equipment repairs. For the emergency medical budget, this being an emergency evacuation boat stationed on the island itself, not on the mainland to respond to island emergencies — contracted services are easily met. Training for EMT's would be provided in the fire budget. For the police budget, it would still provide for 24 hours a day coverage year-round by one officer and allowing for expanded service seasonally in the summer. Each of them will be EMT trained. Under health and human services, you will find a similar notation. General Assistance is presently reimbursed of course, 50 percent with state funds. In drawing up their human services budget, they were able to provide the same level of services they are now receiving without including any state reimbursement.

I believe that anybody who takes the time to think this out could be proud of any town they would live in that could be so careful, that could provide its citizens with such assurance. Since these are the very figures, in fact the figures of life and death of living and remaining and loving and staying in a community that will be heavily debated by the islanders should be given the choice, I believe they have gone in three years, three times, far enough down that road to give themselves a solid document to start from, which I believe they will discuss fully, fairly, and completely and with no guaranteed outcome as I expressed before.

Love of community is something that strikes us all very deeply. The community which I come from I still hold in my heart, the community that I live in I hold very much in my heart as would any of us, as with the islanders for their small island two miles off the coast of Portland divided by a 25 minute ferry trip each way, very much a part of the city that it has belonged to for so long, very much a part of the community that they become every time the last ferry leaves at night before the next one comes in the morning.

Better than anything persons like myself can say, I would encourage you to have listened to the islanders, pro and con, in the aisles and the hallways who have spoken to us for so long, read carefully the documents that I have just had distributed, the essence of island life described by one of their residents and understand that by far

from it is a decided outcome of this issue should we decide to give the right to vote on it.

I would encourage you, as I have before, merely to vote your conscience, I have no magic answer to the difficulties before us as a state and as the various communities we face, but as you do that, I hope you do realize that the desire for independence does not always depend merely upon taxes, we all pay the same. They do not depend merely upon the inability of us to absorb further property taxes to pay for our school system. The ability to change that factor remains in our hands. Should you be afraid that secession movements will strike your communities based solely upon that fact, I would encourage you to think very carefully about the changes we should be making in the school funding formula rather than accepting "business as usual" and expecting no results.

Nothing in our lives or in this legislature or in the City of Portland or on those islands happens in the morning and goes away at night without eventual consequence. Seeking independence carries great burden. Ignoring great problems, whether we be a large town or a small city or a very small town, does bear consequence at the end of the session like it does at the end of the day. It would seem to me that no matter what process we establish in any process bill coming through the State and Local Government Committee, which I commend for their diligence and their attempts to do the right thing, if we deny this particular effort of the island to have their say, they will merely be back again for the fourth time, perhaps joined by other communities who should then take advantage of yet another process to express their opinions. If the separation bill frightens us into passing a procedures bill that is such a steep hill that it is impossible to climb, I would remind you that it is precisely what the State of Massachusetts did for a generation. We waited for a long time for Boston to solve our problems; it never happened. Finally, when we had our own choice in the matter, we shouldered those responsibilities on the 15th of March, 1820. I would point out to you the 15th of March is the exact same date, interestingly enough, that that yellow sheet I have now had distributed stating the cause for self-choice on the island, appeared in our local paper, a bit of symbolism I rather enjoyed at the time.

I believe we may either deal with it now or deal with it again later. I believe we must either admit the problems that cause such things to come about or have them come back around and hit us in the head again later. I believe the time has come to settle the issue, not stifle the discussion, not vote based on fears of what may happen to one of our own individual communities but based upon the evidence of what has happened in others and from which we must make our best choice possible.

I conclude by pointing out again that it is not comfortable for me necessarily to oppose so many people in my own delegation and on this floor who we worked so long with and who we care so much for, but the islanders are similarly divided, it is just as difficult for them. Depriving them now of a choice will not make our choice any easier in the future or their case any easier for them in the future either. For that reason, I would encourage you to consult your conscience, I having done so will be voting in favor of the Majority "Ought to Pass" Report.

The SPEAKER: The Chair recognizes the

Representative from Lewiston, Representative Aliberti.

Representative ALIBERTI: Mr. Speaker, Colleagues of the House: Two weeks ago today, I reassumed the role of the native. I visited Peaks Island after 60 years of absence. I was welcomed there like a favorite son. I felt so comfortable. This map was handed out and I received while visiting the island. I was transported to every part of that island that was passable and, believe me, there were many roads that were just dirt roads, not criticizing because that is the way they choose to have them. You can only get the feeling of what Peaks Island is by visiting it. It is a feeling that is so difficult to explain. Now notice that I am not talking about giving them the right to secede or any of that stuff, I am talking about the feeling of a spirit of community. It is so uniquely different.

I don't see how we can deny them the right to choose. What was the big difference I saw when I came on the landing — first of all, the boat was different, it was not the Aquacisco or the Ameda, it was a small boat. I got off the landing, went up the walkway and I looked to my right, something was wrong, there used to be a Gem Theater there, it was a real gem. In its place is a waste treatment plant — now this has an important point at this time — they changed the zoning laws to put the treatment plant in — if you look at the map, it is the furthest landing as you come off the boat, you go up a little ways, I would say about 100 yards to the right on the beautiful part of the waterway and there is where this waste treatment plant is. They changed the zoning laws to put that plant there without any input from the islanders. This is the kind of thing that feels unjustified in not allowing them to make that decision. Of course they need a treatment plant, but as I traveled the islands, there were many remote places to put that treatment plant rather than having a person under certain conditions walk up that ramp and take a deep breath. I don't think they would want to take another one.

I solicit your support to allow them to make this decision. I voted against the smaller islands because I honestly felt that they were doing themselves an injustice, but I hope you will vote to allow these people to determine their own destiny. You and I would want that same right.

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

Representative MARSHALL: Mr. Speaker, Colleagues of the House: Just a few minutes ago somebody brought up wealth as one of the prerequisites or consideration to be made, a relative wealth, and I think I am a little offended by the wealth of a community or individuals in a community even being part of the discussion here. I mean, what does wealth have to do with it? I just don't understand that, but to go a little further than that, the secession of any town or any portion of a town is not unlike the reasons we decided to secede from England. We were unhappy with the services they were giving us, we were unhappy with the representation that we got and we decided that we wanted to be independent, to be able to make our own mistakes and I am sure we have made a lot of them. That is part of the enjoyment or the honor of being an independent town or nation or whatever it is.

Government was set up to protect the citizens, at least ours was, and I fear that we are getting into the realm of protecting government, rather than



protecting citizens. I think we need to take another look at that.

To go back to the Constitution again, in the First Article, the first two sections, speaking of inalienable rights, it goes on to say: "among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness." Happiness I think is a key word.

Section two: "All power is inherent in the people; all free governments are founded in their authority and instituted for their benefit; they have therefore an unalienable and indefeasible right to institute government, and to alter, reform, or totally change the same, when their safety and happiness require it."

I think if we let these people vote now, they may well vote to stay with Portland and it will be over. If we don't allow them to vote, I think we may get their backs up and they may decide to get a little more cranky with us. I wouldn't blame them at all. It might give them a good reason to want to fight just a little harder. If we let them vote and they vote no, which they may well decide to do, we may have ended it and we won't have to discuss it any further.

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

Representative OLIVER: Mr. Speaker, Ladies and Gentlemen of the House: I think it is important to keep focus on this. One of the things that I thought most important in Maine is common sense. If there is any ingredient that separates us generally from the other 49, I think it is the deep-rooted common sense of our people. We don't jump fast, we don't take chances that we don't have to take, we are very measured people.

I think what we are doing here is starting a ballgame before we have the rules. I don't think tonight's vote is pro or con secession. Tonight's vote is whether we as a body, knowing that we have a very responsible state and local committee that has come up with a process and has a unanimous vote, that that should take precedent, that's the rules of the game. Those rules will set statewide standards and criteria that all future secession movements can go through. That is the common sense approach so we can get the verdict on whether Peaks Island has an infrastructure or how far it is from Portland or feelings of its people. All those things matter but tonight we are really voting on whether we will vote in a process, which we are very close to voting in, before we start the game.

So, I hope you keep the focus. This is not a vote for or against whether Peaks Island should leave. It really is important to remember that we have a committee who has done very hard work in coming up with a unanimous process bill, that should go first before this vote. I urge you to defeat this bill, knowing that all future secessions can come through the process that we voted on as a body. That makes more sense, I think it is more rooted in Maine tradition.

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

ROLL CALL NO. 297

YEA - Adams, Ahearne, Aikman, Aliberti, Ault, Barth, Bennett, Birney, Bowers, Bruno, Cameron, Campbell, Carr, Carroll, Cathcart, Clement, Cloutier, Clukey, Coffman, Constantine, DiPietro, Donnelly, Erwin, Farnsworth, Farnum, Farren, Foss, Gamache, Gould, R. A.; Gray, Greenlaw, Hichborn, Hogle, Hussey, Joseph, Joy, Kerr, Larrivee, Lemont, Libby, James, Lipman, Look, Lord, Marshall, Michael, Morrison, Murphy, Nash, Ott, Pendexter, Plowman, Pouliot, Rand, Reed, G.; Reed, W.; Ricker, Simoneau, Skoglund, Small, Spear, Strout, Thompson, Townsend, G.; Tufts, Whitcomb, Winn, Young, Zirkilton.

NAY - Anderson, Bailey, H.; Bailey, R.; Beam, Brennan, Carleton, Caron, Cashman, Chase, Chonko, Clark, Cote, Cross, Daggett, Dexter, Dore, Driscoll, Dutremble, L.; Faircloth, Fitzpatrick, Gean, Hale, Hatch, Heeschen, Heino, Holt, Jacques, Jalbert, Johnson, Ketterer, Kneeland, Kontos, Lemke, Libby, Jack, MacBride, Marsh, Martin, J.; Melendy, Michael, Mitchell, E.; Mitchell, J.; Nadeau, Nickerson, Norton, O'Gara, Oliver, Paradis, P.; Pendleton, Pfeiffer, Pineau, Pinette, Plourde, Poulin, Richardson, Robichaud, Rotondi, Rowe, Ruhlin, Rydell, Saint Onge, Saxl, Simonds, Stevens, A.; Stevens, K.; Sullivan, Swazey, Tardy, Taylor, Townsend, E.; Townsend, L.; Tracy, Treat, True, Vigue, Walker, Wentworth, The Speaker.

ABSENT - Coles, Hillock, Kilkelly, Kutasi, Lindahl, Martin, H..

Yes, 68; No, 77; Absent, 6; Paired, 0; Excused, 0. 68 having voted in the affirmative and 77 in the negative, with 6 being absent, the Majority "Ought to Pass" Report was not accepted.

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

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

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Recessed until 6:30 p.m.

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(After Recess)

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Bill "An Act to Reestablish a Mechanism for Review of Disputed Elections" (H.P. 1418) (L.D. 1932)

- In Senate, Majority "Ought to Pass" as amended Report of the Committee on Legal Affairs read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (H-885) in non-concurrence.

- In House, House reconsidered whereby it Adhered to its former action whereby the Minority "Ought Not to Pass" Report of the Committee on Legal Affairs was read and accepted.

TABLED - March 28, 1994 by Representative DAGGETT of Augusta.

PENDING - Adherence.

On motion of Representative DAGGETT of Augusta, the House voted to Insist and ask for a Committee of

Conference.

Bill "An Act to Clarify the Application of Nursing Facility Admissions Criteria" (EMERGENCY) (H.P. 1230) (L.D. 1650)

- In House, Majority "Ought to Pass" as amended Report of the Committee on Human Resources read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (H-922) on March 25, 1994.

- In Senate, Minority "Ought Not to Pass" Report of the Committee on Human Resources read and accepted in non-concurrence.

TABLED - March 29, 1994 (Till Later Today) by Representative TREAT of Gardiner.

PENDING - Motion of Representative MARTIN of Eagle Lake to Recede and Concur.

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

Representative TREAT: Mr. Speaker, Men and Women of the House: I would like to explain what this bill does and why the Majority of the Human Resources Committee would like you to vote no on the recede and concur motion.

This bill concerns the demonstration project — the language as amended concerns a demonstration project as ongoing in the Department of Human Services concerning nursing home admissions. It is a demonstration project that was established last year as part of L.D. 418, which was a major piece of legislation changing the ways that we approach long-term care in this state. Part of what that demonstration project did was to set up an assessment of potential nursing home applicants, a preadmissions assessment that would basically review what their needs were and what kinds of services they needed most and were most appropriate to provide to them.

The purpose of the assessment was to assist families and individuals in deciding whether or not a nursing home was the most appropriate care or whether they would be served more appropriately in the home or in some other community option, whether it is assisted living or boarding care or some other approach.

What we put in the original bill was language which said that there should be no pecuniary interest in the people doing the assessment and in carrying out that assessment. Essentially what has happened with the department is that they have taken a look at this and they found that pretty much all the existing entities out there do have some kind of pecuniary interest.

In the interest of pursuing a demonstration project in the short-term, they decided to basically contract with three different entities in different parts of the state. So, what their proposal is that in Aroostook County it will be an area agency on aging that is doing basically the case management. In Hancock County, it is a hospital and in Cumberland County, it is HRS-Maine, which is a subsidiary of Blue Cross/Blue Shield. Of those three demonstration areas, one of those does not have a pecuniary interest, which is HRS-Maine, the other two definitely could have an interest.

What this bill does is it waives that language only until October 1st of this current year so it is a matter of a few months to give a chance for the department to go through with this experiment, see

what the issues are, see whether or not their approach works in one region of the state versus another region of the state and then basically to make a decision about where they want to go on a more permanent basis.

The overall language on pecuniary interest is not changed by this bill, it just waives it between now and October 1st. At that point, the language would go back into effect and the department could not implement anything in this area without coming back to the legislature and changing that language if they want to do it differently.

The majority of the committee felt that this was worthwhile to pursue. In order to avoid any pecuniary interests, we basically need to set up entirely new agencies of some type and the potential there was to create a lot of bureaucracy in a very short period of time without knowing whether or not it was needed to create it. We felt that this demonstration project was worthwhile and we needed this language in order to continue with that demonstration project.

I would encourage you to vote for this because, as I said, it is a short-term project and we will be able to get the results back and see whether our original approach made sense or whether any of the three approaches in the demonstration project make sense. So, I would urge you to vote no on the pending motion so that we can go on to pass this bill.

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

Representative MARTIN: Mr. Speaker, Members of the House: This is my piece of legislation. I introduced the legislation at the beginning of the session as an emergency measure. If you recall, the deal was because of some of the problems that had developed in nursing homes, specifically on the questions of what would happen in terms of reviewing them and turning them out of nursing homes.

The committee, instead of going in that direction dealing with the intent of the legislation I introduced, has chosen instead to deal with another issue, which has nothing to do with what I had intentions of correcting, instead in the direction of creating three areas in this state where Triple A's in effect would do reviews.

I am not going to bore you with many examples but I am going to use one of them — again, Aroostook County because I do know a little bit about what is going on.

The Triple A Agency in effect took a patient out of a nursing home where the state and Medicaid and the federal government was paying roughly \$3,000, took the patient home where Medicaid and the state was paying close to \$9,000 to maintain that person in that home environment in contradiction of state law. You may remember what we passed was that someone had to be maintained in the home with home care and the rest of the programs and it was about 80 percent of what a nursing homes charges. When I brought it to the department's attention, they said that that could not be going on. I happen to be an officer in both corporations of these non-profit entities and I told them in fact it was going on. They said it still couldn't be happening so they started checking and they came back with a chagrin and said, "You're right." I asked them if they would do a run and guess what? They found another eight in the same county. I have asked them now for a run statewide, that was a month and a half ago, I have not received it yet, but they have told me that it is more than

what I thought it was.

We can argue about pecuniary interest all we want to, we now have expenditures of state and federal dollars by the very group that this committee wants to give to these three entities. If that's the way it is going to be, my feeling is very simple — as it is my piece of legislation, I would ask you all to vote to recede and concur and let's get rid of it and kill it, once and for all.

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

Representative CARR: Mr. Speaker, Ladies and Gentlemen of the House: It is a rare and pleasurable experience for me to concur with the Representative from Eagle Lake.

L.D. 1650 is not a good bill. It commissions a demonstration project to institute an admission's procedure for nursing homes and to follow up 418. We all know that demonstration projects can accent the desired conclusions and reports can be interpreted to erroneous leads to false conclusions. The fact is participants in this pilot project do have a pecuniary interest.

It was my opinion in committee, as it is my opinion now, DHS should go for an RFP to locate a processor of admissions who has no pecuniary and I recommend that we vote to recede and concur.

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

Representative TOWNSEND: Mr. Speaker, Men and Women of the House: I would just like to clarify a few points on this issue for you.

First of all, I want to be very clear that for this demonstration project, this will not be conducted by a Triple A Agency, a Maine area agency on Aging in each of the three areas where the demonstration project will take place. That is exactly the point.

The purpose of doing this demonstration project is to learn what is the best procedure for implementing L.D. 418, which as you all remember, was a very significant piece of legislation we passed last year, the purpose of which was to create the entire continuum of care for your constituents and mine. As we all know, all of us would prefer to remain in-home for as long as possible before we ultimately have to go to a nursing home.

It is important for me to proceed with the demonstration project in order to find out just how best we can implement this legislation. In my mind, the alternative that has been proposed, which is to go to a request for proposal process, would mean that people awaiting evaluation, prescreening prior to admission either to a nursing home or to a home health agency or to whatever type of care might prove to be the best for them, will otherwise remain in the hospital. I am sure you have heard from constituents, I certainly have, about the bumpy road which has occurred in the implementation of L.D. 418, I don't deny that. To go through the request for proposal process prior to implementing a demonstration project, in my mind, will only hold up finding out what exactly is the best method to screen people so those who do not need nursing home care can get other types of care.

I also want to be very clear to you that the department has been explicit to all providers, to all people conducting the screening process, that the purpose of L.D. 418 was not (was never) to remove people from nursing homes. That was not the

legislative intent, it was not the department's intent. The best thing that any one of us can do for people awaiting services is to allow this demonstration project to go forward. We are only waiving the pecuniary interest language until this coming October, seven months, a very short amount of time.

I also want to be clear to you that we are not the first state in the nation to go through this process. Many other states have implemented case assessments. In Oregon, the choice was made to go with the area agency on aging. In Florida, it is done by a variety of providers. I particularly don't care who does it, but right now, we do not have any single entity out there who cannot be viewed as having some pecuniary interest, whether that is Meals on Wheels, whether that is a hospital — I suppose you could claim pecuniary interest in retaining people in their beds although it is hard for me to believe that they would really want to do that, so please I would ask you not to recede and concur and for your constituents sake and for the sake of implementing what is a very good and important piece of legislation, let's approve the demonstration project.

The SPEAKER: The Chair will order a vote. The pending question before the House is the motion of the Representative from Eagle Lake, Representative Martin, that the House recede and concur. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

71 having voted in the affirmative and 32 in the negative, the motion to recede and concur did prevail.

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HOUSE REPORT - "Ought to Pass" as amended by Committee Amendment "A" (H-969) - Committee on Legal Affairs on Bill "An Act to Amend the Laws Governing the Training and Certification of Law Enforcement Officers" (H.P. 828) (L.D. 1114)

TABLED - March 29, 1994 (Till Later Today) by Representative ZIRNKILTON of Mount Desert.

PENDING - Acceptance of the Committee Report.

On motion of Representative ZIRNKILTON of Mount Desert, tabled pending acceptance of the Committee Report and specially assigned for Thursday, March 31, 1994.

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HOUSE DIVIDED REPORT - Majority (10) "Ought to Pass" as amended by Committee Amendment "A" (H-952) - Minority (3) "Ought Not to Pass" - Committee on Judiciary on Bill "An Act to Amend the Maine Health Security Act" (H.P. 86) (L.D. 116)

TABLED - March 29, 1994 (Till Later Today) by Representative COTE of Auburn.

PENDING - Acceptance of Either Report.

On motion of Representative COTE of Auburn, tabled pending acceptance of either Report and specially assigned for Thursday, March 31, 1994.

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HOUSE DIVIDED REPORT - Majority (11) "Ought Not to Pass" - Minority (2) "Ought to Pass" as amended by Committee Amendment "A" (H-959) - Committee on

**Judiciary** on Bill "An Act Amending the Discovery Rule for Damage Resulting from the Placement of Foreign Objects in the Human Body" (H.P. 1345) (L.D. 1812) TABLED - March 29, 1994 (Till Later Today) by Representative JACQUES of Waterville.  
PENDING - Acceptance of Either Report.

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

Representative COTE: Mr. Speaker, Ladies and Gentlemen of the House: I move that the House accept the Majority "Ought Not to Pass" Report.

The majority of the Judiciary Committee voted against passage of "An Act Amending the Discovery Rule for Damage Resulting from the Placement of Foreign Objects in the Human Body" and before I explain the reasons why I would like to say that the members of the committee sympathize with the people who are suffering from the Vitec implant. The existing statute of limitations for medical negligence cases was established in 1986 as a compromise among all interested parties including the Trial Lawyers Association, the Maine Bar Association, Maine Hospital Association and the Maine Medical Association. In addition to limiting the Discovery Rule to cases in which foreign objects were unintentionally left in the body, the period of time during which an adult could sue was extended from two years to three years. The existing statute of limitations has been in effect for over 5 years and has been found to be constitutional.

L.D. 1812 attempts to shift responsibility from the manufacturer of a defective product to the physician or other general health professionals. Such a shift in liability is not only unfair but will also result in an increase in premiums for this already troubled line of liability insurance. In the cases that were the impetus for this bill, the so-called TMJ implant cases, oral surgeons implanted an FDA approved product. Only years later it was determined that an implant could fail. Eventually, the manufacturer went into bankruptcy. It is a tragedy that many persons are suffering from the Vitec implants; however, opening up the statute of limitations to allow victims to sue forever when the only liability is on the part of the manufacturer is unfair and should be defeated. The physician should not be held accountable for the manufacturing of a defective product.

I urge you to vote for the "Ought Not to Pass" Report.

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

Representative FARNSWORTH: Mr. Speaker, Men and Women of the House: I don't think it is an experience that I have had before in the House to be on a such a small minority on the Judiciary Committee. It is not an experience I care to repeat but I will make the best of it.

This bill, in my opinion, represents our trying to change the Discovery Rule and going too far. I don't believe as a practical matter that this legislature is going to correct the situation but I would like to take just a minute (and that's all) to tell you what this is about because I think you are going to find you are hearing about problems from your constituents and I expect those two or three people that are in the room that will be returning again in the next session may find themselves wanting to support

something like this.

As many of you may recall, I think it was last fall, it seemed several years ago, that you may have gotten very brightly colored letters from one or more people who complained about tremendous pain and anguish and disabilities they suffered as a result of what they call TMJ implants or temporal mandibular joint implants. I have a constituent who had that problem resulting from the placement of temporal mandibular joint implant in her jaw and that is what got me involved in this.

When I learned what we had done in 1986 with the Discovery Rule, I was really quite concerned and then as I got into this bill, which seemed quite simple in the beginning, I also discovered that we are, as a routine matter now, medically implanting all kinds of items in people all over our bodies and this kind of a situation is definitely going to come up again. I am sure that probably everybody in here will, if you don't know somebody today who has an implant of some sort, you probably will if you just start asking. So, I understand that there is a fair amount of hesitation on the part of everybody to make a change in the law that could affect so many people, everything from pacemakers to jaw implants to replacement parts but this particular TMJ implant was a teflon-based implant and breast implants have a silicone-base, this had a silicone base, and there are also various plastics that we put in people now and all kinds of metal items. I agree with the comments of the chair that this kind of a situation one might first look at the producer or the manufacturer of these kinds of implants. In this case, somebody did and the result once people started complaining and suing the manufacturer, the manufacturer went bankrupt long before they were able to redress the problems that they had caused. In this case, the implant had been on the market or one like it from the early 1960's so it came in under an exception under the FDA rules, but since it has been on the market for a long time without major problems, it didn't need to have the extensive kind of testing that we now require.

So in the early 80's, they were putting in these implants in a lot of people and it was not like the testing that we do now. I think in most cases the oral surgeons who put these in in the early 80's were only doing what seemed to be state of the art at the time. Actually, I don't have as much concern about our law affecting that because in fact when most of the people that came before our committee had their implants put in between 1981 and 1982 and 1987 or 1988, our law which wasn't changed I think until 1988, our law already had a Discovery provision where it allowed you to sue from the time you discovered the harm, not three years from the time that the implant was put in. Effective in 1988, we enacted it 1986, we changed the rules and said that it doesn't matter when you discover harm, it is just three years from the date it was put in. So, some of these people had implants put in in the early 80's and when they were put in, the surgeon knew and they knew or should have known, that the law was that they would have three years from the date it was put in or three years from the date they discovered the harm. Then later, the legislature in the flurry of tort reform legislation in the attempt to address lots of other problems, changed the Discovery Rule and I think went just a little too far maybe without realizing it at that point, they actually took away rights for people

who had them in the early 80's. In addition, some of these people went back to their oral surgeons in the late 80's when there started to be a significant number of reports about problems with these implants and there has been a continuing situation with care for these people. They have had increased disabilities and there are a series of decisions made by their medical providers that I think needs to be addressed. Right now, when a foreign object is involved, the apparent law would be that they can only have any redress for negligence on the part of the doctor from three years from the time it was put in.

I think the proposed language in the final amendment, which is very different from the original bill, thanks to the work of the Judiciary Committee, would add a provision that would simply allow you to have three years from the date of discovery of harm in the case of a foreign object when the provider of the health care or professional services negligently failed to comply with the requirement to obtain informed consent of the patient using the standard of care applicable at the time of the decision to leave the foreign object in the plaintiff's body. To my mind, this would apply, — even now, people as a result of the hearing we had on this bill, I got a call from somebody who had just been to the hospital and had just recently learned that the problem she had been experiencing may have come from this implant. She obviously is consulting a physician some place and if that doctor tells her all of the risks that are now known about this may make a decision to have them removed.

For your information, the FDA actually gave out recall notices, so to speak, and told people there were major problems with these in the early 90's and some doctors have said that that is a problem and you should have them out and others have not really informed people about these notices. It is that kind of decision and the potential for negligence at that point as well that I am concerned about.

All I would say to you is that these particular implants and silicone itself generates tremendous disabilities. A lot of these people have been told that they can't get insurance. A number of these people are going to end up needing public assistance, so all I am proposing is that we give back the ability to have a discovery period that includes three years from the discovery of harm when we have foreign objects involved and when the doctor has been negligent in informing the person of all the risks at the time they are leaving the object in.

I know that in our committee, as here tonight, we are very busy, we are very tired, we have had a lot on our minds and it is hard to do these kinds of things, so I will understand however people vote. I do think that people have enough experience personally with their families and others with this kind of issue that it is possible that you may be able to make your own decision. You may be willing to do what the Judiciary Committee was not willing to do. Sometimes we get a little overwhelmed by the number of bills that we have on this and bills get set aside if they don't seem to be the right bill at the right time up there. Normally I think in a year when we would have had a little more time, our committee would take more time with this bill, we put a lot of time into it, but we ran out of time.

So, I would ask you to give this your most serious consideration and I appreciate your listening.

The SPEAKER: The Chair will order a vote. 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.

A vote of the House was taken.

71 having voted in the affirmative and 34 in the negative, the Majority "Ought Not to Pass" Report was accepted and sent up for concurrence.

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HOUSE DIVIDED REPORT - Majority (9) "Ought Not to Pass" - Minority (4) "Ought to Pass" as amended by Committee Amendment "A" (H-960) - Committee on Banking and Insurance on Bill "An Act to Continue Health Care Reform in Maine and Prepare for Federal Reforms" (EMERGENCY) (H.P. 1429) (L.D. 1954) (Governor's Bill)  
 TABLED - March 29, 1994 (Till Later Today) by Representative JACQUES of Waterville.  
 PENDING - Acceptance of Either Report.

On motion of Representative JACQUES of Waterville, the Bill was tabled unassigned.

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HOUSE DIVIDED REPORT - Majority (7) "Ought to Pass" as amended by Committee Amendment "A" (H-941) - Minority (6) "Ought Not to Pass" - Committee on Education on Bill "An Act to Amend the Role of the State Board of Education" (H.P. 82) (L.D. 112)  
 TABLED - March 29, 1994 (Till Later Today) by Representative JACQUES of Waterville.  
 PENDING - Acceptance of Either Report.

Representative MITCHELL of Vassalboro moved that the House accept the Minority "Ought Not to Pass" Report.

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

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

Representative NORTON: Mr. Speaker, Ladies and Gentlemen of the House: The subject that I believe we are addressing tonight is the key to the dilemma that we are facing today in education in this state.

I believe as long as we have politically appointed commissioners you are not going to have the leadership that it takes to step out and be the advocate that education always needs. I believe that you can be in the Governor's Cabinet because I believe to be Commissioner of Education, first of all, you have to be a statesperson. I believe the justification of having the state board appoint the Commissioner of Education takes place when you inspect the large expenditures of money that the local units make.

The State of Maine puts in a little over half — right now a little less than half — of its budget into funding education in the State of Maine. Local

units put in up to 75 or 80 percent. I believe that there is a fair compromise achieved when the State Board of Education is appointed by a Governor and that State Board in turn appoints the Commissioner of Education.

I have some facts to back this up. I was a witness to this. In 1952, the State Board of Education appointed for the second time in our history, because there was an interim when they did not do this, we changed back once, in 1952 the State Board of Education was reintroduced to this state because it had been eliminated. In 1952, they were given by this legislature the right to appoint a Commissioner of Education. The immediate past two Commissioners of Education, prior to the Governor appointing Commissioners, were Warren Hill appointed in 1956, who served until 1963 and led the Sinclair Act. He led it because he was free to do it by a non-political State Board of Education. We didn't have printout politics, we didn't have printout formulas, we didn't have printout subsidy. He was free to do what he felt was right and I want you to know that Warren Hill was a statesperson. He went from here to head up the education commission of the state, much to the regret of the Governors that he served. Following Warren Hill was William Logan. William Logan was here when we assumed the tremendous responsibility of accepting federal funds. That was under the Elementary and Secondary Education Act and he was the one that was here to do that and to follow through on the work and consolidation of schools started under the Sinclair Act. Those gentlemen served an average of 7 years in office.

In 1971 under the reorganization of state government, we had the State Board stripped of its responsibilities of appointing a Commissioner. It went to the Governor. The Governor appointed well, I won't mention names, I revered that person that was appointed, he was in office four years. The average of Commissioners serving under appointments of Governors has averaged less than 3 1/2 years since 1971. Is it any wonder that we've had a herky-jerky ride where one Commissioner comes in and advocates this and another one comes in and advocates that — it is no accident that we are in the mess we are in. There is no advocate and we are down — and I want to give you some statistics now and I will be brief because I think brevity is part of success — where are we in regards to the rest of the nation on this subject? Listen closely. Twenty-four states have Commissioners appointed by State Boards of Education. I hope soon there are 25.

Secondly, 11 states elect the Commissioner of Education by the whole electorate because they recognize that unique state/local responsibility. Maine and only 6 other states appoint Commissioners by Governors. Does that not tell you something? Where are the other 7? They have mishmashes. The leaders in education in this country do not have Governors appointing the Commissioners of Education. I have a list of them but I don't think I have to read them and you may have a mindset one way or the other but I hope that maybe some of these things I have mentioned are important.

To continue to operate in the manner that we are in this appointment, we, number one, sacrifice leadership potential. A lot of good people have served, I am not demeaning those who have been in office at all, they served in an impossible capacity. Can you imagine me serving as Commissioner

of Education, which some of you have suggested that I should strive for? I would tell you before the Appropriations Committee the absolute truth, I would not be restrained and I would not be in office. I believe the continuity in office of less than 3 1/2 years is a public disgrace to the State of Maine. We have had good people and when you consider that one of those people served nearly 6 years, you look at where that average really is, it is down around 2 1/2 years. How can you have any sustained effort in such an important field where you have such a unique involvement with the locals and the state? This is not a state province, this is not a local province, this is a shared province.

I believe we need to move from the place where you have to ask the right questions to get the right answer, to a place where you can truly put your trust in a system which deals with an appointment by a board which is selected by a Governor.

The amendment to this bill actually gives a Governor the right to participate in the selection process but leaves the determination of staying in office with the State Board. I do not believe that you will ever see a loose cannon in that office because I believe part of that job deals with statesmanship. I do believe that I could stay in that office if that system were in place. I do not believe that I could stay in office under the other. I am not so vain as to have any personal interest in it myself, I have a great interest in the subject.

I would like to urge you to vote against this "Ought Not to Pass" Report. It is a Minority Report but let's face it, it was close, 7 to 6 and these are all good people voting exactly as they believe and I am expressing myself and I hope I am understandable.

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

Representative MITCHELL: Mr. Speaker, Ladies and Gentlemen of the House: There is nothing more difficult than following my good friend, Representative Norton. There is no finer champion of education in this state or any of the other states for education and if I were a Governor, which I am not, I would be very pleased to have you serving as Commissioner of Education, so I would hope that you would consider the fact that you might not be willing to do such a thing.

I think Representative Norton has laid out to you very clearly what the issue is here. It is very simple, the Minority Report says that the Commissioner of Education will continue to be appointed by the Governor, whoever he or she might be.

The Report that Representative Norton supports says that we will change that pattern which we have followed in Maine, sometimes successfully and sometimes not so successfully, to adding another layer. We would allow the State Board of Education, which I might also add is appointed by the Governor, and they would be selecting the Commissioner of Education.

I think, as Representative Norton has pointed out, that there is no right or wrong here. Other states survived perfectly well under the three systems that he outlined and the other system, of course, was the election of the Commissioner of Education and I guess perhaps if I were persuaded to Representative Norton's point of view, I would be advocating that one. If we wanted the Commissioner of Education to be a total advocate for education, I would even put

them on the ballot and let them run for office. But because I believe the Commissioner of Education must work with and serve on a cabinet with the person who is elected by the state to lead this state, and though I do believe education is one of the most important things that we must deal with, I would want that Commissioner appointed by the Governor sitting at the table because I think everybody on the Appropriations Committee can remind all of us that over half of our budget does, indeed, go to education. So it is for those reasons that I regretfully take the opposite side from my good colleague and urge you to vote for the Minority "Ought Not to Pass" Report.

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

Representative AULT: Mr. Speaker, Ladies and Gentlemen of the House: I urge you to support the pending motion. I do not believe it is a good idea for education in the state to have the Commissioner of Education appointed by anyone other than the Governor. In fact, the State Board of Education historically does not want this responsibility, so again, I urge you to support the pending motion.

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

Representative NORTON: Mr. Speaker, Ladies and Gentlemen of the House: I would like to make one more point. If I had to rate these things in order that I would accept them, I would rate appointment by the Governor third; I would rate appointment by the State Board first; and I would rate the General Election of a Commissioner second because I don't want to see us running for that office. I have seen this and just wanted to say that where we can agree, I believe in agreeing, and I would say that public election, to me, would be preferred over the appointment by a Governor.

When I am sitting in the Appropriations Room, I am often asked questions directly from the Appropriations Committee members that should be answered by a Commissioner.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Cape Elizabeth, Representative Simonds.

Representative SIMONDS: Mr. Speaker, Ladies and Gentlemen of the House: I, too, am reluctant to debate my good friend and colleague on the committee. He makes some very excellent points and I am tempted to say that he has had the advantage of a very long and rich history except that I was around at the same time when he was there too in state government.

There are three points I would make in argument. First, if I am fortunate enough to have my Governor, my candidate for Governor, elected, I would expect him to be able to carry out, quickly and efficiently, the policies that he has espoused in his campaign.

Second, if for some reason that those policies falter, I want to be able to hold someone responsible, an individual, namely the Governor and the Commissioner, instead of a defused board sharing that kind of responsibility.

Third, the next Governor, whoever he or she may be, which party he or she may represent, will have education reform and restructuring very prominent on their plate and I would expect quick and efficient action from that Governor whoever he or she may be. I don't think that will happen with the method of appointments proposed by the good Representative from

Winthrop. I think we can expect more efficient administration and more effective policy implementation when we have the Commissioner directly responsible to the Governor that we elect.

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

Representative TRUE: Mr. Speaker, Ladies and Gentlemen of the House: I am a slow learner, I apologize.

I wanted to speak on this because I go a little further back than Representative Norton, although I can't remember as many things as he has already articulated but I do feel that the points that he brought up are very, very important and I believe that society as a whole would perhaps feel that the method of election by giving them an opportunity to have the Commissioner by the public would perhaps be the best idea.

I am reminded of something that I read some time ago which said "Politicians only think of the next election, but statesmen think of generations."

Representative Young of Limestone requested that the Clerk read the Committee Report.

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

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

Representative OLIVER: Mr. Speaker, Ladies and Gentlemen of the House: I wasn't going to speak on this bill, the hour is late, but I have so enjoyed Representative Norton on the Education Committee for creative thinking, for forcing us to deal with the unthinkable, to challenge us to go ahead of where we are and, of course, I have enjoyed his great humor.

But in this case, I think he speaks from the heart, we have seen the fact that education needs an advocate, needs an independent advocate, needs an advocate beyond parties, needs an advocate to force us to rethink the way we educate our children, the way we restructure our schools, political questions that if you are in the arena, you may have difficulty in answering. But as an independent, you may have the ability and the chance to strike out in those tangents that we encourage our kids to do in the classroom and to rethink the way we learn and the way we teach and the way that we restructure our school systems. So I think Representative Norton has forced us, once again, as he has done many times in that committee with myself, I have had to rethink my position, forced us to rethink the way we run education in this state.

I wanted to say something else, the fact that I may never get a chance to say it, the session is coming to an end and Representative Norton is leaving — if I had a list and I had the forethought to get those quotes down over those six years with Representative Norton on the campaign, I could have a best seller.

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

A vote of the House was taken.

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The Speaker resumed the Chair.

Representative WINN of Glenburn requested a roll call on the motion to accept the Minority "Ought Not to Pass" Report.

The SPEAKER: 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: I just want to give you a scenario that I gave to my good seatmate here, Representative Marsh. Suppose the next Governor, whoever that is, is elected and he or she has a dynamic new way to really improve education, it seems to me that that person, whoever he or she may be, must be able to appoint a Commissioner of Education to carry that out rather than relying on a Commissioner of Education picked by a Board of Education and the Commissioner of Education could be appointed by a State Board of Education that this new incoming Governor did not appoint and would be at odds to that Governor's plan. That is what I see as the bad thing about having this bill passed.

The SPEAKER: A roll call has been ordered. The pending question before the House is the motion of the Representative from Vassalboro, Representative Mitchell, 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. 298

YEA - Ahearne, Aikman, Ault, Barth, Bennett, Birney, Carleton, Caron, Carroll, Cashman, Chonko, Clark, Clement, Cote, Cross, Daggett, DiPietro, Donnelly, Dore, Dutremble, L.; Faircloth, Farnsworth, Foss, Gamache, Gean, Greenlaw, Hale, Hatch, Heeschen, Heino, Hoglund, Holt, Jacques, Johnson, Joseph, Ketterer, Kontos, Larrivee, Lemont, Libby James, Lindahl, MacBride, Marshall, Martin, J.; Melendy, Michaud, Mitchell, E.; Nadeau, O'Gara, Ott, Paradis, P.; Pendexter, Pineau, Plourde, Plowman, Rand, Reed, G.; Reed, W.; Richardson, Rotondi, Saint Onge, Saxl, Simonds, Simoneau, Skoglund, Small, Strout, Sullivan, Swazey, Tardy, Taylor, Treat, Vigue, Walker, Young, Zirnkilton, The Speaker.

NAY - Adams, Aliberti, Anderson, Bailey, H.; Bailey, R.; Beam, Bowers, Brennan, Bruno, Cameron, Campbell, Carr, Cathcart, Chase, Cloutier, Clukey, Coffman, Coles, Constantine, Dexter, Driscoll, Erwin, Farnum, Farren, Fitzpatrick, Gould, R. A.; Gray, Hichborn, Jalbert, Joy, Kerr, Kneeland, Lemke, Libby Jack, Lipman, Look, Lord, Marsh, Michael, Mitchell, J.; Morrison, Murphy, Nash, Nickerson, Norton, Oliver, Pendleton, Poulin, Ricker, Robichaud, Rowe, Rydell, Stevens, A.; Stevens, K.; Thompson, Townsend, E.; Townsend, G.; Townsend, L.; Tracy, True, Tufts, Wentworth, Winn.

ABSENT - Hillock, Hussey, Kilkelly, Kutasi, Martin, H.; Pfeiffer, Pinette, Pouliot, Ruhlin, Spear, Whitcomb.

Yes, 77; No, 63; Absent, 11; Paired, 0; Excused, 0.  
77 having voted in the affirmative and 63 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 (12) "Ought to Pass" as amended by Committee Amendment "A" (H-948) - Minority (1) "Ought Not to Pass" - Committee on Agriculture on Bill "An Act to Amend the Harness Racing Laws" (H.P. 1243) (L.D. 1670)  
TABLED - March 29, 1994 (Till Later Today) by Representative JACQUES of Waterville.  
PENDING - Acceptance of Either Report.

On motion of Representative TARDY of Palmyra, the Majority "Ought to Pass" Report was accepted.

The Bill read once. Committee Amendment "A" (H-948) was read by the Clerk.

Representative TARDY of Palmyra presented House Amendment "D" (H-1003) to Committee Amendment "A" (H-948) which was read by the Clerk and adopted.

The same Representative presented House Amendment "E" (H-1007) to Committee Amendment "A" (H-948) which was read by the Clerk and adopted.

Representative ALIBERTI of Lewiston presented House Amendment "C" (H-999) to Committee Amendment "A" (H-948) which was read by the Clerk.

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

Representative ALIBERTI: Mr. Speaker, Ladies and Gentlemen of the House: What a pleasure! Working cooperatively with the Agriculture Committee and the Chairs, especially the House Chair, who support and with my support have cooperatively amended this bill for the preservation and betterment of harness racing and bring it to the heights never seen before by any of its members and the participants of the industry. Revenues for the state will skyrocket.

The propositions for the OTB and their contributions are staggering, incredible and achievable. These proportions are tripled compared to what they were last year. I now feel fulfilled in my attempt to preserve live racing and all its components, its counterparts, and a bright and productive guaranteed future.

Should these projections not come to light with the cooperation of the House Chair of the Agriculture Committee, we have also sunsetted this bill for May, 1995.

Subsequently, House Amendment "C" (H-999) was adopted.

Committee Amendment "A" (H-948) as amended by House Amendments "C" (H-999), "D" (H-1003) and "E" (H-1007) 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-948) as amended by House Amendments "C" (H-999), "D" (H-1003) and "E" (H-1007) thereto and sent up for concurrence.

Bill "An Act to Correct Errors and Inconsistencies in the Laws of Maine" (EMERGENCY) (S.P. 676) (L.D. 1852)

TABLED - March 29, 1994 (Till Later Today) by



Representative JACQUES of Waterville.  
 PENDING - Adoption of Committee Amendment "A" (S-531).

Subsequently, Committee Amendment "A" (S-531) 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.

Representative COTE of Auburn presented House Amendment "A" (H-985) which was read by the Clerk and adopted.

The Bill was passed to be engrossed as amended by Committee Amendment "A" (S-531) and House Amendment "A" (H-985) in non-concurrence and sent up for concurrence.

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An Act to Create Retirement Alternatives (EMERGENCY) (H.P. 1362) (L.D. 1841) (C. "A" H-867)  
 TABLED - March 29, 1994 (Till Later Today) by Representative JACQUES of Waterville.  
 PENDING - Passage to be Enacted.

On motion of Representative JALBERT of Lisbon, under suspension of the rules, the House reconsidered its action whereby L.D. 1841 was passed to be engrossed.

The same Representative presented House Amendment "A" (H-972) which was read by the Clerk.

On motion of Representative ZIRNKILTON of Mount Desert, tabled pending adoption of House Amendment "A" (H-972) and specially assigned for Thursday, March 31, 1994.

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An Act to Ensure Appropriate and Equitable Penalties for Violation of Electoral Laws (H.P. 1311) (L.D. ,)66) (C. "A" H-830)  
 TABLED - March 29, 1994 (Till Later Today) by Representative CHONKO of Topsham.  
 PENDING - Motion of Representative BENNETT of Norway to indefinitely postpone Bill and all accompanying papers. (Roll Call Requested)

The SPEAKER: The Chair recognizes the Representative from Gorham, Representative Larrivee.

Representative LARRIVEE: Mr. Speaker, Ladies and Gentlemen of the House: As I speak on this bill today, I will try not to have any strange voices interrupt what it is I have to say - that was a very wierd experience to say the least.

We were in the middle of this discussion (it seems like weeks ago) about a day or so ago regarding this bill on the penalties imposed in this particular piece of legislation which passed last year. I have asked you if you would please vote against the pending motion which is indefinite postponement of this bill.

This bill does change some of the penalties which were put in place last year and brings them more in line with other sections of law and these are in accordance with the recommendations of the Criminal Law Advisory Commission. I am sure you remember the issue as I talk about it.

Besides changing some of the penalties to make them more consistent with other laws, the other thing that this bill does is add language on intent to these crimes. For instance, the crime of now wearing

a beeper inside the voting place simply is, if you happen to wear your beeper inside the polling place knowingly, what I have asked in this legislation is to have the words included which are specifically "with the intent of affecting the outcome of the election" and that simply states that if you have your beeper on unintentionally and you are not there for any negative reason and you are not there to try to impact the outcome of that election, you won't be considered a criminal having a beeper on your belt. There are several other places in here where we have added that section of intent, so I would ask you to stay with your former action whereby this bill was passed and vote against the indefinite postponement.

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

Representative BENNETT: Mr. Speaker, Friends and Colleagues of the House: I would encourage the House to leave well enough alone for this year. As the previous speaker just stated, what we are proposing here with this bill is to change the very penalties that this House and the other body put into law last year in the wake of a difficult time in the history of our state democracy.

It is outrageous to me that one year later after assuring the people of Maine that we were vigilant about democracy in this state, that we should come back just one year later with some changes to the penalties that we put in place.

Representative Larrivee talked about fixing the problem with the beeper and I don't care if we fix the problem with the beeper, that's fine, why don't we just fix the problem with the beeper? I would have gone along with that in committee, but this is more than just a beeper bill. This bill changes classifications of crime. If the Representative would like to amend the bill so that it just deals with the beeper problem, I will be all for it, but it is outrageous to me that we should take the sanctimonious word of the CLAC, the Criminal Law Advisory Commission or whatever it is, when it wasn't even clear from my reading of their memo that they were actually making recommendations about certain things.

As I stated before when we debated this, they used the former Senator Gauvreau, the Chairman, and used the words "well, we question the propriety of a certain penalty, we wonder about that, we question it, we have concerns about it" but there were not in many cases firm recommendations. If they would like to make specific recommendations regarding the changes, then they ought to do it next year with a new legislature in place to review them. Again, why must we this year erode the safeguards that we put in place last year? It is outrageous to me that we would do that and I encourage you to vote to indefinitely postpone this bill and leave it for another legislature to review what we have done as they invariably will.

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 Augusta, Representative Daggett.

Representative DAGGETT: Mr. Speaker, Ladies and Gentlemen of the House: I hope you will vote against the pending motion. The bill in question is basically an effort to simply fold the penalties, the actions of what was taken in last year's elections bill into the current criminal code. There was not an opportunity to do that last year but it simply puts it in cinct with the current criminal code.

I hope you will vote against the pending motion so the bill can be passed.

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

Representative ROBICHAUD: Mr. Speaker, Colleagues in the House: I would urge you to support the pending motion. Again last year we, as a body, made a conscious decision to increase these penalties and now we are being asked to decrease those penalties. I personally feel like I'm on a yo-yo and I am choosing to remain consistent to the positive action we took last year and vote yes to indefinitely postpone this bill. Please join me.

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

ROLL CALL NO. 299

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

NAY - Adams, Ahearne, Aliberti, Beam, Bowers, Brennan, Caron, Carroll, Cashman, Cathcart, Chase, Chonko, Clark, Clement, Cloutier, Coffman, Coles, Constantine, Cote, Daggett, DiPietro, Dore, Driscoll, Erwin, Faircloth, Farnsworth, Fitzpatrick, Gamache, Gean, Gould, R. A.; Gray, Hale, Hatch, Heeschen, Hichborn, Hoglund, Holt, Jacques, Johnson, Joseph, Kerr, Ketterer, Kontos, Larrivee, Martin, J.; Melendy, Michaud, Mitchell, E.; Mitchell, J.; Morrison, Nadeau, Nash, Norton, O'Gara, Oliver, Paradis, P.; Pendleton, Pineau, Plourde, Poulin, Rand, Richardson, Ricker, Rotondi, Rowe, Rydell, Saint Onge, Saxl, Simonds, Skoglund, Stevens, K.; Strout, Sullivan, Swazey, Tardy, Townsend, E.; Townsend, G.; Townsend, L.; Tracy, Treat, Vigue, Walker, Wentworth, Winn, The Speaker.

ABSENT - Dutremble, L.; Hillock, Hussey, Jalbert, Kilkelly, Kutasi, Lemke, Martin, H.; Pfeiffer, Pinette, Pouliot, Ruhlin.

Yes, 54; No, 85; Absent, 12; Paired, 0; Excused, 0.

54 having voted in the affirmative and 85 in the negative, with 12 being absent, the motion to indefinitely postpone the Bill and all accompanying papers did not prevail.

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

Bill "An Act to Establish the Right of

Grandparents to Act as Foster Parents for Their Grandchildren" (H.P. 1352) (L.D. 1818)

- In House, passed to be engrossed as amended by Committee Amendment "A" (H-938) on March 28, 1994.

- In Senate, passed to be engrossed as amended by Committee Amendment "A" (H-938) as amended by Senate Amendment "A" (S-544) thereto in non-concurrence.

TABLED - March 29, 1994 (Till Later Today) by Representative PARADIS of Augusta.

PENDING - Further Consideration.

Subsequently, the House voted to Recede and Concur.

TABLED AND TODAY ASSIGNED

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

HOUSE DIVIDED REPORT - Majority (7) "Ought to Pass" as amended by Committee Amendment "A" (H-961) - Minority (6) "Ought Not to Pass" - Committee on Banking and Insurance on Bill "An Act to Provide Family Security through Quality, Affordable Health Care" (H.P. 956) (L.D. 1285)

TABLED - March 29, 1994 by Representative PINEAU of Jay.

PENDING - Acceptance of Either Report.

On motion of Representative JACQUES of Waterville, the Bill was tabled unassigned.

HOUSE DIVIDED REPORT - Majority (12) "Ought Not to Pass" - Minority (1) "Ought to Pass" as amended by Committee Amendment "A" (H-955) - Committee on Judiciary on Bill "An Act Regarding Disorderly Conduct" (H.P. 969) (L.D. 1300)

TABLED - March 29, 1994 by Representative MARTIN of Eagle Lake.

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

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

Representative CATHCART: Mr. Speaker, Ladies and Gentlemen of the House: I urge you to vote against the motion "Ought to Pass" so we can go on and accept the Majority "Ought Not to Pass" Report, which was 12 members of the Judiciary Committee.

This bill has to do with agricultural machinery noise and what it would do is, if your agricultural machinery is making noise that bothers your neighbor, you could be charged with a Class E crime. We had tremendous opposition to this bill in the Judiciary Committee. We had opposition from the Maine Department of Agriculture, from the Farm Bureau, from the Maine Blueberry Commission and we were told that if we passed this bill, it could be devastating to the blueberry industry in this state. I think when we have gone through the recession that we have had and we are in a time when we are trying to encourage industry and agriculture, we would be crazy to pass this kind of bill.

I urge you please to defeat this motion so that we can defeat this terrible piece of legislation.

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

Representative MARTIN: Mr. Speaker, Members of the House: I am going to take you on a little trip to Aroostook. I wish I could take you on a chartered flight but I can't do that.

I want to tell you how this piece of legislation came to be. In the past few years, potato farmers have now gotten into the business of irrigation. The vast majority of the farmers are fairly responsible individuals who are concerned about the people who live next door to them. What has transpired with irrigation is that that piece of equipment is used — pumps for example — to irrigate potatoes. Frankly, it is rather expensive, contrary to our wells with free water from the federal dams, but we have to dig our own holes to put the water there and irrigate from that source or go to a brook or river or whatever and move the water onto the potato fields. We have had a number of instances where those have been placed next to homes, and in some instances to a point where they operate 24 hours a day during the worst period of drought in July and August without stopping and you can well imagine what it is like living next to one of those and being unable to sleep at night. Most farmers understand that you have to give people some free time without the noise so they can (at least) sleep, but there are others who decide that they don't care. Under the Right to Farm Act of which I happened to be a sponsor of many years ago, farmers in effect are excluded from any of the laws. We passed the Right to Farm Act so that people from away who move next door to farms could not drive farmers out of business. What has transpired is it is now used against neighbor. In one instance for example, I worked with a farmer and we solved the problem. In other instances, it did not work.

What I asked the committee to do was to provide a mechanism so that the Department of Agriculture could deal with the problem. In fact, I believe there are 8 members of the Judiciary Committee who approved letting the Commissioner promulgate rules to deal with various situations. You all know the rest of the story, the lobbyists showed up and they proceeded to deal with that one because they didn't want to give the authority to a Commissioner, they wanted to keep the law the way it is now.

The result of that is that we will do nothing this session and the problem will continue this summer. Last year I was able to convince the Department of Agriculture, the Extension Service of the University of Maine, the Soil and Water Conservation to put together a committee to study the problem of irrigation, the noise of irrigation and how to deal with it. They put forth a study and it will continue through the year.

The question I want to leave with all of you, especially to those of you who represent districts in Aroostook as I do and other areas that are potato producing areas in Central and Western Maine, that this will become the way of the future because we cannot grow potatoes without irrigation and compete with the west or with other sections of the country.

If we think that this problem is going to go away just because of a 12 to 1 report, I want all of you to know that we are all kidding ourselves. Neighbor will be against neighbor and that problem will be back here next year. There is no question in my mind that this particular bill is not the way to go, it was never intended to be, but I was hoping that we would have some leadership in the department to deal

with that question. It is going to have to come. This is not the vehicle.

Rarely do I give a speech where it is going nowhere but I want to now bring you back to Augusta and move indefinite postponement of the bill.

Subsequently, on motion of Representative MARTIN of Eagle Lake, the Bill and all accompanying papers were indefinitely postponed and sent up for concurrence.

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An Act to Establish a Technical College in York County (H.P. 1313) (L.D. 1775) (C. "A" H-851)  
 TABLED - March 29, 1994 by Representative JACQUES of Waterville.  
 PENDING - Passage to be Enacted.

On motion of Representative MITCHELL of Vassalboro, under suspension of the rules, the House reconsidered its action whereby L.D. 1775 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" (H-851) was adopted.

The same Representative presented House Amendment "A" (H-989) to Committee Amendment "A" (H-851) which was read by the Clerk.

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

Representative MITCHELL: Mr. Speaker, Men and Women of the House: This is a technical amendment which adds the name York County Technical College to the list of all the technical colleges in the state. I urge its adoption.

Subsequently, House Amendment "A" (H-989) to Committee Amendment "A" (H-851) was adopted.

Committee Amendment "A" (H-851) as amended by House Amendment "A" (H-989) thereto was adopted.

The Bill was passed to be engrossed as amended by Committee Amendment "A" (H-851) as amended by House Amendment "A" (H-989) thereto in non-concurrence and sent up for concurrence.

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Resolve, Establishing the People with Disabilities Access Commission (H.P. 1321) (L.D. 1783) (C. "A" H-894)  
 TABLED - March 29, 1994 by Representative JACQUES of Waterville.  
 PENDING - Final Passage.

On motion of Representative JACQUES of Waterville, tabled pending final passage and specially assigned for Thursday, March 31, 1994.

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Resolve, Authorizing the State to Release its Interest in Certain Real Property in Belfast (H.P. 1397) (L.D. 1906)  
 TABLED - March 29, 1994 by Representative JACQUES of Waterville.  
 PENDING - Final Passage.

On motion of Representative JACQUES of Waterville,

tabled pending final passage and specially assigned for Thursday, March 31, 1994.

HOUSE DIVIDED REPORT - Majority (8) "Ought to Pass" as amended by Committee Amendment "A" (H-912) - Minority (4) "Ought Not to Pass" - Committee on Business Legislation on Bill "An Act to Create a Franchise Practices Act" (H.P. 1407) (L.D. 1916) TABLED - March 29, 1994 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" as amended Report was accepted.

The Bill read once. Committee Amendment "A" (H-912) was read by the Clerk.

Representative HOGLUND of Portland presented House Amendment "A" (H-1005) to Committee Amendment "A" (H-912) which was read by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Glenburn, Representative Winn.

Representative WINN: Mr. Speaker, Ladies and Gentlemen of the House: I urge you to oppose this motion for a variety of reasons.

One of the primary reasons is that, in my opinion and in the opinion of most other people that have dealt with this issue, it is clearly not an emergency situation and, therefore, we should not be in the situation where we are forced to make such a decision at this time.

Another aspect of this to consider is that this is indeed a very complex issue, okay? The committee, in my opinion, has not had sufficient amount of time to really consider all of the ramifications of this complex issue. For instance, when we did have the public hearing on this bill, that morning around ten o'clock we were given a brand new version of the bill, it was completely different from the one that had come out of the Revisor's Office - that was on Monday - then on Wednesday, we were given another completely different version of the bill with no public hearing on it and no opportunity to look at the ramifications. Then on Thursday, we were given yet another completely different version of the bill and, again, with very little input from people who could understand the ramifications of it.

I was asked to support this bill and to support that final version. At that time in the committee in the work session, I pointed to a small, tiny bill that we had last year about interior designers and the report at the time was 12 to 1, I was the only person that hadn't read the bill yet, and I said that I would look through it and see what I think and get back to you. That night I read through it and that bill shows that if we passed that bill at that time that we would have eliminated all students that were in interior design school from ever being able to be a certified interior designer. It ended up taking me two weeks to straighten that out and make sure that we didn't (by mistake) eliminate all the students that were in interior design school.

My point is that often we are busy and distracted by a variety of very complicated issues and we don't have the time to look at it thoroughly and I want to make sure before we pass any bills that is this complicated and has such severe implications for businesses in our state that we don't do anything

rash, okay?

At that work session, again they asked me to support that bill and I said, "Are you sure it is fine, are you sure it is clean, are you sure you have looked at all the aspects of this?" They said, "Yes, we have, trust me, it's fine." We opened up the document and looked at it, we had been told that it was limited now to only fast food restaurants - we opened the bill and looked at it and saw that it also included all fast food restaurants and also any franchised restaurant, which includes the Olive Garden, Wendy's, Friendly's, Howard Johnson's, all sorts of different franchises and, again, the public never had an opportunity to tell us what the ramifications were.

The third point, and I think the most important point, is that the state is, in my opinion, in dire economic straits, okay? Every day, every month for the past two years, I have received one of those little blue forms from the Department of Labor. I received one this weekend and every single month the unemployment rates go higher and higher and I don't want to do anything that might jeopardize businesses in this state. In my opinion and in the opinion of many associations and what not, that is exactly what this bill would do. Iowa is the only state that has passed a bill like this and it has had dire economic consequences, it has lost thousands of jobs and costs hundreds of millions of dollars. I would also like to mention other people that are opposed to this legislation includes the Maine Merchants Association, Maine Restaurant Association, Maine Innkeepers Association, Maine Chamber of Commerce and Industry, Associated General Contractors of Maine, Maine Poultry Federation, Action Committee of 50, International Franchise Association, the city of Brewer, the Maine Department of Economic and Community Development and Bangor feels the same way.

Again in conclusion, I would like to ask if you are in doubt, please say no, it can come back next year when we have the time and chance to look at it and really understand what we are doing. This is not an emergency, you are protecting millionaires from multi-millionaires, they have an opportunity, they hire lawyers, they can look at these contracts, read them and understand them before they sign it.

I remember the day when we heard the public hearing on this, one of the lobbyists in the hall said that he was not testifying on the bill, he lobbies for the Wine and Beer industry, and he said, "This reminds me of my clients when they all want to be liquor agency stores and they argue that it is not fair to have such a large territory. Then as soon as they become a liquor agency store, they say, 'oh no, we have to have 20 miles.'" As soon as you in on the game, you want all the protection but, again, I would just like to thank you for listening to this, consider what you are doing, and if you are in doubt, don't vote to do something that might have such a detrimental impact on businesses in this state.

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

Representative COFFMAN: Mr. Speaker, Ladies and Gentlemen of the House: I will be brief. Two weeks ago, I met with Joe Broast, the Manager of the James River Plant in Old Town. We are losing 125 to 150 jobs there. While we were here in this state battling over Workers' Comp sending a message across this country that we were not business friendly, James River chose to invest their money to update

plants in other areas in other states. We lost out. Right now he is trying to sell his corporation on investing here in this state so we can keep jobs. He believes in us, he believes in the work and productivity that we have that has shown to be higher than most other areas in the state and all the other things that are positive for us, but he is having a hard time selling us to the corporation headquarters to get them to invest here. We talked for three hours about this subject matter and one of the bills that we spoke about was the franchise bill. And, whether we like it or not, what we do here matters. The message that we send out by the legislation that we pass goes out there to the business communities to people that we want to invest here in this state. I am not so gung-ho business that just anything that they want — I mean that's not what I am saying but I think that in this instance, I have listened to both sides, I have gone back and forth and I clearly see that both sides have points here and I can't for the life of me understand why we are being forced in this last hour to do something here that would have significance all around this country. I mean, when Iowa did it, everybody in the United States knew that they did something about the franchises — now if we do something here with the speed and haste that we are asked to do this, I am afraid that the message is going to go out there in a big way and somebody like James River is going to look at that say, gee, I don't know. That is what I am afraid of.

I am representing part of Old Town that is losing 125 to 150 jobs and I don't see a real solution to that, that's what my concern is, so I am just asking that we not be too hasty here to pass something. Something is needed here and I tried to get Representatives from both sides to sit down at the table together and one side was willing to do that and the other side said, absolutely not. I think that is what needs to be done, everybody needs to sit around the same table and work on this and come up with something that is satisfactory to everybody concerned. I hope that we don't rush into this and send the wrong message out there because jobs are at stake here.

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

Representative SULLIVAN: Mr. Speaker, Ladies and Gentlemen of the House: I am here to simply read a letter into the Record. That letter is from Bruce Farnsworth. You may not know that name, but you must know the business that he owns, which is Pat's Pizza. This letter expresses his opposition to L.D. 1916. I have been asked to read the letter so if you will sort of pretend that I am Bruce Farnsworth, I will read the letter for you. "From my hometown of Orono, Pat's Pizza has expanded to 15 sites and over 350 employees. I am proud of this accomplishment and I would think the results would be something that the State of Maine would want to encourage. This is not the message I get from L.D. 1916.

This legislation suggests that franchising is filled with problems crying for a legislative solution. Moreover, L.D. 1916 suggests that these problems are so bad that the legislature should throw contracts I negotiated in good faith with licensees out the window, along with hundreds of other franchise agreements in Maine. It would be a very serious blow to Maine's economy if the legislature began destroying business contracts on the scale proposed in L.D. 1916. It is also a serious matter

for the legislature to allow any party the opportunity to realize a gain that could not be obtained through free and open contractual negotiations.

My contract negotiations with licensees are conducted in compliance with mandatory disclosure requirements. What you see is what you get. My contracts contain provisions for resolving differences. It should be of interest that none of my licensees have raised grievances. A legislative solution is not needed for a problem that I believe does not exist.

I would hope in considering this bill you would first document the nature and extent of the problem. Then I would ask that you assure yourself that those with problems have exhausted existing opportunities to resolve these problems. Please listen to both sides of any disputes. Only after these efforts will you have the facts to judge the issues raised in L.D. 1916. Maine now has a small but growing number of franchises. I wish I were here today supporting a bill that could speed this rate of growth and not opposing a bill that would kill the growth altogether. Please take the time to make the right decision. Thank you."

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

Representative JOHNSON: Mr. Speaker, Ladies and Gentlemen of the House: I, too, have a letter. I cannot give you the name of the person, the person does not live in my district, I have the information but he does not want it broadcasted because he said he will be hurt, he will be punished. I will read portions of the letter. He is a franchisee.

"There are good franchisors as well as bad ones. Most belong to the International Franchise Association, an organization of all franchisors until the last year or so when it became obvious that including franchisees would enable them to present themselves to legislators as representing both sides.

This trade group has adopted a code of ethics, it is an honorable approach, but does not prohibit, and without weight of law, has the effect of reserving for the exception a franchisor from choosing whose best interests should prevail, the corporate stockholders and employees goals and bonus over franchisees.

Franchising need not be a trap for the trusting. Basic legal standards such as good faith conduct, which is recognized in all other contractual agreements, continues to be debated and denied in franchising." Then he goes on to speak of incidents of persons known to him and of his own experience of being intimidated or being forced to back down or being forced to do what he is doing right now, that is, he cannot talk openly and he cannot give you his name or the name of his business because he doesn't have the power. He is asking for legislative redress.

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

Representative HØGLUND: Mr. Speaker, Ladies and Gentlemen of the House: That is one of the examples why I put this franchise law in. My idea was to make it a fair and equitable relationship between the franchisor and the franchisee.

It is true that we had more than one bill and, as you know when you work a bill you have several bills, several amendments, and I think I came out with the perfect solution and that is the amendment that I

just presented before.

What that amendment does is it takes everything out, it is the most watered down piece of legislation I have ever decided to endorse. It waters it down, there are four items in the new franchise law and what that does is it is a right of association. It gives the franchisor the freedom to associate with franchisees — can you imagine that? The right to association.

Venue — to be able to resolve legal disputes in Maine and not in other states. Franchisors here, when they have a problem, they have to go to Kentucky, to Chicago, to Florida and then they have to argue their case or their dispute in their courts and bring their lawyers. Unfortunately, all small business people here in Maine cannot afford to do that so we are trying to copy what other franchise laws in this state say and that is the right of venue.

Survivorship — it allows a franchisor to leave a business to their child if the child meets the qualification of a franchisor. Simple. You buy the name, you buy a franchise, you work it for ten or twenty years, maybe 30, you are incapacitated, you are old, you retire, you might die, but you want to leave it to your children — as long as your children can qualify, can come under the same negotiations, there is no reason why you shouldn't be allowed to leave it to them after all your hard work. Simple.

Termination — Termination requires a notice that the franchisor have a good reason before terminating or not renewing an agreement. It also provides an opportunity to cure the problem. Simple. You have problems, if you are a felon or anything like that, they can terminate you. If not, they have to give you a proper notice, maybe six months, so that you know that they no longer want you to have their franchise. It is as simple as that.

What it does take out of this bill that everyone was worried about is the retroactivity — that is totally and completely taken out. It removes all encroachment, that is totally taken out. It removes the right to transfer a franchise to a third party and I seem to think that we have watered it down and this is compatible for the franchisor and the franchisee to make a reasonable solution in this state, like we have done for the last three franchise laws that we have put in, the snowmobile law, the farm machinery law and the automobile law.

We have franchisors in this state, I have one in my city, we have a couple in the other cities nearby, and this does not interfere with our own franchisors in this state. This does not interfere with the franchisees who are happy with the negotiations, the contract or whatever agreement they have. It also, in writing, in law, defines that the franchisor can give any type of agreement, any type of anything they want to give above and beyond what this particular amendment does. This amendment only protects those four items I told you about, the right of association, venue, survivorship and termination.

I ask you please to vote in favor of this amendment.

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

Representative LIPMAN: Mr. Speaker, a parliamentary inquiry?

Are we debating the bill or the amendment?

The SPEAKER: The Chair would inform the Representative that in fact the motion before the House is adoption of House Amendment "A." The Chair

would encourage members to confine their comments and remarks to the provisions in House Amendment "A."

The Chair recognizes the Representative from Palmyra, Representative Tardy.

Representative TARDY: Mr. Speaker, Ladies and Gentlemen of the House: I don't know what the original L.D. was, I didn't read it, but the amendment strips it down to what I consider to be the bare necessities of doing business under these circumstances in the State of Maine.

I had first-hand experience in 1984 when my father passed away. We had been a family farm equipment dealership, not a franchise but a dealership, since 1935, fairly well established as farm equipment dealerships go, but at this time, the particular company that we sold for decided that they wanted a dealership in Bangor, they did not want a dealership in Newport and, therefore, because at this time there was a change in dealer principles, they were going to terminate the contract for doing business at our location in Newport. It was only because they made a mistake in the process, and I found it, that I was able to continue as a dealer. I know how important, and I wasn't a child at that time, I wished I was, but I know how important it is to have a right of survivorship in these kinds of contracts.

I followed very closely the legislation two, three or four years ago that dealt with farm equipment dealerships in putting some legislation in place. At that time, a Ford tractor operation had purchased New Holland hay tools out of New Holland, Pennsylvania and in many places in the state, there was a Ford dealer and down the road was a New Holland dealer and both of those dealerships had been in business for years. They had sold a lot of Ford tractors and Ford products, they had a parts business, a come back, a repeat parts business for Ford tractor operations. They had the same type of business that the dealership down the road for New Holland had. Both of these businesses had established a lot of blue sky — which one goes? Is there any compensation for the one that gets closed? Think about those things and these are why you need these types of protections in your statutes and I don't believe that many franchisors would look at what is left here and say that it is bad. I would say they would say it is a minimum and we can live with it.

I guess I would respond to the letter from Bruce Farnsworth, since I spent as much time at Pat's Pizza as I did in Botany class, maybe more, that he is lucky that Pat's made and sold his own pizzas because if Pat's had been a Domino or some other franchise and wanted to turn the assets of that business over to Bruce, he might not even be in existence today. I think Mr. Farnsworth ought to consider that since he is thinking about this franchise legislation.

I would urge your support for this report.

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

Representative ANDERSON: Mr. Speaker, Ladies and Gentlemen of the House: I speak in favor of the Franchise Act and the amendment.

The representatives of the big out-of-town, state corporations who are here today have tried to portray this bill as an issue of economic development but this bill has nothing to do with profits, jobs, or development. It has everything to do with basic fairness. How can I say this bill has nothing to do with jobs? I rely on a study by a Professor of Economics and Public Policy, Mark Edleman of Ohio

State University. He has examined the effects of a similar bill passed in Iowa two years ago. I must add that he is unlike many others in total objectivity and has accepted no money from either side of this dispute. Edleman found that "this Act has no direct tax or regulation impact on operating margins of Iowa, franchisees and franchisors that materially alter normal profits."

Indeed, if you step back from the alarmist rhetoric of the opponents, you can't help but see that Edleman's conclusion must be true. The Act allows disputes to be settled in Maine courts — now is this the sort of thing that reduces sales at Pizza Hut after the basketball games? It allows franchisees to join an association — do you think this provision will reduce hamburger sales at McDonald's? It allows franchisees to pass their businesses on to their children — will this reduce fried chicken sales? None of these provisions have anything to do with jobs or profit. They all have to do with basic fairness.

The job argument is a smokescreen, it is a distraction, it is used because the argument of merit is so weak. They can't argue that it is right to deny parents to pass on their business to their children so instead they wave the red flag about jobs. This issue has nothing to do with jobs, it is about treating Maine's small business owners with dignity.

The Franchise Act is like a customer protection law, only this time for small business owners. We have lots of consumer protection laws already and they don't hurt the economy. For example, we have laws that require real estate agents to disclose their hidden costs when they sell a house. Now imagine how this body would react if Maine real estate agents showed up here to fight mortgage disclosure laws on the basis that it hinders them from making sales and in this way hurts Maine's economy. If they came here with this sort of argument, we'd laugh them right out the door. We would tell them that if they think the only way to make money is to use and exploit people, then forget it, it is not the way to do business in Maine. But today on the Act, we have high-priced lobbyists here from all over the country making a virtually identical argument. They say, don't make us have to use Maine courts, don't make us allow parents to pass on their businesses to their children, don't make us act in good faith because if we act in this way, we won't make as much money and Maine will lose jobs. It is laughable, it's a joke.

On motion of Representative COLES of Harpswell, tabled pending adoption of House Amendment "A" (H-1005) to Committee Amendment "A" (H-912) and specially assigned for Thursday, March 31, 1994.

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Representative ANDERSON of Woodland moved that the House reconsider its action whereby the House accepted the Minority "Ought Not to Pass" Report on the 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).

On further motion of the same Representative, tabled pending his motion to Reconsider whereby the Minority "Ought Not to Pass" Report was accepted and specially assigned for Thursday, March 31, 1994.

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Representative HATCH of Skowhegan moved that the House reconsider its action whereby Bill "An Act to Strengthen the Coordinated Delivery of Substance Abuse Services in the State" (S.P. 655) (L.D. 1824) (C. "A" S-508) was passed to be engrossed.

On further motion of the same Representative, tabled pending her motion to Reconsider passage to be engrossed as amended by Committee Amendment "A" (S-508) and specially assigned for Thursday, March 31, 1994.

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

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On motion of Representative BOWERS of Washington, adjourned at 6:30 p.m., until 9:00 a.m., Thursday, March 31, 1994.