

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
37th Legislative Day
Friday, April 8, 1994

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

Prayer by Reverend Jerry Begin, Spirit of Fire Evangelistic Ministries, Lewiston.

The Journal of yesterday was read and approved.

SENATE PAPERS

The following Communication:

Maine State Senate
Augusta, Maine 04333

April 7, 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 State & Local Government, James S. Henderson of Orr's Island for reappointment as the State Archivist to the Maine State Archives.

Sincerely,

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

Was read and ordered placed on file.

The following Communication:

Maine State Senate
Augusta, Maine 04333

April 7, 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 Education, the following:

Albert B. Glickman of Cape Elizabeth for appointment to the University of Maine Board of Trustees. Albert B. Glickman is replacing Buzz

Fitzgerald.

Ralph L. Hodgkins, Jr. of Wiscasset for reappointment to the University of Maine Board of Trustees.

Erin O'Brien of Scarborough for appointment as Student Trustee Member of the University of Maine Board of Trustees. Erin O'Brien is replacing Peter Crockett.

Sally G. Vamvakias of Falmouth for reappointment to the University of Maine Board of Trustees.

Sincerely,

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

Was read and ordered placed on file.

The following Communication:

Maine State Senate
Augusta, Maine 04333

April 7, 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 Education, the following:

David W. Brown of Bar Harbor for reappointment to the Maine Educational Loan Authority.

Denison Gallaudet of Cumberland for appointment to the Maine Technical College System Board of Trustees. Denison Gallaudet is replacing Jean Mattimore.

Natalie Graceffa of Augusta for reappointment to the Maine Educational Loan Authority.

Donald A. Kopp of West Buxton for reappointment to the Maine Education Assistance Board.

Ronald P. Milliken of Farmington for reappointment to the Maine Educational Loan Authority.

Walter H. Moulton of Brunswick for reappointment to the Maine Educational Loan Authority.

J. Michael Orenduff of Bangor for reappointment to the Maine Education Assistance Board.

Sincerely,

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

Was read and ordered placed on file.

Non-Concurrent Matter

Bill "An Act to Amend the Laws Governing the Training and Certification of Law Enforcement Officers" (H.P. 828) (L.D. 1114) on which the House insisted on its former action whereby the Bill was passed to be engrossed as amended by Committee Amendment "A" (H-969) as amended by House Amendment "B" (H-1062) thereto in the House on April 6, 1994.

Came from the Senate passed to be engrossed as amended by Committee Amendment "A" (H-969) as amended by Senate Amendments "B" (S-581) and "C" (S-591) thereto in non-concurrence.

On motion of Representative DAGGETT of Augusta, the House voted to Adhere and sent up for concurrence. Ordered sent forthwith.

ORDERS

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

ORDERED, that Representative Theone F. Look of Jonesboro be excused March 28 for legislative business.

AND BE IT FURTHER ORDERED, that Representative Harry G. True of Fryeburg be excused April 5 for health reasons.

Was read and passed.

REPORTS OF COMMITTEES

Ought to Pass Pursuant to Public Law

Representative MARTIN from the Committee on Energy and Natural Resources on Bill "An Act Concerning Plastic Holding Devices" (H.P. 1484) (L.D. 2009) reporting "Ought to Pass" pursuant to Public Law 1993, chapter 341, section 7.

Report was read and 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.

Under further suspension of the rules, the Bill was passed to be engrossed and sent up for concurrence. Ordered sent forthwith.

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.

Bill "An Act to Correct Certain Inconsistencies in the Laws Relating to the Commission on Governmental Ethics and Election Practices" (H.P. 1380) (L.D. 1867) -In House, Passed to be Engrossed as amended by Committee Amendment "A" (H-1026) on April 1, 1994. -In Senate, Passed to be Engrossed as amended by Committee Amendment "A" (H-1026) as amended by Senate Amendment "B" (S-585) thereto in non-concurrence. TABLED - April 7, 1994 (Till Later Today) by Representative JACQUES of Waterville. PENDING - Further Consideration.

On motion of Representative JACQUES of Waterville, tabled pending further consideration and later today assigned.

HOUSE REPORT - "Ought to Pass" Pursuant to Joint Order (H.P. 1475) - Committee on State and Local Government on Bill "An Act to Establish Procedures for Secession and Annexation" (H.P. 1480) (L.D. 2006) TABLED - April 7, 1994 (Till Later Today) by Representative TOWNSEND of Portland. PENDING - Acceptance of Committee Report.

On motion of Representative JACQUES of Waterville, tabled pending acceptance of the Committee Report and later today assigned.

An Act to Clarify Agency Relationships in Real Estate Transactions (S.P. 616) (L.D. 1714) (H. "A" H-1036 to C. "A" S-551) TABLED - April 7, 1994 (Till Later Today) by Representative JACQUES of Waterville. PENDING - Passage to be Enacted.

On motion of Representative JACQUES of Waterville, tabled pending passage to be enacted and later today assigned.

An Act to Clarify Maine Election Laws (H.P. 1201) (L.D. 1609) (S. "A" S-557 to C. "A" H-947) TABLED - April 7, 1994 (Till Later Today) by Representative JACQUES of Waterville. PENDING - Passage to be Enacted.

On motion of Representative JACQUES of Waterville, tabled pending passage to be enacted and later today assigned.

SENATE DIVIDED REPORT - Majority (9) "Ought Not to Pass" - Minority (4) "Ought to Pass" as amended by Committee Amendment "A" (S-565) - Committee on Appropriations and Financial Affairs on Bill "An Act to Authorize a General Fund Bond Issue in the Amount of \$10,000,000 to Expand and Improve the State's Distance Learning Infrastructure" (S.P. 717) (L.D. 1939) (Governor's Bill) - In Senate, Majority "Ought Not to Pass" Report read and accepted. TABLED - April 7, 1994 (Till Later Today) by Representative JACQUES of Waterville. PENDING - Motion of Representative CHONKO of Topsham

to accept Majority "Ought Not to Pass" Report.

On motion of Representative JACQUES of Waterville, tabled pending the motion of Representative CHONKO of Topsham to accept the Majority "Ought Not to Pass" Report and later today assigned.

Bill "An Act to Increase Access to Primary Care by Redefining the Practice of Advanced Nursing" (S.P. 390) (L.D. 1185)

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

TABLED - April 7, 1994 (Till Later Today) by Representative JACQUES of Waterville.

PENDING - Adoption of House Amendment "H" (H-1067) to Committee Amendment "A" (S-454). (Roll Call Requested)

On motion of Representative JACQUES of Waterville, tabled pending adoption of House Amendment "H" (H-1067) to Committee Amendment "A" (S-454) and later today assigned. (Roll Call Requested)

Bill "An Act to Make Statutory Changes to Implement the Recommendations of the Legislature's Total Quality Management Committee" (EMERGENCY) (H.P. 1083) (L.D. 1449) (C. "A" H-951; H. "A" H-1063)

TABLED - April 7, 1994 (Till Later Today) by Representative POULIOT of Lewiston.

PENDING - Motion of Representative JACQUES of Waterville to Reconsider Failing of Passage to be Engrossed.

On motion of Representative JACQUES of Waterville, tabled pending his motion to Reconsider Failing of Passage to be Engrossed and later today assigned.

An Act to Revise the Laws of Maine to Incorporate the Office of Rehabilitation Services within the Department of Education (EMERGENCY) (H.P. 1431) (L.D. 1956) (Governor's Bill) (C. "A" H-909)

TABLED - April 7, 1994 (Till Later Today) by Representative JACQUES of Waterville.

PENDING - Passage to be Enacted.

On motion of Representative JACQUES of Waterville, tabled pending passage to be enacted and later today assigned.

An Act to Implement the Recommendations of the Commission to Study the Future of Maine's Courts (H.P. 1008) (L.D. 1354) (H. "A" H-1015 to C. "A" H-1000)

TABLED - April 7, 1994 (Till Later Today) by Representative ZIRNKILTON of Mount Desert.

PENDING - Passage to be Enacted.

On motion of Representative PARADIS of Augusta, tabled pending passage to be enacted and later today

assigned.

An Act to Authorize Applied Technology Regions to Borrow Funds for Necessary Repairs to Existing Buildings (H.P. 1479) (L.D. 2005)

TABLED - April 7, 1994 (Till Later Today) by Representative WHITCOMB of Waldo.

PENDING - Passage to be Enacted.

On motion of Representative WHITCOMB of Waldo, tabled pending passage to be enacted and later today assigned.

Bill "An Act to Ensure Proper Funding of the Department of Environmental Protection" (H.P. 1385) (L.D. 1884)

TABLED - April 7, 1994 (Till Later Today) by Representative MARTIN of Eagle Lake.

PENDING - Adoption of Committee Amendment "A" (H-1076).

On motion of Representative JACQUES of Waterville, tabled pending adoption of Committee Amendment "A" (H-1076) and later today assigned.

Resolve, Authorizing the Examination of School Finance and Taxation Proposals (S.P. 776) (L.D. 2003) (Governor's Bill)

- In House, passed to be engrossed on April 6, 1994.

- In Senate, passed to be engrossed as amended by Senate Amendment "A" (S-590) in non-concurrence.

TABLED - April 7, 1994 (Till Later Today) by Representative MITCHELL of Vassalboro.

PENDING - Further Consideration.

On motion of Representative JACQUES of Waterville, tabled pending further consideration and later today assigned.

BILL HELD

Bill "An Act to Amend the Harness Racing Laws" (H.P. 1243) (L.D. 1670)

- In House, 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 on March 30, 1994.

- In Senate, passed to be engrossed as amended by Committee Amendment "A" (H-948) as amended by House Amendments "D" (H-1003) and "E" (H-1007) thereto in non-concurrence on April 7, 1994.

- In House, House Receded and Concurred. HELD at the Request of Representative ALIBERTI of Lewiston.

Representative ALIBERTI of Lewiston moved that the House reconsider its action whereby the House Receded and Concurred.

On further motion of the same Representative, tabled pending his motion to reconsider and later today assigned.

The Chair laid before the House the following items which were tabled earlier in today's session:

Bill "An Act to Correct Certain Inconsistencies in the Laws Relating to the Commission on Governmental Ethics and Election Practices" (H.P. 1380) (L.D. 1867) which was tabled by Representative JACQUES of Waterville pending further consideration.
 -In House, Passed to be Engrossed as amended by Committee Amendment "A" (H-1026) on April 1, 1994.
 -In Senate, Passed to be Engrossed as amended by Committee Amendment "A" (H-1026) as amended by Senate Amendment "B" (S-585) thereto in non-concurrence.

Subsequently, the House voted to Recede and Concur. Ordered sent forthwith.

Bill "An Act to Increase Access to Primary Care by Redefining the Practice of Advanced Nursing" (S.P. 390) (L.D. 1185) which was tabled by Representative JACQUES of Waterville pending adoption of House Amendment "H" (H-1067) to Committee Amendment "A" (S-454). (Roll Call Requested)

Representative HOGLUND of Portland withdrew House Amendment "H" (H-1067) to Committee Amendment "A" (S-454).

The same Representative presented House Amendment "F" (H-1057) to Committee Amendment "A" (S-454) which was read by the Clerk.

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

Representative PENDEXTER: Mr. Speaker, Men and Women of the House: House Amendment "F" removes the immunity language in the liability problem that we are having, because (there again) of the loose definition of collaboration.

I will continue to keep emphasizing — if we define the word correctly we do not have a liability problem. I attempted to do that last night and wasn't victorious.

If you accept this language, what basically will happen is that the physician will not collaborate with the nurse practitioners because there will be no legal counsel in this state that will counsel a physician to practice in this manner at all. What you are doing is killing the bill. This is a killer amendment because nothing will happen, a physician will not collaborate if the liability language is not correct. Therefore, I will be opposing this amendment.

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

Representative HOGLUND: Mr. Speaker, Men and Women of the House: I disagree with my good friend, Representative Pendexter, from Scarborough. I think this is very clear that on the liability clause that you have civil liability for damages. From what I understand, it is that doctors and nurses collaborate — they have a written agreement. That written agreement is also governed by a Board of Nursing and — excuse me — the joint council gives their description of their scope of practice. Then, what it says is a physician functioning with a collaborative relationship with an advanced

registered nurse practitioner may not be found civilly liable for damages unless they physician was negligent in rendering medical treatment in a person directly or advising that person directly.

Nowhere, in any profession, should we allow anyone to be immune from any negligence or liability. We have never done it in the state and we shouldn't do it now. The Judicial Committee has never granted it and I don't think that you would want that for your patients or your constituents either.

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

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

Representative LIPMAN: Mr. Speaker, Men and Women of the House: My good friend, the Representative from Scarborough, Representative Pendexter, has raised an interesting argument. However, I think her argument comes back to defeat itself. If she says that if we pass this amendment that no doctors will collaborate with nurses. Therefore the bill is ineffective. This good Representative, Representative Pendexter, doesn't want this bill so she shouldn't be opposing this amendment, if in fact it means that no doctors are going to collaborate.

I would urge you that in fact the amendment that is being offered does make sense. That if in fact no one goes into one of these agreements we haven't caused any harm.

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

Representative PENDEXTER: Mr. Speaker, Men and Women of the House: The physicians are very willing to collaborate. That is not the problem.

The Representative from Portland spoke about a written collaborative agreement. If you read the amendment, a nurse practitioner only has to have a written collaborative agreement with one physician, only one. Then the nurse practitioner may have ad hoc — the word ad hoc is written right in the Statement of Fact — ad hoc agreements with other physicians. It is with those other physicians that the liability problem is a real issue. Is that how we want our nurse practitioners to be practicing, with ad hoc arrangements? They only have to have a written collaborative agreement with one physician and that is the basis of my argument. We can argue all night, all day. I am not a lawyer, I cannot argue the legal jargon. However I do know that with this amendment on the bill it is in trouble because it is not acceptable to the medical community.

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

Representative PENDLETON: Mr. Speaker, Men and Women of the House: If I could just clarify that business about collaboration, a written agreement with one physician and ad hoc. What that means is the nurse practitioner would have a written agreement with a collaborating physician.

However, if a patient comes to that nurse practitioner and she is under the care of another physician — say another specialist, a cardiologist, because remember the nurse practitioner is practicing in her own scope, GYN/OB nurse practitioner is working with well women. However if that well woman who is getting her pap test, who is having her physical exam, is under the care of a medical physician (another physician) not the collaborating

physician but another physician for something such as diabetes or a heart condition, that ad hoc agreement, the nurse, if she saw anything, a high blood sugar or a problem with a heart condition, she would have the ability to call that specialist and say I have found this problem and I am referring the patient to you because this patient is your patient and this particular problem is showing itself again while I was giving the routine physical.

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

Representative CATHCART: Mr. Speaker, Men and Women of the House: I urge you to adopt House Amendment "F" and not to allow yourself (and myself) to get confused because there are people out there who are trying to confuse us with this liability issue. I think the issue is very clear and simple. This would allow more access for the people of Maine to primary care and that health care would cost less money if we allow nurses to provide the services that they are trained to do.

This is an issue that has been dealt with in other states and it is working well in the State of New Hampshire.

I have a personal experience and I will share that briefly. I had an advanced practice nurse, a nurse practitioner in Bangor who did all of my primary care. My physical each year cost \$75, that's it. When we switched last year to the Blue Select plan, I had to switch to a physician for primary care. I am not denigrating that physician, I think she is a fine doctor but, the cost of my physical just went up astronomically. That is being covered by our insurance but, let me assure you we are paying the cost of that.

This is a way to allow nurses to advance professionally in the field that they are trained in, to get more satisfaction and, it is also a way that the people of rural Maine (in particular) can have high quality preventative and primary care and hold down the cost to all of us for the cost of our health care.

The SPEAKER: The Chair recognizes the Representative from Rockland, Representative Melendy.

Representative MELENDY: Mr. Speaker, Men and Women of the House: Again, I am here because I am concerned for the people on the street, the people who will go and try to get medical care. I want to know, who can assure me how will a patient know whether a nurse is collaborating with a physician on their particular case? If I am going in to see a nurse practitioner how will I know that that nurse practitioner is just dealing with her own knowledge, which is far less knowledge and training than a physician has had with the years and years that they have had to study multiple diagnosis and so forth? What assurance do they have that that nurse will then turn to somebody else or just try to do what she can within her scope?

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

The Chair recognizes the Representative from Portland, Representative Hوجلund.

Representative Hوجلund: Mr. Speaker, Men and Women of the House: It is a notice of disclosure, Representative Melendy. The advance nurse practitioner who has a relationship of collaboration has to notify her patients.

The SPEAKER: The Chair recognizes the

Representative from Winslow, Representative Vigue.

Representative VIGUE: Mr. Speaker, Ladies and Gentlemen of the House: This bill has been worked to death. We have had it for one year.

The only problem I have with the bill at the present time is the changes that have occurred this morning with this amendment. What we have done is initiated or installed the trail lawyers language and this is not acceptable to the medical profession.

Originally with the original amendment the language was acceptable and the bill became palatable to all parties involved. With this new language it is now not acceptable to me and not acceptable to the medical profession.

I urge you to not adopt the pending motion.

The SPEAKER: The Chair recognizes the Representative from Rockland, Representative Melendy.

Representative MELENDY: Mr. Speaker, Men and Women of the House: Again, I guess I have to go back to what Representative Hوجلund mentioned and that was talking about the disclaimer. As far as I am concerned, a disclaimer, unless you can really make sure that the lettering is yey-big or people know, without a doubt, that they will know immediately without having to stop and read a little tiny sign or some little incidental thing, they still will not know. When you say that the disclaimer says that they are collaborating, you still have not defined collaborating in a very satisfactory manner.

If I may go on — if you can respond to that. Also, I guess I am going to have to agree with Representative Vigue. This issue has been before us for quite a while and yesterday when I saw the language of immunity I thought that makes sense. If a doctor has not seen a nurses patients or if that doctor has not told the nurse how to treat that patient then he certainly should be immune.

As far as I am concerned Representative Lipman has now made this into a lawyers bill.

So, I think if we were to sit here and look at what is happening with this bill, this bill has generated more than 13 amendments. It is coming to us at the eleventh hour and I think that it would be easy to just kill this bill, let it come back next year. It is not going to change the fact that nurses can continue to practice, doctors can continue to practice but I think we need to have something clean and something that the people of this state can look at and have asurety that they are being treated well.

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

Representative CAMERON: Mr. Speaker, Men and Women of the House: I am not exactly sure where to start here — but the issue this morning seems to be centered around liability. I think that this whole argument is very interesting because under a collaborative relationship that a doctor enters into freely (I might add) in a written — this amendment is one of the things that we have been talking about all along, will provide the vehicle for a written arrangement between the doctor and the nurse. Under that kind of relationship when the doctor enters into that with a nurse, the doctor, in fact, will be less liable even with the language that we presently have that says civilly liable versus immune.

I stress again what Representative Lipman said, no profession in this state, none, has a piece of — has anything in statute that holds them immune from liability for their actions, no others, and there are really no reasons that they should.

What is interesting is under this particular situation of collaboration, with written agreement, the doctor actually has less potential of liability than they do today. Today under a delegatory relationship (I will add again) that doesn't go away for any nurse who chooses to operate in a delegatory relationship with a doctor — can still do that. Nothing in this bill prevents that from happening. Nothing in this bill forces any doctor to go into a collaborative relationship but any nurse and doctor relationship that remains as it is today under a delegatory relationship, the physician takes on the entire burden of liability, the entire burden whether he does anything wrong or not. If that nurse makes a mistake the doctor is held completely, 100 percent, liable.

Under a collaborative relationship that is not true. The collaborative relationship provides (I would like to say equal, I am not a lawyer and I can't speak to that) somewhere more nearly an equal share of the liability. Nobody, nobody, nobody, not us, not the doctors, not pharmacist, nobody should be held immune from their actions.

I think you heard yesterday, Representatives of the Judiciary Committee make it very plain, that that has been standing in this state since time began. The Judiciary Committee has never been willing to do that and they are not willing to do that now. I support them, I absolutely agree with that. So, it is important, I think, that you understand that the language that we have here now, even though it may not say immune as it shouldn't say, the doctor is actually less liable than they are under the present day situation of a delegatory relationship.

I would like to add one more thing. The delegatory relationship versus a collaborating relationship takes the doctor/nurse relationship from an employee/employer relationship (as it is presently) to a partnership relationship. I think that that is a very important step. I don't see anywhere the breaking of the relationship between the doctor and nurse at link that we heard so much about, that back-up that we heard so much about.

Representative Melendy asked a question that I would like to respond to just momentarily. She asked the question about the public assurance and Representative Hoglund referred to the disclosure (and that is a very important piece of that) but I might add, when I go to my GP I have no guarantee that that person will refer me to a specialist when they need to or they will try to do something beyond what they are capable of. I would be foolish to stand here and give you people guarantees, it just cannot happen, it will not happen.

I will again emphasize what I did the other day, I believe in the nurses in our state. I believe they are professionals and I believe that they will do what any professional will do when it is time to ask for more help.

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

Representative REED: Mr. Speaker, Ladies and Gentlemen of the House: The concept of this bill (I think) is good. I have wanted to support this bill all along but if it is not acceptable, if this liability clause is not acceptable to the doctors I cannot support this bill. I think the advanced nurse practitioners are well qualified and I think they are doing a fine job.

We spent a year massaging this bill and if we

can't come up with liability that can be acceptable to the doctors then I will have to change my vote because last time I voted in favor of this bill but if we can't come up with something that is acceptable to the doctors in this state then I urge you to defeat this amendment.

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

Representative FAIRCLOTH: Mr. Speaker, Men and Women of the House: I think reasonable people certainly can differ on the underlying legislation.

I do want to clarify (as I understand it) a point with regard to House Amendment "F." I think it provides fairly ample protection for a physician.

Let me give you a hypothetical situation as it would fall under this amendment. If a nurse practitioner contacts, on an ad hoc basis, some physician and she gets advice from that physician (or he gets advice from that physician) and the advice is in writing, memorialized in writing, then yes, the normal rules of negligence would apply. But, if a physician gives orally advice that is grossly negligent, terribly negligent, completely and obviously negligent, that physician is not civilly liable for what they do. It protects them rather dramatically.

I think — I would be happy to be corrected if somebody disagrees with it — but, under House Amendment "F," if you are a physician and you have this language you can feel fairly safe. The only time you would be held liable is if you have chosen (and you have to choose to do this) if you choose to enter into one of these collaborative relationships and no one can drag a physician into this.

As a matter of fact, I anticipate that this legislation will have a very limited effect because I don't think that many physicians are likely to participate in this because no one can force them to. But, if they are consulted on an ad hoc basis and they give advice orally they are held civilly harmless essentially. So, I think this provides fairly significant protection to physicians and that is why I would be willing to support it.

Representative Pendexter of Scarborough was granted permission to address the House a third time.

Representative PENDEXTER: Mr. Speaker, Men and Women of the House: I just want to respond real briefly to some comments made by the Representative from Rumford who states that physicians now are totally liable for working with a nurse practitioner. That is correct, and they are not objecting to that. They don't have a problem with that because it is very clearly defined in law what is expected of a physician. With a proper definition of collaboration that also can be very clearly expressed but is the responsibility of the physician.

We are having this debate right now because the collaboration definition that is being perpetuated with this L.D. just states that somehow a nurse and a physician are going to jointly contribute to somebody's health care. That is just not an acceptable definition. So, because of that, it leaves the arena wide open, it is not in statute clearly defined what the physician is responsible for.

We all carry malpractice insurance. I carry \$1 million for each occurrence accumulative of \$3 million. We all carry the same amount so there is no deep pocket, basically. I would be held just as liable for something I do as they physician I work with will be held just as liable. They are going to

take both of us, because I have to be responsible for my decision as well and I have to be responsible for what I do with the advise that a physician tells me. On any collaborative agreement whatever advise a physician gives me over the phone I am also very liable for what I choose to do with that advise.

We can go around all day and talk about this but the bottom line is we have a problem with liability because the definition of collaboration is not correct.

I would just say one more thing. The whole drive for this bill to be before us was a movement by the nurses to change the wording in the law. They want to get away from delegation and yet they continue to perpetuate that word in this bill. We are all agreeing that collaboration would be fine because that is how it works now anyway. The law might say that we work under delegation but I am telling you that I am practicing under collaboration. It just sort of amuses me that the whole drive to this whole bill to be here before us was a movement by nurses to change the word delegation but also their agenda was to be independent practice and that is where we differ. My agenda is not independent practice. I will remove the word delegation and I won't work under those circumstances or I will remove it from statute but I will use the word collaborate because I think that more appropriately reflects what happens today.

I will just remind you, we can have this discussion about liability but there doesn't exist a liability problem right now, you are creating one and that really just sort of amuses me. I don't know what we are trying to do here. We are creating problems, there is not a liability problem out there today. I just have to wonder what this is all about in the first place and I will continue to oppose this amendment.

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

Representative VIGUE: Mr. Speaker, Ladies and Gentlemen of the House: After listening to much of the debate I want to reiterate what I previously said. This is going to be a trial lawyers dream. We can't come up with a real definition as to where we want to go. We don't have an area that we can honestly say this is what this bill is going to do. We have changed the meaning of collaboration, we have changed the medical liability. We have had 13 or 14 amendments — we are then saying this is the right one. You listen to the lawyers explain it and you realize this is going to create additional problems. We can't come up with a definition.

The "F" amendment that we previously had had a definite medical liability, it did allow for the protection that was necessary. We flip-flopped on this 13 or 14 times.

Ladies and gentlemen, I don't think we have a definite strong bill here that we can support. I would recommend that you not adopt House Amendment "F" and vote against it.

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

Representative BAILEY: Mr. Speaker, I would pose a question through the Chair.

The rural health centers in the rural parts of this state rely upon nurse practitioners a great deal. Is this going to change the way we operate in the rural health clinics? If someone could answer

that?

The SPEAKER: Representative Bailey of Township #27 has posed a question through the Chair to any member who may respond if they so desire.

The Chair recognizes the Representative from Green, Representative Saint Onge.

Representative SAINT ONGE: Mr. Speaker, Men and Women of the House: It most certainly could. What it could do is expand the number of nurse practitioners you might have in that area in regards to collaboration versus delegation they could still work under the supervision of a physician or they could collaborate with several different physicians as opposed to under one supervising. So, the answer to your question is yes, it could.

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

Representative BAILEY: Mr. Speaker, Men and Women of the House: I would ask a follow-up question. Does that place the malpractice liability on the health centers at that point or does it continue to rest with the physician?

The SPEAKER: Representative Bailey of Township #27 has posed a question through the Chair to any member who may respond if they so desire.

The Chair recognizes the Representative from Green, Representative Saint Onge.

Representative SAINT ONGE: Mr. Speaker, Men and Women of the House: I don't claim to be an attorney so perhaps someone will be able to clarify should I make a mistake. My understanding is it would depend on the relationship. And, again, it depends on the individual. A nurse practitioner who is practicing on her own in collaboration has her own license, would go to the Nursing Board and would go through the process as a physician would under collaboration. I am not sure if that clarified the question.

Representative Pendexter of Scarborough was granted permission to address the House a fourth time.

Representative PENDEXTER: Mr. Speaker, I would like to answer Representative Bailey's question further.

This doesn't affect how nurse practitioners get their liability coverage. In other words, however your nurse practitioners get their coverage right now would not change, whether they purchased their own or whether the health center purchased it for them, it would not change how they purchased that insurance. What we are talking about here is how the physician is liable for what happens.

I would further comment on your first question, the only nurses that can collaborate under this bill are nurses who have masters level education, with three years of experience with a physician. Or, there are two exceptions, that they are OB/GYN or nurse midwives, everybody else continues to practice at the same level whether they are delegation or supervision, which brings up my whole argument again that if we are trying to get away from delegation this bill doesn't do it.

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

Representative HOLT: Mr. Speaker, Men and Women of the House: I think the key to our problem has been stated by the good Representative, Representative Vigue. This bill is being worked to death. That is what is happening. It is like if you are haven't been able to get rid of something by slow

poisoning over a year and a half work, you get out your gun and you use bird shot and shoot one amendment out and then another and another until people get very tired and confused. That is what is happening here. Nothing new is going on.

Nurses carry liability, doctors carry liability. I would like to remind you that in New Hampshire they have had independent practice, not collaborative, since 1976 with no increase in malpractice. The District of Columbia, Superintendent of Insurance, denied an increase in rates for obstetricians working with nurse midwives because he found no insurance risk.

The nurses have worked with the physicians guild for a long time. At first they didn't want to accept the definition of collaboration, then they did, then they didn't, then they sent in a new team — that is a tactic by a very powerful physician lobby. Those physicians who work with nurse practitioners now will still want to do that with this bill. Those who don't will choose not to. We want to increase service to the people of Maine in primary care, physicians are again blocking access to primary care for the people of Maine. It was done to chiropractors, it was done to psychologists, physical therapists, podiatrists and now nurses.

Do not be confounded. Please adopt House Amendment "F" to Committee Amendment "A" to this bill and let us get on with the business of helping Maine's people to have better lives. This bill will not hurt doctors. It won't hurt people, it will help us all.

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

Representative CAMERON: Mr. Speaker, Men and Women of the House: At some point in this discussion this morning there has been the impression given, I think, that the medical community as a whole is opposed to this. I would dare say that maybe everybody in here (at one time or another) has talked to a doctor or received a letter indicating that they were not supporting it. I can understand that. I hope that in the two years that I have been here I have developed enough trust with you folks that if I tell you that those of us that have worked on it for some extended period of time have talked to and have had phone calls from and have received letters from doctors who are very supportive of this effort, I hope you believe me. I cannot prove that to you standing here today but I assure you that there are many doctors out here who support this effort.

I also would emphasize that the association with whom we have been negotiating, if you will, for the extended period of time representing the doctors, and again, I can't give you, to the 100th of a point, the exact number but, represent approximately 30 to 35 percent of the physicians in the state. When the statement is made that the medical communities do not support this effort that is somewhat erroneous information. I hope you can believe me on that.

Representative Melendy of Rockland was granted permission to address the House a third time.

Representative MELENDY: Mr. Speaker, Ladies and Gentlemen of the House: I, too, would like to respond to Representative Bailey. I would like to tell him what my fears are in terms of him being able to have a nurse practitioner dealing with problems in the rural areas not having enough medical care.

My fear is that if this piece of legislation is passed (we will go back to the question that I asked

the other day) what is to assure us that nurses and doctors will collaborate? What is to assure us that there will be more nurse practitioners going out there to rural areas? The answer on both of those questions is there is no assurance.

Right now, today, there is a good relationship between physicians and nurse practitioners. I received many letters from physicians who work with nurse practitioners who supervise them and they feel very comfortable in that relationship. If we go and we change it to collaborating with the definition so loose you are going to find that physicians are no longer going to be willing to do that. So, once your nurse practitioner moves on, I am not sure how many more are going to be able to be moving up to that thing. That is my fear, the fear of this bill is that the nurses are going to end up hurting themselves by what they are doing this way, by not being technical enough that they will end up, your community, in the long run may end up hurting.

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

Representative CHASE: Mr. Speaker, Colleagues of the House: Forgive me for prolonging this debate by rising, I tried not to.

In case you were not willing to trust Representative Cameron, after knowing him for two years in this body, I urge you to recall one of the many pieces of paper you have gotten on this issue that lists at least three dozen physicians who are not only in support of the bill but, who are willing to enter into a collaborative relationship with nurse practitioners.

I didn't want to prolong the debate so I was writing a note to Representative Bailey to let him know that I also have a rural health center in my district, in Albion, the Lovejoy Health Center. I would be very very concerned if anything in this bill, in any way, decreased the ability of that health center to function in the rural area of Albion. I don't anticipate that the nurse practitioners who are employed there are going to leave. I think nurse practitioners will continue to work where they are happy, where they do enjoy a good relationship with physicians. They will stay. They will stay as employees. They will stay because it is a secure job. They will stay because they enjoy their work. As Representative Pendexter has described there are nurses who simply enjoy that work. I suspect that the nurse practitioners at the Lovejoy Health Center may just stay there.

For those nurse practitioners who do want to practice in a different way, in collaboration with a physician, I think we should try it.

We are overlooking, in our debate, Committee Amendment "A" which is a substantial amendment. That Committee Amendment sets up the Joint Practice Council on Nurse Practitioners — perhaps I am naive for having faith in this council but, among other things that the council is going to review and report back to the Business Legislation Committee before any of this actually happens — are various guidelines. One of those guidelines, the guideline for practice agreement contract between the collaborating physician and an advanced registered nurse practitioner. If we have this council hammering out language of a practice agreement I think we will have a better notion of what collaboration will be. That report will be given back to the Committee on Business Legislation (unless I misunderstand this

amendment) at which point that committee, I assume, will come back to the House and to the Senate and we will do this all over again and make those recommendations law or not.

I urge you to give this a try and calm your fears and go forward.

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

Representative FARNSWORTH: Mr. Speaker, Men and Women of the House: I have a deep respect for the amount of work that the Business Legislation Committee has done on this bill and I totally support this amendment. I agree with the comments that have been made by the members of the Business Legislation Committee about it.

I would like to comment briefly to Representative Bailey's question about the immunity language or this amendment's language effect on the insurance clause. If in fact a rural health care facility is paying the insurance costs for a nurse practitioner. It would seem to be very clear that the malpractice insurance costs would go up if immunity is adopted as the prevailing language. This amendment would be much more fair and cost effective.

That brings me to the main point I would like to make and that is (I think) that this bill is very clearly, certainly, not a lawyers bill and this amendment isn't going to make it a lawyers bill. This bill is a health care access bill. This bill is a health care affordability bill. The doctors who are represented by the Maine Medical Association have never really looked forward to this bill, they haven't been helpful with it (to my impression from a distance). I think this is an opportunity to kill it. Calling it a lawyers bill is usually effective in doing that but I don't believe — I can tell you about sudden death, this feels like a slow death but I don't believe this bill is dead, it certainly oughtn't die.

I would just like to say that the one thing that I was pleased about, I agree with — I don't know if I agree with it but I am pleased to hear Representative Pendexter say — and I hope she was speaking for the Maine Medical Association on this — that there is currently no problem with liability. That is wonderful to hear. We certainly spent a lot of time in the Judiciary Committee hearing from doctors that they think there is a terrible problem. The fact is that this bill will leave them in a better position.

I hope you will support this amendment.

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

Representative BAILEY: Mr. Speaker, I would pose a question through the Chair.

Providing primary care in rural areas of this state is a very fragile situation. The rural health clinics are able to do that by offering a sliding fee. Would the passage of this amendment allow nurse practitioners (that are now working) to go out on their own and compete with the rural health clinics? This would be a big fear of mine.

The SPEAKER: Representative Bailey of Township #27 has posed a question through the Chair to any member who may respond if they so desire.

The Chair recognizes the Representative from Scarborough, Representative Pendexter.

Representative PENDEXTER: Mr. Speaker, Men and Women of the House: The answer to that question is

if they have a masters degree and have three years of experience, nurses, or they are OB/GYN or nurse midwives they can go out and set up practice anywhere they want to.

I might reiterate that nurse practitioners can do that to a point now. I gave an example a couple of debates ago where I practiced about 30 to 35 miles away from my physician and so it is very flexible as it stands. I am not so sure that there would be a whole lot of competition, but that would be possible, yes.

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

Representative VIGUE: Mr. Speaker, Men and Women of the House: I just want to make a comment. I just got a real brave note from some individual here in the House. It was written in red ink, it is "I was all wet about trial lawyers in support of this one, voting for this bill." That gives me a nice warm fuzzy feeling.

I would like to say that the medical profession is not in favor of the medical liability in this bill.

I would urge you to vote against it.

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

Representative WINN: Mr. Speaker, Ladies and Gentlemen of the House: I want to be perfectly clear about my feelings about the concept of this bill. I haven't had a chance to speak on the floor of the House about this before.

I do want you to know that the committee has worked on this very hard, we all received — and I have read about nine inches worth of research reports, statistics and copies of legislation from other states. I have spent a couple hundred hours on this bill myself. I have over 100 different conversations with people, students, teachers, nurses, doctors, patients. I have been up until three in the morning on numerous occasions trying to work out something that is going to meet the needs of the people and the state, something that will provide them with access to affordable health care. I even received a phone call on Christmas Eve about this issue. It has really involved me and a lot of other people on the committee and the members of my family.

I want to make it perfectly clear that I have worked very very hard for this bill and I want this concept to happen. I was also the person that created the concept of the Joint Practices Council. I was also the person who created the concept of an internship. I have worked very hard on this bill.

When I was campaigning I made only three promises. Three promises. I believe anybody that knows me knows that I have kept those. Those promises were to do everything I could to make sure that we had a change in leadership at the State House and I think what we saw yesterday afternoon was a good example of that. I have also done everything I can to make sure that government is more effective and efficient. I have also done everything I can to not engage in political games.

I have to say that I strongly disagree with Representative Farnsworth and Representative Holt. My perception of reality about this legislative bill has been quite different.

A few weeks ago I made an agreement with the social studies teacher at one of my schools to come talk to the students (in a few days) about the legislative process. We agreed we were going to use this bill as an example.

I think you should all be aware of the process that I have experienced working with this bill. Two weeks before our committee made a vote on this bill the sponsor of this bill came to me and said, "You are not going to vote with them are you? You are not going to vote with Republicans are you?" I went to vote on this bill and I was given a hard time for the way I voted on it, "Ought Not to Pass." A staff member suggested I change my vote so that we could have this vetoed. I have been intimidated by all sorts of Representatives. I have asked for cooperation from my chair and have received none. I have been called a liar and a jerk.

We worked so hard on this all along and it was so close last night. I went into the Speakers office and saw two or three lawyers and a few women decide that they were going to go with this Amendment "F" knowing that it was not going to pass in the Senate, knowing that it would be vetoed. And, even if it wasn't vetoed, knowing the doctors would not engage in it.

I talked to the Attorney General and I said what is this problem with the language about liability. He said he sees no significant difference, the bill should not be killed because of it.

We could go with the original amendment we were talking about last night, Amendment "H" and everything would be fine.

I have to say that I am very very disturbed that a few trial lawyers are doing this. I understand that they need to continue having law suits to try, but I resent it. I haven't heard anybody once talk about the patients out there and the people in this state that could benefit from this service, not once. All I have heard is my clients won't agree to this or the lawyers won't agree to this. Then, once and a while I hear, "Oh, it will make our party look good and we can pass this again next year." Well, I tell you the people I represent didn't hire me to come down here and play these games and say that I am sorry, we aren't going to do anything for you again, you are just going to have to wait for next year and maybe you will get Representatives that won't play those kinds of games.

I have an amendment which is either Amendment "H" or Amendment "G" would work — all of the parties have agreed it would work. The Governor's office has agreed they would sign it.

My position on liability is that as long as a nurse is working within her scope of practice there will be no problem. If they go too far, if they stick their neck out and they do something stupid there will be a problem and I think they deserve it, peoples lives are at stake here.

Again, as I said, Amendment "F" is not going to work. Amendment "H" and "G" would work. There are also amendments from the Senate that would work.

I do want to say that if any of you have any advise about what to tell those students back in the social studies class, please let me know. And, if you do really care about the people you represent you will try to do the right thing. You will think about the things that go on here when we recess and decide what kind of Representative you really want to be.

Representative ZIRNKILTON of Mount Desert requested a roll call on adoption of House Amendment "F" (H-1057) to Committee Amendment "A" (S-454).

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

Representative CAMERON: Mr. Speaker, Ladies and

Gentlemen of the House: Very quickly. I did make a statement here a few minutes ago and said it incorrectly and I want to correct myself. In the number of doctors that were represented by Maine Medical Association, I had it backward, it is approximately 70 percent.

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. All 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.

ROLL CALL NO. 333

YEA - Adams, Ahearne, Bailey, H.; Beam, Bowers, Bruno, Cameron, Carleton, Caron, Carroll, Cashman, Cathcart, Chase, Chonko, Clark, Clement, Coles, Constantine, Daggett, Dexter, DiPietro, Donnelly, Dore, Erwin, Faircloth, Farnsworth, Fitzpatrick, Gean, Gould, R. A.; Hale, Hatch, Heesch, Heino, Hichborn, Hoglund, Holt, Hussey, Jacques, Johnson, Kerr, Ketterer, Kilkelly, Kontos, Larrivee, Lemke, Lemont, Lipman, Lord, Marshall, Martin, J.; Michael, Michaud, Mitchell, E.; Mitchell, J.; Morrison, Murphy, Nadeau, O'Gara, Ott, Paradis, P.; Pendleton, Pfeiffer, Pineau, Pinette, Plourde, Poulin, Rand, Richardson, Rotondi, Rowe, Ruhlin, Rydell, Saint Onge, Skoglund, Spear, Stevens, K.; Strout, Sullivan, Swazey, Tardy, Townsend, E.; Tracy, Treat, True, Wentworth, Young, Zirnkilton.

NAY - Aikman, Aliberti, Anderson, Ault, Bailey, R.; Barth, Bennett, Birney, Carr, Cloutier, Clukey, Cote, Cross, Driscoll, Dutremble, L.; Farnum, Farren, Foss, Gamache, Gray, Greenlaw, Jalbert, Joy, Kneeland, Libby Jack, Lindahl, Look, MacBride, Marsh, Melendy, Nash, Nickerson, Norton, Pendexter, Pouliot, Reed, G.; Reed, W.; Ricker, Robichaud, Saxl, Simoneau, Small, Stevens, A.; Taylor, Tufts, Vigue, Walker, Whitcomb, Winn.

ABSENT - Brennan, Campbell, Coffman, Hillock, Joseph, Kutasi, Libby James, Martin, H.; Oliver, Plowman, Simonds, Thompson, Townsend, G.; Townsend, L.; The Speaker.

Yes, 87; No, 49; Absent, 15; Paired, 0; Excused, 0. 87 having voted in the affirmative and 49 in the negative, with 15 being absent, House Amendment "F" (H-1057) to Committee Amendment "A" (S-454) was adopted.

Representative PENDEXTER of Scarborough presented House Amendment "C" (H-1049) to Committee Amendment "A" (S-454) which was read by the Clerk.

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

Representative PENDEXTER: Mr. Speaker, Men and Women of the House: I hope this is a non-controversial amendment. I am putting it in at the request of the Board of Nursing.

In the Committee Amendment it states that nurse practitioner will have a seat at the table of the Board of Nursing. That just presents a little bit of a problem which I would like to share with you. Presently on the board there are nine members. Of those nine members one is a public member, one is an LPN (which is a licensed practical nurse) — I am sorry, there are seven members. Now we are down to

five that represent nursing per se. Of those five two have to be involved in the educational arena because they are the ones that do the site visits to the nursing schools. One, by statute, that the legislature did, has to be dedicated to nursing care and so at the moment that just leaves two slots open for the 14,000 nurses out there that are practicing. If we allow a nurse practitioner to come to the table by designation of the statute then that just leaves one slot on the Board of Nursing open for 14,000 nurses who are practicing out there, actually there are almost 16,000 nurses practicing. The nurse practitioners only represent four percent of the nursing population and it just kind of bothers me that we would designate a specialty group like that that only represents four percent of the nurses to have a special designation on the Board of Nursing. So, in fairness to everybody out there we all have a chance to serve on the board if we are active in nursing and I think that you are just weeding down one slot if you don't pass this amendment. I do hope that you can support me in a favorable outcome to this amendment.

Representative BOWERS of Washington moved that House Amendment "C" (H-1049) to Committee Amendment "A" (S-454) be indefinitely postponed.

The SPEAKER: The Chair will order a vote. The pending question before the House is the motion of Representative Bowers of Washington that House Amendment "C" (H-1049) to Committee Amendment "A" (S-454) be in definitely postponed.

A vote of the House was taken.

34 voted in favor of the same and 76 against, subsequently, House Amendment "C" (H-1049) to Committee Amendment "A" (S-454) was adopted.

Committee Amendment "A" (S-454) as amended by House Amendments "C" (H-1049) and "F" (H-1057) 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" (S-454) as amended by House Amendments "C" (H-1049) and "F" (H-1057) thereto in non-concurrence and sent up for concurrence. Ordered sent forthwith.

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

Reference is made to (S.P. 655) (L.D. 1824) Bill "An Act to Strengthen the Coordinated Delivery of Substance Abuse Services in the State"

In reference to the action of the House on April 7, 1994, whereby it Insisted and Joined In a Committee of Conference, the Chair appoints the following members on the part of the House as Conferees:

Representative GEAN of Alfred
 Representative JOHNSON of South Portland
 Representative BRUNO of Raymond

SENATE PAPERS

The following Joint Order: (S.P. 779)

ORDERED, the House concurring, that Bill, "An Act to Revise the Authorization of the Towns of Appleton, Camden, Hope, Lincolnville and Rockport to Form a Community School District," H.P. 1474, L.D. 2002, and all its accompanying papers be recalled from Engrossing to the Senate.

Came from the Senate, read and passed.

Was read and passed in concurrence. Ordered sent forthwith.

On motion of Representative Gwadosky of Fairfield, the House recessed until 11:10 a.m.

(After Recess)

The House was called to order by the Speaker.

The Chair laid before the House the following item which was tabled earlier in today's session:

HOUSE REPORT - "Ought to Pass" Pursuant to Joint Order (H.P. 1475) - Committee on State and Local Government on Bill "An Act to Establish Procedures for Secession and Annexation" (H.P. 1480) (L.D. 2006) which was tabled by Representative JACQUES of Waterville pending acceptance of the Committee Report.

Representative MARTIN of Eagle Lake moved that the Bill and all accompanying papers be indefinitely postponed.

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

Representative MARTIN: Mr. Speaker, Members of the House: I don't know if you had an opportunity to read this bill but you ought to. It is L.D. 2006.

I am sure that the State Government Committee spent a lot of time working on this bill and I am sure that they tried to reach unanimity, and they did. But, one of the problems when you do that is that you make something occur that shouldn't occur.

If you think that the voters in your home town will be happy once they see this, you will be surely shocked. Because what you in effect have created is an opportunity for petitions to be circulated every week on withdrawal until such time a sufficient number has been achieved to move to the next step.

There are also a number of conflicts of other sections of the law. I have just managed to catch a couple.

For example, non-residents are now going to be given a voice as to what happens with a municipality. As you know, under present law right now if a non-resident wishes to participate in a town meeting they must have the approval of two-thirds of the people at that town meeting. This changes that.

I have some real concerns about what else we do through the process. If you have not had an opportunity and you may have thrown that sheet away

that was prepared by staff and distributed under the name of the Representative from Waterville, Representative Joseph — it is an 8 1/2 by 14 sheet of a process that will be used throughout this endeavor. After reviewing it I felt that the only proper action to take was to kill the bill. Maybe what you may want to do instead of having that motion and vote on it now is table it so you can read it. I can encourage you that if you know nothing about the bill my suggestion is that you vote against it, because I guarantee you that from my point of view that when you do you will become very displeased with what it is that you have voted for.

That is really all that I can tell you, I am sorry to the State Government Committee members. I am sure that they worked very hard in trying to get everyone to agree but it is one of those pieces of legislation that ought to go back to committee and worked on a lot more than this one.

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

Representative GRAY: Mr. Speaker, Ladies and Gentlemen of the House: This bill sets up a process prior to bringing the legislation to the legislature. That is all it does, it is a process. I am amazed that he interpreted it this way. Right now they can come to the legislature with nothing. All this does is give us a preliminary examination of what they want to do.

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

Representative KILKELLY: Mr. Speaker, Men and Women of the House: The State and Local Government Committee has worked very hard on this issue. Not just in terms of this particular bill but from the beginning of Long Island which was four years ago through Peaks Island, Small Island, other islands, letters from other places in the state. One of our concerns as a committee is that if there is not a process that is available for people to follow then what will happen in this next legislative session is that we will end up with four or five more bills for different parts of different towns to secede. Those bills will come to the legislature without much work being done in advance. The legislative staff, the committee, and those people will then spend a two year period doing all of the things that will be outlined in this bill.

One of the advantages that you will find if this bill is passed is that that work will be done prior to the legislation coming here and we thought that made sense. We were attempting to front-load the process so that the studies were done in advance, the petition process was done in advance, a meeting was set up with the municipal officials in advance of coming to the legislature. All of those things would happen locally whether we were talking about Portland, Washington County, Aroostook County or Lincoln County, that process would happen locally as opposed to happening in Augusta.

One of the difficulties that people face on the secession issues that we have dealt with in the last three years is coming to Augusta for all of that work to be done, whether it was meeting with our staff to go through a process or having the municipal people and the people that were interested in seceding traveling from their homes here for that to happen. So, that was one of our intentions was to have all of that work happen in advance of the legislation being

put forward and also to have that work done locally so that more people could be involved.

In a couple of the questions that have been raised, our attempt was to create a unanimous committee report and with the State and Local Government Committee that is always a challenge. However, we were successful. I will agree with the Representative from Eagle Lake that in fact we did pick out middle ground on many issues. There were things that I was concerned about that I gave up. There were things that people on the other side of this issue were concerned about that they gave up but we were committed to the concept of putting information out for people to follow.

Some of the communities that have approached the State and Local Government Committee on this issue of secession in the past have been communities that have been fortunate enough to have (residing within the area that wished to secede) very talented people, whether they were lawyers or CPA's or planners or whatever, folks that had expertise that they were able to put into this process. Our concern was that there may be areas of this state that are interested in secession that ought to have an opportunity to discuss that that did not have access to that same type of expertise by outlining a process and by bringing State Government into that process with a secession commission, we felt that we would provide everyone an opportunity for this discussion to take place and that seemed more fair than only allowing those areas that had the ability to bring in the expertise, either by raising the money to do it or because those people lived there, that that seemed unfair.

The issue of non-residents or non-voters being involved in the process, again, when we took a look at this we had a long discussion about that first municipal meeting. Should we allow people who were not registered voters to have an equal discussion in that process and we said, yes, we should. Because it is not a town meeting. This is a meeting in which people from two sides of an issue need to get together and present their concerns. The hope is that at the time that those concerns are presented people can work out their difference. There is a 30 day cooling off period after that meeting in which petitions cannot be circulated, in which people are expected to just go back and think about what has been said at that meeting. Our effort in that allowing non-registered voters to participate is that people who are property owners in an area do have an interest in what happens to the area, although they should not be entitled to a vote, so we gave them an opportunity to discuss without an opportunity to vote.

We have requested input from members of the House on this. We have had a number of people who have come into the committee and brought their ideas and have talked to us about this. Again, the concept from the State and Local Government Committee was that we present a process because what we had heard on the floor on the debate of all the bills is we need a process, we are not going to vote for any secession until there is a process. This is the process, the attempt was to front-load it so that the work is done in the community before it gets here.

I would urge you to not support indefinitely postponing it.

I would also like to comment that some of the frustration in terms of efforts to kill this bill could have, if the intent had been to indefinitely

postpone it, I am sorry that we needed to go through the expense to the legislature and to the time of getting an entirely separate bill printed and I wish that we could have had this debate and discussion over a week ago when we had a little more time to work on it.

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

Representative O'GARA: Mr. Speaker, I would pose a question through the Chair to the sponsors or the supporters. If this process were in place, prior to the situation at Peaks Island, would the mainland residents of Portland have been allowed to have any vote on this issue at all?

The SPEAKER: Representative O'Gara of Westbrook has posed a question through the Chair to any member who may respond if they so desire.

The Chair recognizes the Representative from Wiscasset, Representative Kilkelly.

Representative KILKELLY: Mr. Speaker, Men and Women of the House: There is an optional advisory vote that information, if the parent community (for lack of a better term) a parent community would choose to have a vote they may choose to do that. That information would then be part of the package of information that would come to the legislature in the report that would come forward from the seceding community and the parent community.

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

Representative MARTIN: Mr. Speaker, Members of the House: I would like to respond, the answer is no. There is no binding vote by the municipality. It is advisory only. It would have no bearing into the process except that it would come to the legislature and the legislature could decide whether or not it wants to accept the advisory vote but the community in itself would not have the final vote.

If you don't have the sheet with you — I would like to talk about it for a few minutes. By the way, this is not the end of the world type legislation, but it is the type of thing which gets legislatures into trouble.

The initial petition requires ten percent of the voters of those that are interested in the secession area, not the community. So, if you have a community of 1,000 and you have an area of 50 people you need five people to sign the petition. That is not the voters of the community, that is what the bill says.

Then the meeting is called by the municipal officers, a public meeting is called.

Then, there is a 30 day cooling off period, I believe that is the way the Representative from Wiscasset referred to.

Then, the group has six months to collect signatures. If you have less than 500 people then you need 50 percent of the registered voters in the area of secession. Again, if you have got 50 people you need 25, which is what would happen in most of the towns in Maine. If you have a community of 500 to 1,500 you need 35 percent of the disgruntled people, as I would put it, usually it is over taxes, we all know that.

Then, you create a local committee. Those who want to secede have three people, the municipal officers have three people. These people choose a neutral person who acts as the Chair.

Then you set up this process.

If the Representative from Wiscasset, Representative Kilkelly, says there are five towns

that are doing this or talking about it then this piece of legislation, the fiscal note, needs to be revised because it requires a fiscal note now that the facts are clear. Because this bill requires that five departments of this state become involved, the Commissioner of Education, the Bureau of Taxation Assessor, the Commissioner of DEP and PUC or their designee. That means state dollars.

So, five communities are now going to have these representatives from these five departments we need a fiscal note because the fiscal note says it can be absorbed within the existing state budget.

Give me a break, if you are going to have five state employees travel to Princeton, Eagle Lake or any other community in Northern Maine it is not a \$12 trip, it may be if you live in Wiscasset but certainly not where I come from.

Remember, once you have done all that it doesn't make any difference, because, you may remember we have a process on how we — I hate to bring up this subject — how colleges and universities are supposed to be certified but, it can also be bypassed by an act of the legislature. So, we have created a process and then someone can simply put in a bill to withdraw anyway. I think we are creating a serious mistake.

That is all I can give you, I think it is just something that we better look at really carefully. I will say that if it moves on that I will question it on the question of cost.

The SPEAKER: The Chair recognizes the Representative from Buxton, Representative Libby.

Representative LIBBY: Mr. Speaker, Men and Women of the House: The one part of this bill that concerns me greatly is the arbitration process. Normally you might go through mediation or fact finding first but even if you did go to direct arbitration I hope you realize that this arbitration process (as I read it) is a private arbitration process rather than going through the Maine Labor Relations Board. The private arbitration process in this bill is going to cost about three or four times more than going through the Maine Board of Arbitration and Conciliation, three or four times more. I will put money on that.

I have been down to the Revisors Office and I have also been down to check about the fiscal note and ask them if they can come up with a per secession cost or something to give us in this fiscal note because they haven't given us a thing. They just say it depends on how many secessions there would be. I think that really doesn't inform us here in the legislature at all about what the cost of a bill like this is going to be.

I really have some serious doubts about the way that this thing has been crafted, especially the arbitration process.

If we do go through and have it under the jurisdiction of the Maine Labor Relations Board that falls under the jurisdiction of the Labor Committee and I kind of feel a little bit more comfortable with that as well.

I hope you will vote for the indefinite postponement of this bill.

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

Representative LEMKE: Mr. Speaker, Men and Women of the House: I had hoped to be in a position where I could support this bill when it came before the House. Like a number of you, when I voted on the

earlier secession bills, I was very disturbed that we didn't have a good process in place. That was one of the reasons why in fact I voted against both of those secession bills.

The problem is today, and has already been articulated by the Representative from Eagle Lake, in terms of the petition and other processes, and also by the Representative from Buxton, in terms of arbitration, there are a number of flaws with this. I would put before you one other flaw (at least where I am coming from) and that involves the actual votes for secession. You will note that it requires a two-thirds vote. I am a believer in a majority vote, I think that is the democratic way. When I was waiting for a bill for guidelines and criteria I didn't want to create a bill which was essentially anti-democratic. Frankly, on the merits, I might vote against secession bills but I don't want to be in the position of legislatively mandating it on the municipal level, it has to be a two-thirds vote. We are ruled by majority, not by two-thirds majority. So, from another direction I also have a problem with this particular bill. With some reluctance, I must urge you to vote 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 you to oppose the pending motion so that we can go on and consider this bill along with the amendments that I know are forthcoming.

I am really encouraged to hear such concern about fiscal issues here, to hear the fiscal conservatism. I think what we need to keep in mind — we have got to weigh that on the consideration of local control. This bill provides a process where local people, having local problems, can get together locally and try to solve them before they come to the state legislature for a solution.

Currently the only process for secession that we have is for folks to come before the state legislature. If we want to talk about costs, let's talk about the cost of printing the bills that we always hear about and the cost of going through the legislature. The cost of pursuing all of these things that add up to a lot of serious money that could perhaps be handled locally. What about the cost to the people coming up to the legislature and debating here and lobbying here and sitting through lots of State and Local Government Committee meetings or other committee meetings and spending time out of their day to try to come to Augusta for a solution to a local problem? Perhaps we should allow those people an opportunity to avoid those costs and solve these problems at home.

Is this bill perfect? I don't think so. There are problems with it. It is the result of compromise as most big important pieces of legislation are in this body. Killing this bill, however, isn't the solution.

I would welcome the consideration of the amendments because when the amendments come the committee will have a chance to explain what the basis of compromise was in each one of those amendments.

This needs your consideration. We heard previously when we dealt with the Peaks Island bill and the other bills, a constant complaint that there was no process here. I was surprised that the State and Local Government Committee was able to pull

together when there are so many different views in that committee represented on those other bills and on principles regarding the formation of government. I was surprised that that committee could bring together those different views and hammer out a compromise.

Let me just give you an example of a compromise, something that I didn't like, something Representative Lemke from Westbrook points to, and that is the two-thirds vote. I don't like that, I would have preferred a majority myself but, the two-thirds vote is in keeping with other statutes such as the dissolution of a school administrative district which requires, if a town wants to leave a school administrative district, it needs two-thirds vote. I think it is appropriate under this process that that two-thirds also be maintained.

This bill has a lot of processes in it. It is a substantial bill and it merits consideration. But, killing it now before we have a chance to debate and consider amendments to it and for the committee to explain how we arrived at these tentative compromises I think would be a mistake and a disservice to all the local people who have problems and want to work those out without coming to the Legislature and looking for us to solve their problems.

I encourage you to vote against this pending motion. I ask for a division.

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

Representative STROUT: Mr. Speaker, Men and Women of the House: I think the previous speaker has laid out a good scenario for you and I think the place for this is to get rid of it today once and for all.

You try to put something together at this late stage of the game with this legislature that has as many problems in this bill as it does and you are now talking about offering amendments to correct it. The thing to do is forget about the amendments, forget about the bill, get rid of it and try to go back at a later date and do what you should do.

I can tell you this, you don't want to get involved with the majority out there telling those people in the towns that you want to go to a majority when you have two-thirds now.

You talk about having a group of people in a part of that community and you are going to let them get a petition to have ten percent of part of that group is ridiculous.

Here we are, supposedly trying to finish up and to deal with a bill like this today is, again, ridiculous.

You heard the previous speaker saying we need to have some amendments to correct this. The committee came out with it. If you are going to do anything with this bill, put it back where it should be, get it in its proper form, and give it back to us at some later date.

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

Representative MURPHY: Mr. Speaker, Ladies and Gentlemen of the House: I want to thank Representative Martin for bringing this issue to my attention on this bill. Non-residents, I have no islands that are going to secede from Berwick, in fact nobody has any ideas so I have no other interest in this except that it says here that non-residents may participate in the meeting at the discretion of the moderator.

Ladies and gentlemen, now those of us who have a

town meeting form of government, we have to take a two-thirds vote to allow someone to speak at our town meetings and there is nothing that the people from out-of-state would love any better than to get their foot in the door on being allowed to speak at all our town meetings.

I can remember a few years ago I was in a parking lot at a store in York and this gentleman from Massachusetts saw my plate and he came up and climbed all over me because he couldn't vote at the York town meeting. I said, "Well, I can't either." He said, "You are from here aren't you?" I said, "No, I choose to live here in the summer but I choose to claim my residence in Berwick." I said, "Where is your residence?" He said, "Malden, Mass." I said, "Change your residence to York, Maine, you can be eligible to vote, no problem." He said, "I don't want to change my residence." I said, "Fine, don't vote, you can only vote in one place but you can't vote in two."

This is their attitude, they would love to be able to get in here and change our policy and change our way of government.

In a town meeting form of government, the legislative body rules.

We certainly don't need any out-of-staters coming in and help us rule it either.

Please support the pending motion.

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

Representative KILKELLY: Mr. Speaker, Men and Women of the House: I do want to clarify this issue of non-registered voters because I think it is one that has gotten a bit muddied. Again, we talked a lot in committee about whether or not this particular meeting would be held as a town meeting with that two-thirds vote or not. The feeling was because this meeting was to solicit information that it was to benefit everyone involved to have as many people able to participate in that meeting as possible. Obviously people that are affected in that secession area (because we felt the information needed to be brought forward) that it did not serve any reasonable purpose to exclude people from being able to be part of that discussion. This is not allowing people to vote in a town meeting. This is not allowing people to vote on the issue of secession. It is allowing people to participate in a meeting called by the municipal officials with the people that are interested in seceding to talk about the concerns. So, it is not an insult to a very positive town meeting process, merely an opportunity to get information.

I do want to go back to a couple of other questions that have been raised in terms of the parent community having a binding vote. Any of the issues that we have seen in terms of secession, the parent community has been significantly larger than the seceding area. If there was a parent community binding vote, it would take very few comments of maybe, possibly, could be, we might have a tax increase, maybe if this were to happen. That is all it would take to assure that it would not happen.

The concern on the part of the committee is either we are serious about allowing people an opportunity for self-determination, allowing people an opportunity to take a look at what they feel is the best situation for them in terms of their governing structure or not. That particular clause will not

only kill the bill but it will kill any effort at secession. On the committee we discussed that for a long time. As you know, we have had a number of divided reports on this issue and felt that a process needed to be doable and a process that includes that type of vote is not doable because it is not going to happen. We should not be expecting the majority in the parent community to have to give permission for other people to make a decision about self-determination.

I would also like to comment on the process that we currently have in place. The process we have in place now is not a petition of five people or a petition of ten people it could be one person. One person comes to one legislator and one legislators submits legislation to create a secession process and the cost is staggering. When we heard that the five departments that are going to be involved in a secession commission would cost the state a great deal of money, I can assure you that it already has. The staff person from State and Local Government Committee, in fact, took the reports that came from the secession areas that were in question about the various bills we dealt with this year and had to go and meet with all these people to say, "Is this information accurate?" and bring that information back to the State and Local Government Committee.

Our hope in getting those five departments involved was not that the five department people would need to traipse around the state in order to be a participant in every one of the meetings that took place but to take a look at the information that has been prepared in report and determine if in fact the information was accurate or not, particularly on the issue of education. School funding and the school funding formula is something that I certainly didn't master in four years on the Education Committee. It is very important that the information that is being presented to the voters of an area that wishes to secede or to the legislature that is looking to either approve that vote or not is accurate. It is absolutely essential the Department of Education be involved.

As to the need for a fiscal note, certainly the bill has been through a very interesting process, a rather unusual and unique process and we certainly can determine getting a fiscal note.

One of the previous speakers from the committee, Representative Bennett, commented about amendments. I would just like to respond to Representative Strout's concern about that. The committee met last night. In our discussions we were aware that there would be amendments presented to this bill and the discussion of those amendments is always a healthy process, because discussion is a healthy process. However, the committee felt that we would stick with the bill as it was put out because we did all give up something in order to come out with this unanimous report. We felt that what we were doing also was at the request of the House to come up with a process so next year or in future years we are not hit with the number of bills that, as I said, come from one person to one legislature to one legislator and start this entire process happening.

If we don't pass this bill that is the process that we will have. I think the concern about whether it is five people or ten people, pales in comparison to the fact that it can be one person and one legislator.

I would urge you not to indefinitely postpone this

bill.

Mr. Speaker, I request a roll call.

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

Representative BENNETT: Mr. Speaker, Men and Women of the House: I would like to address a couple of concerns raised by previous speakers as well.

First of all, apparently I didn't communicate well enough to the House regarding the issue of amendments. I will not be supporting any of the amendments because this was a unanimous committee report that was hammered out through the spirit of compromise. However, I do think it is appropriate that the House considers amendments so we can get into the specifics of the bill so the committee can explain its position on those changes, proposed changes, so the House can consider them. That is not saying that I think there is any need for them.

Secondly, the issue of cost. We are concerned about sending five people around to different corners of the state, well, how about 13 members of the State and Local Government Committee when we went down to the Portland City Council Chamber last year to take testimony on this bill and hear people? As Representative Kilkelly points out, what about the staff time involved all summer long, and fall, working on the Peaks Island and the other island bills. There is a lot of cost involved there and I would contend that it is a lot more expensive to do it the way that we are doing it now than it would be through this process. I believe that these amendments — I believe that the House ought to consider the amendments and not use the problems that we can see now in the bill or that some members see now in the bill as an excuse for killing it now.

One other point, regarding the meeting that will be held at the municipal level, it is important to state clearly that this is an informational meeting, no votes will be held at this meeting. It is only to share ideas, share information, not for action. There will be no chance of influencing immediate action at that meeting because there won't be any taken.

This, again, is a local issue. The alternative we have is to have the state legislature, as it now does, run the process. That may be the desire of some members in this chamber and that is a legitimate point of view, I suppose. But, for me this is an argument of whether we should have the legislature at the beginning of the process or whether we should have the local communities at the beginning of the process. I will be voting with the local communities.

The SPEAKER: The Chair recognizes the Representative from Standish, Representative Greenlaw.

Representative GREENLAW: Mr. Speaker, Ladies and Gentlemen of the House: I hope I have better luck than I did a few weeks ago (speaking of Frye Island) I got eight votes that time, on a liquor store issue.

Well, this is a different issue to me. The Representative from Eagle Lake is correct. Frye Island has probably got \$2 million to \$3 million worth of valuation, it is in the Town of Standish. Standish has collected taxes for the property. There are four registered voters. One is from Raymond, the other three (the last I knew) were from Massachusetts. Our voter registration laws are so that you can come from Massachusetts and spend overnight on Frye Island and go down and register to vote the next day.

Under this bill (I take it) these four people

would only need three of the people — only one, it takes three of these people to get this bill going. Once it gets going I don't think there is any way to stop it.

I went down to the Revisors Office and asked them about it yesterday and I must have been speaking to a lawyer down there because he said, "You could win in court easy on this one." I said, "Why is it in the bill if it is that out of balance?" There is not a resident on this island that lives there because you cannot get to it in the winter time due to ice and storms, there is absolutely no one living there but we have four registered voters.

Representative Kilkelly of Wiscasset was granted permission to address the House a third time.

Representative KILKELLY: Mr. Speaker, Men and Women of the House: I would just like to clarify that currently it would only take one person requesting a legislator to put in the bill that would cause the secession for Frye Island, for that to happen now. Actually the process in the bill is more restrictive than what is currently there. That is all that it would take right now. So in fact we have — even though people may be concerned that we have not put enough hoops and enough barriers the current process has none because there is no process.

The SPEAKER: The Chair recognizes the Representative from Wilton, Representative Heesch.

Representative HEESCHEN: Mr. Speaker, Members of the House: Sometimes, of course, legislators use discretion in what bills they put in.

I have a question for any of the proponents of this piece of legislation. That is, is there any minimum size area threshold that is required to be a new town? Is there any minimum size or can we have a whole series of micro towns?

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

The Chair recognizes the Representative from Wiscasset, Representative Kilkelly.

Representative KILKELLY: Mr. Speaker, Men and Women of the House: In response to that question — there was a great deal of discussion in the committee about creating thresholds. What number of people? How would we define the area? It was felt by the committee that there was no way to accurately determine a number. If you were to say you must have 100 residents, what if there are 99 residents? Does that mean a place with 99 residents in fact does not have this right when a place with 100 residents does have this right? What if we were to set it at 25? Well, if it is 25 and you have got 24, how does that work?

Wherever we put a threshold we felt that there was unfairness on the lower side of that threshold and that there was unfairness on the upper side.

What we attempted to do was to create a situation in which the process would be created and the work would need to get done. This bill outlines a tremendous amount of work.

I think that is the other thing that we haven't talked about enough in the process. There are studies that need to be done. There are meetings that need to be held. This is a process that takes several months to just get it started before we are even at the point of bringing a piece of legislation here. Obviously we all know that that can take up to two years as Peaks Island did. We are talking about a process that is very long.

Our discussion was that this is a weeding out process. That that would be very difficult for a very tiny area to determine that there were enough people to walk through that process, to put those reports together, come to the meetings and to go through that. It was also practice for running the community. Just as a campaign is a practice and you show yourself and what you can do for future possible constituents this was a practice process in which people would need to understand — what are the requirements from the State Board of Education that we need to understand. What are the requirements from DEP that we would need to abide by. All of that learning process does two things, one, it weeds out those people, those areas that are not serious about it and are not able to do it and, it also serves the purpose of not allowing a very tiny area because the workload is so heavy.

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

Representative RICHARDSON: Mr. Speaker, Men and Women of the House: The answer to the question is there is not a threshold. One could be set, people could join it but, one was not set.

We have been talking mostly about procedural issues in the process of secession and annexation here.

The major problem (as I see it in the bill) is in fact not that, the major problem is that the basic terms and conditions for secession have not been defined. The debts, assets, liabilities provision was left vague.

The reality will be that it will be all over the waterfront or all over the mountains in the State of Maine. It does not define those debts, assets and liabilities, extensive arbitration/mediation is going to be involved. It still will not be resolved and the basic terms and conditions (which I would argue) should be specified before it comes to this body, will not be done except in the manner of a confused procedure that seems to be defined and, will be different in different places, will be right back in our laps.

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

Representative ROWE: Mr. Speaker, Men and Women of the House: I would just like to thank Representatives Kilkelly and Bennett for their good explanation of the bill. This was a unanimous committee report.

I would like to say that I encourage your vote against the pending motion.

We have heard the bill has many problems. One thing I have learned since I have been here is that what is one persons problem is another persons solution. We don't always agree. In fact we very seldom agree unless it is on enactment of a few bond issues and such.

On this committee — I must tell you that we had people so divided on this issue of secession. I would suggest that we probably had some of the strongest advocates on both sides of that issue on this committee. We also had people on our committee who had been through this process, some for four years, myself for the better part of two years and the other 12 members of the committee for the better part of two years. We have spent hundreds of hours deliberating on secession bills. Going over information provided to us by proponents, opponents,

by state agencies, by OPLA and it hasn't been a fun process. It is going to happen again unless we do something about it, so we presented this body with a bill.

As I say, I know some of you think the bill has problems. Others would think they are not problems. We are not going to agree upon the process but I think we all agree that we need a process and that is what we have.

Sure, there are some costs involved. Representative Bennett, I think, made a good comment. I wish I could go back and count up the costs that we have expended both at the municipal level and the state level over the past two years on the bills that we have looked at. There has been a lot of money and time invested in these bills and I would suggest to you that this procedure would be more inexpensive than the current one.

I have heard people talk about the problem with the two-thirds vote for secession or separation. I would suggest to you that this is one of the more important things that could happen to a city or a town especially towns that have been together for 200 years when a part of the town wishes to separate. There is certainly precedent for it. We have withdrawal of a municipality from an SAD, municipal disorganization, deorganization of a school administrative district — these all have two-thirds vote required. We are not breaking new ground here.

I don't think that this body should spend the time that it has spent in the past deliberating secession bills. I think the work should be done at the municipal level. Obviously there needs to be input from state agencies on issues such as environmental issues, education and other issues. That is written into the bill. I know many of you don't agree upon some of the numbers in the bill and some of the procedures but if you think we are going to come back next time and have something that everybody is going to agree with, I think you are fooling yourselves. I am telling you I think this process will work. It is better than what we have now, I will guarantee you. If we get this information and you don't like what has happened then we will vote to not allow a community to secede. We perhaps will have the opinion of those voters in the remaining community — that is something we don't have now. That was a real concern I had. In fact, I wanted into this bill, the remaining community to have a vote but that is not going to happen. Again, I think we are fooling ourselves if we think we are going to write a bill that many people are going to agree to leave that in.

I think what we have here is a document that has been put together by folks that have spent (as I said) hundreds of hours dealing with these issues. I know many of you have detected what you perceive to be flaws and I respect that. I see some things that I would consider flaws but I have compromised so that we can have a process so that we don't have to go through what we have gone through in the past.

I would just ask that you think real hard before you vote on this. It is easy to vote against it because you see something in the bill you don't like, but I would ask you to consider the alternative and that is a status quo. I think Representative Kilkelly is right, we are going to be back next January with lots of separation bills and we are going to do all the work right here. I don't want that. I really think you don't either.

I would just ask for your support in defeating the

pending motion.

The SPEAKER: The Chair recognizes the Representative from Buxton, Representative Libby.

Representative LIBBY: Mr. Speaker, I would pose a question through the Chair.

To anyone who would want to answer from the committee. Since the title of the bill is "An Act to Establish Procedures for Secession and Annexation," is there any specific provisions that include the community that would be accepting this secession in the process? I think of the example of (in my mind) I read recently that Biddeford Pool was thinking about joining Kennebunkport or something like that — it is my understanding after reading this bill that there is no provision for the municipality from which they would want to join on the secession committee. I would like that clarified please.

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

The Chair recognizes the Representative from Wiscasset, Representative Kilkelly.

Representative KILKELLY: Mr. Speaker, Men and Women of the House: I am happy to answer that. The process for the accepting community is for that community to vote. The community that would be accepting a different part of a community to annex to it would need to approve that which is similar to what we have now with counties. Four years ago there was an effort by the town of Richmond and some of the folks in Richmond wanted to leave Sagadahoc County and join Lincoln County. There was a vote first in Richmond that was outlined to determine if all the voters wanted to do that and then there was going to be a vote by Lincoln County for Lincoln County to determine if they were going to accept Richmond. We modeled it after that, that the area that wishes to secede from one community would go through their process then the community that they would annex to would have a vote to accept them or not. If the community to which they wish to annex did not accept them then it all stopped. Obviously it would be in the best interest of everyone to assure that there was communication throughout the entire process but it didn't make sense that they needed to be involved from the beginning of that process because in fact the process can take up to two years.

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

Representative GRAY: Mr. Speaker, Ladies and Gentlemen of the House: There is only one thing that I believe hasn't been answered and that is on arbitration. That was Representative Libby's question. I would Representative Rowe would have answered it because he is more of an expert. Currently the process that is being used is the same as in the bill so there would be no changes.

Representative COFFMAN of Old Town moved that the Bill and all accompanying papers be recommitted to the Committee on State and Local Government.

The SPEAKER: The Chair will order a vote. The pending question is the motion of Representative Coffman of Old Town to recommit the Bill and all accompanying papers to the Committee on State and Local Government. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

7 having voted in favor of the same and 91 against, subsequently, the motion to recommit the Bill and all accompanying papers did not prevail.

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

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

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

ROLL CALL NO. 334

YEA - Aikman, Anderson, Bailey, R.; Barth, Beam, Clark, Clement, Clukey, Coffman, Coles, Constantine, Cote, Cross, Daggett, Driscoll, Erwin, Farnum, Gamache, Gean, Gould, R. A.; Greenlaw, Hale, Hatch, Heeschen, Heino, Hichborn, Hussey, Joy, Ketterer, Kneeland, Lemke, Lemont, Libby Jack, Libby James, Lindahl, Lord, MacBride, Marsh, Marshall, Martin, J.; Melendy, Michaud, Mitchell, E.; Mitchell, J.; Morrison, Murphy, Nadeau, Nash, Nickerson, Norton, O'Gara, Oliver, Pfeiffer, Pouliot, Rand, Reed, W.; Richardson, Ricker, Robichaud, Rotondi, Ruhlin, Rydell, Saxl, Simoneau, Skoglund, Small, Spear, Stevens, A.; Stevens, K.; Strout, Sullivan, Swazey, Townsend, E.; True, Tufts, Vigue.

NAY - Adams, Ahearne, Aliberti, Ault, Bennett, Birney, Bowers, Bruno, Cameron, Campbell, Carleton, Caron, Carr, Carroll, Cashman, Chase, Chonko, Cloutier, Dexter, DiPietro, Donnelly, Dore, Dutremble, L.; Faircloth, Farnsworth, Farren, Fitzpatrick, Foss, Gray, Hoglund, Holt, Jacques, Johnson, Kerr, Kilkelly, Kontos, Larrivee, Lipman, Look, Michael, Ott, Paradis, P.; Pendexter, Pendleton, Pineau, Plourde, Plowman, Poulin, Reed, G.; Rowe, Saint Onge, Simonds, Tardy, Taylor, Tracy, Treat, Walker, Wentworth, Whitcomb, Young, Zirkilton.

ABSENT - Bailey, H.; Brennan, Cathcart, Hillock, Jalbert, Joseph, Kutasi, Martin, H.; Pinette, Thompson, Townsend, G.; Townsend, L.; Winn, The Speaker.

Yes, 76; No, 61; Absent, 14; Paired, 0; Excused, 0.

76 having voted in the affirmative and 61 in the negative, with 14 being absent, the Bill and all accompanying papers were indefinitely postponed and sent up for concurrence.

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

On motion of Representative Gwadosky of Fairfield, the House recessed until 2:30 p.m.

(After Recess)

The House was called to order by the Speaker.

The Chair laid before the House the following items which were tabled earlier in today's session:

An Act to Implement the Recommendations of the Commission to Study the Future of Maine's Courts (H.P. 1008) (L.D. 1354) (H. "A" H-1015 to C. "A" H-1000) which was tabled by Representative PARADIS of Augusta pending passage to be enacted.

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

An Act to Authorize Applied Technology Regions to Borrow Funds for Necessary Repairs to Existing Buildings (H.P. 1479) (L.D. 2005) which was tabled by Representative WHITCOMB of Waldo pending passage to be enacted.

On motion of Representative CHONKO of Topsham, under suspension of the rules, the House reconsidered its action whereby L.D. 2005 was passed to be engrossed.

The same Representative presented House Amendment "B" (H-1082) which was read by the Clerk and adopted.

The Bill was passed to be engrossed as amended by House Amendment "B" (H-1082) in non-concurrence and sent up for concurrence. Ordered sent forthwith.

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

BILL RECALLED FROM GOVERNOR

(Pursuant to Joint Order - House Paper 1483)

An Act to Implement the Recommendations of the Maine Dairy and Nutrition Council and the Maine Dairy Promotion Board (H.P. 1434) (L.D. 1961) (H. "A" H-965 to C. "A" H-861)

- In House, Passed to be Enacted on March 31, 1994.
- In Senate, Passed to be Enacted on April 1, 1994.

On motion of Representative TARDY of Palmyra, under suspension of the rules, the House reconsidered its action whereby L.D. 1961 was passed to be enacted.

On further motion of the same Representative, under suspension of the rules, the House reconsidered its action whereby the Bill 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-861) was adopted.

On further motion of the same Representative, under suspension of the rules, the House reconsidered its action whereby House Amendment "A" (H-965) to Committee Amendment "A" (H-861) was adopted.

On further motion of the same Representative, House Amendment "A" (H-965) was indefinitely postponed.

The same Representative presented House Amendment "B" (H-1084) to Committee Amendment "A" (H-861) which was read by the Clerk and adopted.

Committee Amendment "A" (H-861) as amended by House

Amendment "B" (H-1084) thereto was adopted.

The Bill was passed to be engrossed as amended by Committee Amendment "A" (H-861) as amended by House Amendment "B" (H-1084) thereto in non-concurrence and sent up for concurrence. Ordered sent forthwith.

SENATE PAPERS

Bill "An Act to Clarify the Jobs and Investment Tax Credit" (S.P. 778) (L.D. 2008) (Governor's Bill)

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

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

Non-Concurrent Matter

Bill "An Act to Revise the Authorization of the Towns of Appleton, Camden, Hope, Lincolnville and Rockport to Form a Community School District" (EMERGENCY) (H.P. 1474) (L.D. 2002)

- In House, passed to be engrossed as amended by House Amendment "A" (H-1045) as amended by House Amendment "A" (H-1065) thereto on April 7, 1994.
- In Senate, passed to be engrossed as amended by House Amendment "A" (H-1045) as amended by House Amendment "A" (H-1065) thereto on April 7, 1994.
- Recalled from Engrossing pursuant to Joint Order S.P. 779.

Came from the Senate passed to be engrossed as amended by House Amendment "A" (H-1045) as amended by House Amendment "A" (H-1065) thereto and Senate Amendment "A" (S-595) in non-concurrence.

The House voted to Recede and Concur.

Non-Concurrent Matter

Bill "An Act to Establish Procedures for Secession and Annexation" (H.P. 1480) (L.D. 2006) on which the Bill and accompanying papers indefinitely postponed in the House on April 8, 1994.

Came from the Senate with the Unanimous "Ought to Pass" pursuant to Joint Order Report of the Committee on State and Local Government read and accepted and the Bill passed to be engrossed in non-concurrence.

Representative DUTREMBLE of Biddeford moved that the House Recede and Concur.

The same Representative requested a division on his motion to Recede and Concur.

The SPEAKER: The chair will order a vote. The pending question before the House is the motion of Representative Dutremble of Biddeford that the House recede and concur. Those in favor of that motion will vote yes; those opposed will vote no.

A vote of the House was taken.

46 having voted in favor of the same and 53

against, the motion to Recede and Concur did not prevail.

Representative MARTIN of Eagle Lake moved that the House Adhere.

Representative BENNETT of Norway moved that the House Insist.

Representative MARTIN of Eagle Lake requested a division on the motion to Insist.

The SPEAKER: The Chair will order a vote. The pending question before the House is the motion of Representative Bennett of Norway that the House insist. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

Representative BENNETT of Norway requested a roll call on the motion to Insist.

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. All those in favor will vote yes; those opposed will vote no.

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

The SPEAKER: A roll call has been ordered. The pending question before the House is the motion of Representative Bennett of Norway that the House insist. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 335

YEA - Ahearne, Aliberti, Ault, Bennett, Birney, Bowers, Bruno, Cameron, Campbell, Carleton, Carroll, Chase, DiPietro, Donnelly, Dutremble, L.; Faircloth, Farren, Foss, Gray, Kilkelly, Kontos, Larrivee, Lemont, Libby Jack, Lindahl, Lipman, Look, MacBride, Michael, Nash, Ott, Pendexter, Pendleton, Pinette, Plourde, Plowman, Reed, G.; Rowe, Saint Onge, Simonds, Taylor, Tracy, Tufts, Vigue, Walker, Wentworth, Whitcomb, Young, Zirnkilton.

NAY - Adams, Aikman, Anderson, Bailey, R.; Barth, Brennan, Carr, Cashman, Chonko, Clark, Clement, Cloutier, Clukey, Coffman, Coles, Constantine, Cote, Cross, Daggett, Dexter, Driscoll, Erwin, Farnum, Fitzpatrick, Gamache, Gean, Gould, R. A.; Greenlaw, Hale, Hatch, Heeschen, Heino, Hichborn, Hoglund, Holt, Hussey, Jacques, Jalbert, Johnson, Joy, Kerr, Ketterer, Lemke, Libby James, Lord, Marsh, Marshall, Martin, J.; Melendy, Michaud, Mitchell, E.; Mitchell, J.; Morrison, Murphy, Nadeau, Nickerson, Norton, O'Gara, Oliver, Paradis, P.; Pfeiffer, Pineau, Poulin, Pouliot, Rand, Reed, W.; Richardson, Ricker, Robichaud, Rotondi, Ruhlin, Rydell, Saxl, Simoneau, Skoglund, Stevens, A.; Stevens, K.; Strout, Sullivan, Swazey, Tardy, Townsend, E.; Treat, True.

ABSENT - Bailey, H.; Beam, Caron, Cathcart, Dore, Farnsworth, Hillock, Joseph, Kneeland, Kutasi, Martin, H.; Small, Spear, Thompson, Townsend, G.; Townsend, L.; Winn, The Speaker.

Yes, 49; No, 84; Absent, 18; Paired, 0; Excused, 0. 49 having voted in the affirmative and 84 in the negative, the motion to Insist did not prevail.

Subsequently, the House voted to Adhere.

Non-Concurrent Matter

Bill "An Act to Increase Access to Primary Care by Redefining the Practice of Advanced Nursing" (S.P. 390) (L.D. 1185) which was passed to be engrossed as amended by Committee Amendment "A" (S-454) as amended by House Amendments "C" (H-1049) and "F" (H-1057) thereto in the House on April 8, 1994.

Came from the Senate with that Body having insisted on its former action whereby the Bill was passed to be engrossed as amended by Committee Amendment "A" (S-454) as amended by Senate Amendment "B" (S-513) thereto and asked for a Committee of Conference in non-concurrence.

On motion of Representative HOGLUND of Portland, the House voted to Insist and join in a Committee of Conference.

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

ENACTORS

Bond Issue

An Act to Authorize a Department of Inland Fisheries and Wildlife Bond Issue of \$10,000,000 for Fish Hatcheries (H.P. 1301) (L.D. 1756) (H. "A" H-1037 to C. "A" H-962)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. In accordance with the provisions of Section 14 of Article IX of the Constitution, a two-thirds vote of the House being necessary, a total was taken. 90 voted in favor of the same and 3 against, and accordingly the Bond Issue was passed to be enacted, signed by the Speaker and sent to the Senate.

Bond Issue

An Act to Authorize a General Fund Bond Issue in the Amount of \$9,000,000 to Construct Water Pollution Control Facilities and to Investigate, Abate, Clean up and Mitigate Threats to the Public Health and Environment from Uncontrolled Hazardous Substances Sites (H.P. 1392) (L.D. 1890) (Governor's Bill) (C. "A" H-963)

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

On motion of Representative KILKELLY of Wiscasset, the House reconsidered its action whereby L.D. 1890 was passed to be engrossed.

On further motion of the same Representative, the House reconsidered its action whereby Committee Amendment "A" (H-963) was adopted.

The same Representative presented House Amendment "C" (H-1086) to Committee Amendment "A" (H-963) which was read by the Clerk.

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

Representative KILKELLY: Mr. Speaker, Men and Women of the House: Once again this is the amendment that would move the date of this bond being out in November as opposed to June. It was inadvertently taken off and missed between the bodies. I have met with everyone, everyone is in agreement so it shouldn't be a problem.

Subsequently, House Amendment "C" (H-1086) to Committee Amendment "A" (H-963) was adopted.

Committee Amendment "A" (H-963) as amended by House Amendment "C" (H-1086) thereto was adopted.

The Bond Issue was passed to be engrossed as amended by Committee Amendment "A" (H-963) as amended by House Amendment "C" (H-1086) thereto in non-concurrence and sent up for concurrence.

Bond Issue

An Act to Authorize a General Fund Bond Issue in the Amount of \$20,000,000 for the Remediation and Capping of Municipal Solid Waste Landfills (S.P. 696) (L.D. 1894) (Governor's Bill) (H. "B" H-1043 to C. "A" S-535)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. In accordance with the provisions of Section 14 of Article IX of the Constitution, a two-thirds vote of the House being necessary, a total was taken. 81 voted in favor of the same and 17 against, and accordingly the Bond Issue was passed to be enacted, signed by the Speaker and sent to the Senate.

Bond Issue

An Act to Authorize Department of Transportation Bond Issues in the Amount of \$21,300,000 to Improve Rail and Port Facilities and Make Improvements at State and Municipal Transportation Facilities (S.P. 697) (L.D. 1895) (Governor's Bill) (H. "A" H-1068 to S. "A" S-540)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. In accordance with the provisions of Section 14 of Article IX of the Constitution, a two-thirds vote of the House being necessary, a total was taken. 88 voted in favor of the same and 6 against, and accordingly the Bond Issue was passed to be enacted, signed by the Speaker and sent to the Senate.

Emergency Mandate

Resolve, for Laying of the County Taxes and Authorizing Expenditures of Somerset County for the Year 1994 (H.P. 1462) (L.D. 1988) (H. "B" H-1066)

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

Representative JACQUES of Waterville requested a roll call on final passage.

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. All those in favor will vote yes; those opposed will vote no.

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

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

ROLL CALL NO. 336

YEA - Adams, Ahearne, Aikman, Aliberti, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Bowers, Brennan, Bruno, Cameron, Campbell, Carleton, Carr, Chase, Clark, Clement, Cloutier, Clukey, Coles, Constantine, Cote, Cross, Daggett, Dexter, DiPietro, Donnelly, Dore, Driscoll, Erwin, Faircloth, Farnum, Farren, Fitzpatrick, Gould, R. A.; Gray, Greenlaw, Hale, Hatch, Heeschen, Heino, Hogle, Holt, Hussey, Jacques, Jalbert, Joy, Ketterer, Kilkelly, Kneeland, Larrivee, Lemke, Lemont, Libby Jack, Libby James, Lindahl, Lipman, Look, Lord, Marsh, Marshall, Martin, J.; Melendy, Michael, Mitchell, E.; Mitchell, J.; Morrison, Murphy, Nadeau, Nash, Nickerson, Norton, O'Gara, Oliver, Ott, Paradis, P.; Pendleton, Pfeiffer, Pineau, Pinette, Plourde, Plowman, Poulin, Rand, Reed, W.; Richardson, Robichaud, Rotondi, Rowe, Ruhlin, Saint Onge, Saxl, Simonds, Simoneau, Skoglund, Spear, Stevens, A.; Stevens, K.; Strout, Sullivan, Swazey, Tardy, Taylor, Townsend, E.; Tracy, Treat, True, Tufts, Vigue, Wentworth, Whitcomb, Young, Zirkilton, The Speaker.

ABSENT - Beam, Birney, Caron, Carroll, Cashman, Cathcart, Chonko, Coffman, Dutremble, L.; Farnsworth, Foss, Gamache, Gean, Hichborn, Hillock, Johnson, Joseph, Kerr, Kontos, Kutasi, MacBride, Martin, H.; Michaud, Pendexter, Pouliot, Reed, G.; Ricker, Rydell, Small, Thompson, Townsend, G.; Townsend, L.; Walker, Winn.

Yes, 117; No, 0; Absent, 34; Paired, 0; Excused, 0. 117 having voted in the affirmative and 0 in the negative, with 34 being absent, the Resolve was finally passed, signed by the Speaker and sent to the Senate.

An Act Regarding Access to Property via Abandoned Roads (H.P. 1238) (L.D. 1665) (H. "A" H-1075)

An Act Requiring the Use of Logbooks by Lobster Harvesters (H.P. 1262) (L.D. 1689) (H. "A" H-1017 to C. "A" H-973)

An Act Regarding Access to Chiropractic Services (H.P. 1461) (L.D. 1986) (H. "A" H-998; H. "B" H-1023)

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

An Act to Clarify the Licensing Authority of the Department of Public Safety (S.P. 614) (L.D. 1712) (H. "A" H-933 and H. "B" H-1056 to C. "A" S-518)

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

On motion of Representative DAGGETT of Augusta, tabled pending passage to be enacted and later today assigned.

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

SENATE PAPERS

The following Communication:

Maine State Senate
Augusta, Maine 04333

April 8, 1994

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

Dear Clerk Mayo:

Please be advised that the Senate today appointed the following conferees to the Committee of Conference on the disagreeing action of the two branches of the Legislature on Bill "An Act to Strengthen the Coordinated Delivery of Substance Abuse Services in the State" (S.P. 655)(L.D. 1824):

Senator BRANNIGAN of Cumberland County
Senator HARRIMAN of Cumberland County
Senator HANDY of Androscoggin County

Sincerely,

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

Was read and ordered placed on file.

Reference is made to (S.P. 390) (L.D. 1185) Bill "An Act to Increase Access to Primary Care by Redefining the Practice of Advanced Nursing"

In reference to the action of the House on Friday, April 8, 1994, whereby it Insisted and Joined in a Committee of Conference, the Chair appoints the following members on the part of the House as Conferees:

Representative KETTERER of Madison
Representative ST. ONGE of Greene
Representative CAMERON of Rumford

COMMUNICATIONS

The following Communication:

STATE OF MAINE
OFFICE OF THE GOVERNOR
AUGUSTA, MAINE 04333

April 8, 1994

To the Honorable Members of the 116th Legislature:

I am returning, without my signature or approval, H.P. 1407, L.D. 1916, "An Act to Create a Law Governing Prepared Food Franchise Practices." This bill would interfere with the private business relationship between fast food franchisors and franchisees without any obvious public benefit, imposing intrusive requirements into the contractual relationship governing termination rights, renewal rights, and survivorship transfers.

This bill goes far beyond any mutual agreements between these two private business interests. Where conflicts exist between the two interests, a full mechanism of dispute resolution is in place to resolve specific concerns. All of the key issues raised in this bill can and should be resolved through these existing mechanisms.

It is critical that the State of Maine not inappropriately interject in negotiation between private parties. It disturbs the sanctity of private contracts. Without good cause, government should avoid distorting market forces that ultimately benefit consumers.

Franchises are a growing segment of the Maine economy. In a small rural state such as Maine, franchises represent an increasingly important economic opportunity. As passage of similar legislation in other states has demonstrated, this measure would likely diminish opportunities for job creation offered by franchise development.

A decision that has such a large potential negative impact upon existing and future businesses in this State should not be considered until a full factual assessment can be made. Decisions of this nature cannot be based on purely anecdotal information. I hope you will join me in rejecting this piece of legislation.

Sincerely,

S/John R. McKernan, Jr.
Governor

Was read and ordered placed on file.

The accompanying Bill "An Act to Create a Franchise Practices Act" (H.P. 1407) (L.D. 1916) (H. "A" H-1005 to C. "A" H-912)

On motion of Representative JACQUES of Waterville, tabled pending reconsideration and later today assigned.

On motion of Representative Gwaodsky of Fairfield, the House recessed until 8:00 p.m.

(After Recess)

The House was called to order by the Speaker.

Representative JACQUES of Waterville moved that the House extend until 10:00 p.m., pursuant to House Rule 22.

The SPEAKER: Pursuant to House Rule 22, the Chair will order a vote. The pending question before the House is the motion of Representative Jacques of Waterville, that the House extend until 10:00 p.m.. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

94 voted in favor of the same and 11 against, the motion to extend was accepted.

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

Committee of Conference

Report of the Committee of Conference on the disagreeing action of the two branches of the Legislature on: Bill "An Act to Encourage Municipal Investment in Local Economic Development Projects" (EMERGENCY) (S.P. 647) (L.D. 1806) have had the same under consideration and ask leave to report:

That the House recede from its action whereby it accepted the Minority "Ought Not to Pass" Report of the Committee on Taxation; accept the Majority "Ought to Pass" as amended Report; read the Bill once; read and adopt Committee Amendment "A" (S-468); under suspension of the rules, read the Bill a second time; read and adopt House Amendment "A" (H-1077) and pass the Bill to be engrossed as amended by Committee Amendment "A" (S-468) and House Amendment "A" (H-1077) in non-concurrence.

That the Senate recede and concur with the House.

(Signed) Representative DORE of Auburn, Representative TARDY of Palmyra, and Representative SPEAR of Nobleboro - of the House.

Senator DUTREMBLE of York, Senator SUMMERS of Cumberland, and Senator CAREY of Kennebec - of the Senate.

The Committee of Conference Report was read.

Subsequently, the House voted to Recede. The Majority "Ought to Pass" Report was accepted. The Bill read once. Committee Amendment "A" (S-468) 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. House Amendment "A" (H-1077) was read by the Clerk and adopted. Under further suspension of the rules, the Bill was passed to be engrossed as amended by Committee Amendment "A" (S-468) and House Amendment "A" (H-1077) in

non-concurrence and sent up for concurrence. Ordered sent forthwith.

ENACTORS

Bond Issue

An Act to Authorize a General Fund Bond Issue in the Amount of \$5,000,000 for Academic Improvements at the University of Maine System, Including the Enhancement of Instructional Technology and Distance Learning (S.P. 718) (L.D. 1940) (Governor's Bill) (H. "B" H-1069 to C. "A" S-539)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. In accordance with the provisions of Section 14 of Article IX of the Constitution, a two-thirds vote of the House being necessary, a total was taken. 104 voted in favor of the same and 8 against, and accordingly the Bond Issue was passed to be enacted, signed by the Speaker and sent to the Senate.

Emergency Measure

An Act to Amend the Laws Relating to Potatoes (H.P. 1273) (L.D. 1717) (S. "A" S-589 to C. "A" H-1059)

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

On motion of Representative TARDY of Palmyra, tabled pending passage to be enacted and later today assigned.

Emergency Measure

An Act to Revise the Authorization of the Towns of Appleton, Camden, Hope, Lincolnville and Rockport to Form a Community School District (H.P. 1474) (L.D. 2002) (H. "A" H-1065 to H. "A" H-1045; S. "A" S-595)

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. 106 voted in favor of the same and 0 against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

Emergency Measure

Resolve, Establishing the People with Disabilities Access Commission (H.P. 1321) (L.D. 1783) (H. "A" H-1074 to C. "A" H-894)

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. 101 voted in favor of the same and 2

against and accordingly the Resolve was finally passed, signed by the Speaker and sent to the Senate.

An Act to Establish an Ambient Water Toxics Program (H.P. 1080) (L.D. 1446) (C. "A" H-1072)

An Act Regarding Cable Television (H.P. 1096) (L.D. 1483) (S. "B" S-592 to C. "A" H-836)

An Act to Correct Certain Inconsistencies in the Laws Relating to the Commission on Governmental Ethics and Election Practices (H.P. 1380) (L.D. 1867) (S. "B" S-585 to C. "A" H-1026)

An Act to Clarify the Process for Filling Unexpired Terms for School Board Members (H.P. 1482) (L.D. 2007)

An Act Concerning Plastic Holding Devices (H.P. 1484) (L.D. 2009)

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

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

ENACTORS

Emergency Measure

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) (S. "B" S-588 to C. "A" H-995)

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.

Emergency Measure

An Act to Create Retirement Alternatives (H.P. 1362) (L.D. 1841) (C. "A" H-867; H. "A" H-972)

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. 104 voted in favor of the same and 0 against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

Mandate

An Act to Amend the Laws Governing the Training

and Certification of Law Enforcement Officers (H.P. 828) (L.D. 1114) (H. "B" H-1062 to C. "A" H-969)

Was reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. In accordance with the provisions of Section 21 of Article IX of the Constitution, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 105 voted in favor of the same and 2 against, and accordingly the Mandate was passed to be enacted, signed by the Speaker and sent to the Senate.

An Act to Increase the Jurisdiction of the Loring Development Authority of Maine (H.P. 1275) (L.D. 1723) (S. "A" S-586 to C. "A" H-974)

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

An Act to Reestablish a Mechanism for Review of Disputed Elections (H.P. 1418) (L.D. 1932) (Com. of Conf. "A" H-1079)

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.

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

The Chair laid before the House the following items which were tabled earlier in today's session:

An Act to Clarify Agency Relationships in Real Estate Transactions" (S.P. 616) (L.D. 1714) (H. "A" H-1036 to C. "A" S-551) which was tabled by Representative JACQUES of Waterville pending passage to be enacted.

On motion of Representative HOGLUND of Portland, under suspension of the rules, the House reconsidered its action whereby L.D. 1714 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-551) was adopted.

The same Representative presented House Amendment "C" (H-1087) to Committee Amendment "A" (S-551) which was read by the Clerk and adopted.

Committee Amendment "A" (S-551) as amended by House Amendments "A" (H-1036) and "C" (H-1087) thereto was adopted.

The Bill was passed to be engrossed as amended by Committee Amendment "A" (S-551) as amended by House Amendments "A" (H-1036) and "C" (H-1087) thereto in

non-concurrence and sent up for concurrence. Ordered sent forthwith.

An Act to Clarify Maine Election Laws (H.P. 1201) (L.D. 1609) (S. "A" S-557 to C. "A" H-947) which was tabled by Representative JACQUES of Waterville pending passage to be enacted.

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

Bill "An Act to Create a Franchise Practices Act" (H.P. 1407) (L.D. 1916) (H. "A" H-1005 to C. "A" H-912) which was tabled by Representative JACQUES of Waterville pending reconsideration

The SPEAKER: After reconsideration, the pending question before the House is, "Shall this Bill become law notwithstanding the objections of the Governor?" Pursuant to the Constitution, the vote will be taken by the yeas and nays. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 337V

YEA - Adams, Ahearne, Anderson, Bowers, Brennan, Cameron, Clement, Coles, Dexter, Donnelly, Dore, Erwin, Farnsworth, Fitzpatrick, Gean, Hale, Hatch, Heesch, Hichborn, Hoglund, Holt, Jacques, Johnson, Kerr, Ketterer, Kneeland, Larrivee, Lord, Melendy, Michael, Mitchell, J.; Morrison, Nadeau, O'Gara, Oliver, Paradis, P.; Pendleton, Plourde, Poulin, Rand, Richardson, Robichaud, Rotondi, Rowe, Rydell, Saint Onge, Simonds, Skoglund, Tardy, Townsend, E.; Treat, Vigue, Wentworth, The Speaker.

NAY - Aikman, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Bruno, Campbell, Carleton, Carr, Chonko, Clukey, Coffman, Cote, Cross, Daggett, Driscoll, Farnum, Farren, Foss, Gould, R. A.; Gray, Greenlaw, Heino, Hussey, Kilkelly, Lemont, Libby Jack, Libby James, Lindahl, Lipman, Look, Marsh, Marshall, Martin, J.; Michaud, Mitchell, E.; Murphy, Nickerson, Norton, Ott, Pendexter, Plowman, Reed, G.; Reed, W.; Simoneau, Small, Spear, Stevens, A.; Stevens, K.; Strout, Sullivan, Swazey, Taylor, Tracy, Tufts, Walker, Whitcomb, Young, Zirnkilton.

ABSENT - Aliberti, Beam, Birney, Caron, Carroll, Cashman, Cathcart, Chase, Clark, Cloutier, Constantine, DiPietro, Dutremble, L.; Faircloth, Gamache, Hillock, Jalbert, Joseph, Joy, Kontos, Kutasi, Lemke, MacBride, Martin, H.; Nash, Pfeiffer, Pineau, Pinette, Pouliot, Ricker, Ruhlin, Saxl, Thompson, Townsend, G.; Townsend, L.; True, Winn.

Yes, 54; No, 60; Absent, 37; Paired, 0; Excused, 0. 54 voted in favor of same and 60 against, and accordingly the veto was sustained.

Bill "An Act to Clarify the Jobs and Investment Tax Credit" (S.P. 778) (L.D. 2008) (Governor's Bill) which was tabled by Representative PARADIS of Augusta pending reference.

Under suspension of the rules and without reference

to a Committee, the Bill was read twice and passed to be engrossed in non-concurrence and sent up for concurrence. Ordered sent forthwith.

Bill "An Act to Ensure Proper Funding of the Department of Environmental Protection" (H.P. 1385) (L.D. 1884) which was tabled by Representative JACQUES of Waterville pending adoption of Committee Amendment "A" (H-1076).

Representative MARTIN of Eagle Lake presented House Amendment "A" (H-1088) to Committee Amendment "A" (H-1076) which was read by the Clerk.

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

Representative MARTIN: Mr. Speaker and Members of the House: We had a great deal of trouble dealing with this bill. This particular bill is a Governor's bill and the way in which it was presented was that all the shortness of funds from the federal government was going to be made up by fees.

There was a great deal of concern by industry, by the legislators on the committee and by many of you. We decided that whatever we did we would do it and it would be at the end of the next session that whatever we did would be abolished. I have a series of three amendments and I will explain each one to you.

First of all, what we did was ask Appropriations for \$300,000 which in effect took the shortness in federal funds and we put that to the water program and the department. That left about \$184,000 and that primarily was the land bureau. This particular amendment basically says that regardless of what happens it expires 90 days after the adjournment of the Second Regular Session of the 117th. So, the next legislature will have to revisit the entire structure.

I move adoption of House Amendment "A" to Committee Amendment "A."

Subsequently, House Amendment "A" (H-1088) to Committee Amendment "A" (H-1076) was adopted.

Representative MARTIN of Eagle Lake presented House Amendment "B" (H-1089) to Committee Amendment "A" (H-1076) which was read by the Clerk.

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

Representative MARTIN: Mr. Speaker, Members of the House: What this particular amendment in effect does is to — we decided after a great deal of discussion that we believe that the fees should not go on (the increase, that is, in fees) and that the \$184,000 will be taken from the unappropriated surplus of the General Fund and transferred to the Maine Environmental Protection Fund for the purpose of covering the fees. That in effect will take place on September 1. Then, if that should not occur, only then will the fees not go on.

I would move adoption of House Amendment "B" to Committee Amendment "A."

Subsequently, House Amendment "B" (H-1089) to Committee Amendment "A" (H-1076) was adopted.

Representative MARTIN of Eagle Lake presented House Amendment "C" (H-1090) to Committee Amendment "A" (H-1076) which was read by the Clerk.

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

Representative MARTIN: Mr. Speaker, Members of the House: This corrects an allocation section where

an error was made in the drafting and that is all this does, there is no additional personnel, it looks like it but that is not the case. This is simply a correction in the allocation section.

Subsequently, House Amendment "C" (H-1090) to Committee Amendment "A" (H-1076) was adopted.

Committee Amendment "A" (H-1076) as amended by House Amendments "A" (H-1088), "B" (H-1089) and "C" (H-1090) 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.

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

Representative LORD: Mr. Speaker, My Learned Colleagues: This isn't exactly the way I had hoped it would come around but appears to be the best thing we can get at this time. However, I would hope that the people that are here the next session of the Legislature keeps a sharp eye out on this to make sure that these fees do stay off or at least we do come up with a schedule that is more in line with what we need.

I was hoping we could try and take some of the money that was transferred over to the DEP from the Waste Management Agency and I think this is something that should be looked at very closely at another legislature.

Subsequently, the Bill was passed to be engrossed as amended by Committee Amendment "A" (H-1076) as amended by House Amendments "A" (H-1088), "B" (H-1089) and "C" (H-1090) thereto and sent up for concurrence. Ordered sent forthwith.

An Act to Reestablish a Mechanism for Review of Disputed Elections (H.P. 1418) (L.D. 1932) (Com. of Conf. "A" H-1079) which was tabled by Representative JACQUES of Waterville pending passage to be enacted.

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

The following item was taken up out of order by unanimous consent:

REPORTS OF COMMITTEES

Divided Report

Majority Report of the Committee on Appropriations & Financial Affairs reporting "Ought to Pass" as amended by Committee Amendment "A" (H-1081) on Bill "An Act to Make Supplemental Appropriations and Allocations for the Expenditures of State Government and to Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 1994 and June 30, 1995" (EMERGENCY) (H.P. 1306) (L.D. 1761) (Governor's Bill)

Signed:

Senators: TITCOMB of Cumberland
PEARSON of Penobscot
FOSTER of Hancock

Representatives: CARROLL of Gray
HICHBORN of LaGrange
REED of Falmouth
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: RYDELL of Brunswick

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-1081) was read by the Clerk and adopted. The Bill was assigned for second reading Monday, April 11, 1994.

On motion of Representative COFFMAN of Old Town adjourned at 10:00 p.m., until 9:00 a.m., Monday, April 11, 1994.