

# MAINE STATE LEGISLATURE

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**LEGISLATIVE RECORD**  
OF THE  
**One Hundred And Sixteenth Legislature**  
OF THE  
**State Of Maine**

**VOLUME VI**

**SECOND REGULAR SESSION**

**Senate**  
January 5, 1994 to April 6, 1994

STATE OF MAINE  
ONE HUNDRED AND SIXTEENTH LEGISLATURE  
SECOND REGULAR SESSION  
JOURNAL OF THE SENATE

In Senate Chamber  
Thursday  
March 24, 1994

Senate called to Order by the President, Dennis L. Dutremble of York.

Prayer by Reverend Russell Chase of the Vassalboro United Methodist Church in North Vassalboro.

**REVEREND RUSSELL CHASE:** Let us pray. God, our Heavenly Father, we thank you for the great State of Maine and we thank you for the opportunity that we may represent it through this office. We pray for each member here and for their loved ones and dear ones, all of those that they are concerned with and those that are concerned with us. We ask thy blessings especially upon the President of this body and each member here. Help us, our Father, as we walk down the pathway of faith that we may always keep you in our hearts and in our minds. All of these things we pray in the Master's name. Amen.

Reading of the Journal of Wednesday, March 23, 1994.

Off Record Remarks

**ORDERS OF THE DAY**

**Unfinished Business**

The following matters in the consideration of which the Senate was engaged at the time of Adjournment, have preference in the Orders of the Day and continue with such preference until disposed of as provided by Senate Rule 29.

The Chair laid before the Senate the Tabled and Later Assigned (3/23/94) matter:

Bill "An Act to Increase the Efficiency of the Appointment Process for Occupational or Professional Regulatory Boards"

S.P. 734 L.D. 1960

Tabled - March 23, 1994, by Senator **ESTY** of Cumberland.

Pending - Motion by Senator **BEGLEY** of Lincoln to **INDEFINITELY POSTPONE** Bill and Accompanying Papers

(In Senate, March 23, 1994, Under suspension of the Rules, **READ TWICE**. Senate Amendment "A" (S-482) **READ**.)

**THE PRESIDENT:** The Chair recognizes the Senator from Androscoggin, Senator Cleveland.

Senator **CLEVELAND:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I would just like to speak for a moment to urge you not to vote for the Indefinite Postponement. I believe the amendment that you have before you re-establishes the appropriate balance between the Legislative branch and the Executive branch and it helps ensure that the Boards and Commissions are properly staffed with the appointments that they should be and also with the proportions that we would like to see on those Committees and Boards that are so carefully crafted. I want to bring to your attention one more time that the majority of the vacancies that exist are usually the public members of those Boards and Commissions, really critical individuals to provide the perspective and broad point of view that is necessary on those boards, and the reason why this Legislature appoints those boards so carefully. So I would urge you to support it. I believe that it will provide another means by which we can review in an orderly way any Boards and Commissions that are not properly filled and allow this Legislature to rightfully take its position in insuring that the public interest is represented. Thank you.

On motion by Senator **BUSTIN** of Kennebec, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

**THE PRESIDENT:** The pending question before the Senate is the motion of Senator **BEGLEY** of Lincoln to **INDEFINITELY POSTPONE** Bill and Accompanying Papers.

A vote of Yes will be in favor of **INDEFINITE POSTPONEMENT**.

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

**ROLL CALL**

**YEAS:** Senators AMERO, BEGLEY, BUTLAND, CAHILL, CARPENTER, FOSTER, GOULD, HALL, HANLEY, HARRIMAN, KIEFFER, LUDWIG, LUTHER, MARDEN, PEARSON

**NAYS:** Senators BERUBE, BRANNIGAN, BUSTIN, CAREY, CIANCHETTE, CLEVELAND, CONLEY, ESTY, HANDY, LAWRENCE, MCCORMICK, PARADIS, TITCOMB, VOSE, THE PRESIDENT - DENNIS L. DUTREMBLE

ABSENT: Senators BALDACCI, O'DEA, PINGREE, SUMMERS, WEBSTER

ABSENT: Senators BALDACCI, O'DEA

PAIRED: Senators LUTHER, PINGREE

15 Senators having voted in the affirmative and 15 Senators having voted in the negative, with 5 Senators being absent, the motion of Senator **BEGLEY** of Lincoln, to **INDEFINITELY POSTPONE** Bill and Accompanying Papers, **FAILED**.

**THE PRESIDENT:** The pending question before the Senate is **ADOPTION** of Senate Amendment "A" (S-482).

Senator **BEGLEY** of Lincoln requested a Division.

On motion by Senator **ESTY** of Cumberland, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

**THE PRESIDENT:** The Chair recognizes the Senator from Lincoln, Senator Begley.

Senator **BEGLEY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I had planned not to add any debate to the issue except once again the point is this amendment will not solve the problem as it is presented, anymore than the previous bill would have done it because you are again dividing the two areas of control and getting no compromise. It will simply allow you to say there is a bill on the books that will not function. There is a concern from the Legislative branch here that if you accept that the Executive branch can, by your motion and by your approval, almost eliminate a board simply by inaction. That inaction will come back to haunt you to the point you will say why, in heaven's name, should that be the case. It puts the Legislative branch in a very precarious position and one that I do not feel is necessary to be in. I think if this can be worked out to the agreement of both branches before we do definitely force our hand again in another session. Thank you.

**THE PRESIDENT:** The pending question before the Senate is the motion of Senator **CLEVELAND** of Androscoggin to **ADOPT** Senate Amendment "A" (S-482).

A vote of Yes will be in favor of **ADOPTION**.

A vote of No will be opposed.

Is the Senate ready for the question?

Senator **LUTHER** of Oxford who would have voted **NAY** requested and received Leave of the Senate to pair her vote with Senator **PINGREE** of Knox who would have voted **YEA**.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

**ROLL CALL**

**YEAS:** Senators BERUBE, BRANNIGAN, BUSTIN, CAREY, CIANCHETTE, CLEVELAND, CONLEY, ESTY, HANDY, LAWRENCE, MCCORMICK, PARADIS, TITCOMB, VOSE, THE PRESIDENT - DENNIS L. DUTREMBLE

**NAYS:** Senators AMERO, BEGLEY, BUTLAND, CAHILL, CARPENTER, FOSTER, GOULD, HALL, HANLEY, HARRIMAN, KIEFFER, LUDWIG, MARDEN, PEARSON, SUMMERS, WEBSTER

15 Senators having voted in the affirmative and 16 Senators having voted in the negative, with 2 Senators having paired their votes and 2 Senators being absent, the motion of Senator **CLEVELAND** of Androscoggin, to **ADOPT** Senate Amendment "A" (S-482), **FAILED**.

**THE PRESIDENT:** The pending question before the Senate is **PASSAGE TO BE ENGROSSED**.

Senator **CAHILL** of Sagadahoc requested a Division.

On motion by Senator **ESTY** of Cumberland, Tabled until Later in Today's Session, pending **PASSAGE TO BE ENGROSSED**. (Division Requested.)

**COMMUNICATIONS**

The Following Communication:

**COMMITTEE ON APPROPRIATIONS AND FINANCIAL AFFAIRS  
ONE HUNDRED AND SIXTEENTH LEGISLATURE**

March 23, 1994

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

Dear President Dutremble and Speaker Gwadosky:

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

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

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

Sincerely,

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

Which was **READ** and with Accompanying Bills  
**ORDERED PLACED ON FILE.**

The Following Communication:

**COMMITTEE ON ENERGY AND NATURAL RESOURCES  
ONE HUNDRED AND SIXTEENTH LEGISLATURE**

March 22, 1994

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

Dear President Dutremble and Speaker Gwadosky:

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

L.D. 49 An Act to Set Reasonable Dioxin  
Levels

L.D. 1455 An Act Regarding Low-level  
Radioactive Waste

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

Sincerely,

S/Sen. Mark W. Lawrence  
Senate Chair

S/Rep. John L. Martin  
House Chair

Which was **READ** and with Accompanying Bills  
**ORDERED PLACED ON FILE.**

The Following Communication:

**COMMITTEE ON HUMAN RESOURCES  
ONE HUNDRED AND SIXTEENTH LEGISLATURE**

March 22, 1994

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

Dear President Dutremble and Speaker Gwadosky:

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

L.D. 562 An Act to Reestablish the Maine  
Committee on Aging

L.D. 1644 An Act to Provide Support for a  
Transitional Living Program in  
Cumberland County

L.D. 1929 Resolve, to Effect the Health and  
Social Services Transition Team's  
Recommended Reorganization of the  
Department of Human Services and the  
Department of Mental Health and  
Mental Retardation into a Single  
Department of Health, Children and  
Family Services

L.D. 1955 An Act to Promote a Continuum of  
Quality and Affordable Long-term  
Care and to Promote Consumer Choice

L.D. 1969 Resolve, Pertaining to Assisted  
Living Services and Boarding Care

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

Sincerely,

S/Sen. Judy Paradis  
Senate Chair

S/Rep. Sharon Anglin Treat  
House Chair

Which was **READ** and with Accompanying Bills  
**ORDERED PLACED ON FILE.**

The Following Communication: S.P. 766

**116TH MAINE LEGISLATURE**

March 23, 1994

Senator Harry L. Vose  
Rep. James Mitchell  
Chairpersons  
Joint Standing Committee on Marine Resources  
116th Legislature  
Augusta, Maine 04333

Dear Chairs:

Please be advised that Governor John R. McKernan,  
Jr. has nominated Robert J. Peacock of East Machias  
for appointment to the Marine Resources Advisory  
Council.

Pursuant to Title 12, MRSA Section 6024, this  
nomination will require review by the Joint Standing  
Committee on Marine Resources and confirmation by the  
Senate.

Sincerely,  
 S/Dennis L. Dutremble  
 President of the Senate  
 S/Dan A. Gwadosky  
 Speaker of the House

Which Report was **READ** and **ACCEPTED**, in concurrence.

The Bill **READ ONCE**.

Committee Amendment "A" (H-890) **READ** and **ADOPTED**, in concurrence.

The Bill as **Amended**, **LATER ASSIGNED FOR SECOND READING**.

Which was **READ** and referred to the Committee on **MARINE RESOURCES**.

Sent down for concurrence.

**COMMITTEE REPORTS**

**House**

**Ought to Pass As Amended**

The Committee on **BANKING & INSURANCE** on Bill "An Act Regarding the Workers' Compensation Residual Market Mechanism" (Emergency)

H.P. 1291 L.D. 1739

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A"** (H-887).

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A"** (H-887).

Which Report was **READ** and **ACCEPTED**, in concurrence.

The Bill **READ ONCE**.

Committee Amendment "A" (H-887) **READ** and **ADOPTED**, in concurrence.

The Bill as **Amended**, **LATER ASSIGNED FOR SECOND READING**.

The Committee on **TRANSPORTATION** on Bill "An Act to Amend Certain Motor Vehicle Laws"  
 H.P. 1270 L.D. 1697

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A"** (H-886).

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A"** (H-886).

Which Report was **READ** and **ACCEPTED**, in concurrence.

The Bill **READ ONCE**.

Committee Amendment "A" (H-886) **READ** and **ADOPTED**, in concurrence.

The Bill as **Amended**, **LATER ASSIGNED FOR SECOND READING**.

**Divided Report**

The Majority of the Committee on **MARINE RESOURCES** on Bill "An Act to Implement the Recommendations of the Maine Sardine Council" (Emergency)

H.P. 1386 L.D. 1885

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A"** (H-806).

Signed:

Senators:

VOSE of Washington  
 PINGREE of Knox  
 GOULD of Waldo

Representatives:

MITCHELL of Freeport  
 COLES of Harpswell  
 LEMONT of Kittery  
 TOWNSEND of Eastport  
 CONSTANTINE of Bar Harbor  
 SKOGLUND of St. George  
 SWAZEY of Bucksport  
 HEINO of Boothbay

The Minority of the same Committee on the same subject reported that the same **Ought Not to Pass**.

**Off Record Remarks**

The Committee on **TAXATION** on Bill "An Act to Establish the Municipal Cost Component for Unorganized Territory Services to Be Rendered in Fiscal Year 1994-95" (Emergency)

H.P. 1410 L.D. 1920

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A"** (H-890).

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A"** (H-890).

Signed:

Representatives:

LOOK of Jonesboro  
FARREN of Cherryfield

Bill "An Act to Define Responsibilities of the  
Commission on Biotechnology and Genetic Engineering"  
H.P. 1015 L.D. 1361  
(C "A" H-877)

Comes from the House with the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-806) AND HOUSE AMENDMENT "A" (H-850)**.

Which was **READ A SECOND TIME**.

On motion by Senator **ESTY** of Cumberland, Tabled until Later in Today's Session, pending **PASSAGE TO BE ENGROSSED AS AMENDED**, in concurrence.

Which Reports were **READ**.

The Majority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED**, in concurrence.

The Bill **READ ONCE**.

Committee Amendment "A" (H-806) **READ** and **ADOPTED**, in concurrence.

House Amendment "A" (H-850) **READ** and **ADOPTED**, in concurrence.

The Bill, as **Amended**, **LATER ASSIGNED FOR SECOND READING**.

**Senate As Amended**

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

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

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

(See Action Later Today)

**SECOND READERS**

The Committee on **Bills in the Second Reading** reported the following:

**House As Amended**

Bill "An Act to Acquire Lake and Ocean Frontage to be Preserved for the Public"

H.P. 1312 L.D. 1767  
(C "A" H-879)

Bill "An Act to Prohibit the Location of New Groundwater Drinking Water Supply Wells in Close Proximity to Potential Contamination Sources"

H.P. 1328 L.D. 1791  
(C "A" H-878)

Bill "An Act to Amend the Growth Management Laws Concerning Dimensional Variances"

H.P. 1369 L.D. 1853  
(H "A" H-875 to C "A" H-827)

Resolve, to Enhance the Development of Alternative Uses of Maine Agriculture and Forestry Products

H.P. 1437 L.D. 1963  
(C "A" H-874)

Which were **READ A SECOND TIME** and **PASSED TO BE ENGROSSED, As Amended**, in concurrence.

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

Bill "An Act to Require Disclosure of Minimum Bid Requirements at Mortgage Foreclosure Sales"  
S.P. 567 L.D. 1602  
(C "A" S-486)

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

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

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

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

Bill "An Act to Facilitate Collection of Tolls on the Maine Turnpike"

S.P. 687 L.D. 1873  
(C "A" S-494)

Bill "An Act to Improve Methods of Dispute Resolution of the Maine Human Rights Commission"

S.P. 692 L.D. 1878  
(C "A" S-497)

Bill "An Act to Establish the Maine Surplus Energy Auction Program" (Governor's Bill)

S.P. 707 L.D. 1904  
(C "A" S-491)

Bill "An Act to Clarify and Make Technical Changes to Various Professional Licensing Board Laws" (Governor's Bill)

S.P. 720 L.D. 1942  
(C "A" S-490)

Bill "An Act to Establish an Alternative Form of Telecommunications Regulation in the State" (Governor's Bill)

S.P. 726 L.D. 1947  
(C "A" S-492)

Bill "An Act Relating to Pardons"

S.P. 747 L.D. 1976  
(C "A" S-496)

Which were **READ A SECOND TIME** and **PASSED TO BE ENGROSSED, As Amended.**

Sent down for concurrence.

**ENACTORS**

The Committee on **Engrossed Bills** reported as truly and strictly engrossed the following:

An Act to Repeal the Sunset on Rating Practices in Small Group Health Plans and Individual Health Insurance

H.P. 1207 L.D. 1615

An Act Regarding the Regional Mental Health Authority Demonstration

H.P. 1240 L.D. 1667  
(C "A" H-803)

An Act Requiring the Courts to Report to Corrections Facilities Concerning Balances Owed to the Victims' Compensation Fund

H.P. 1250 L.D. 1677  
(C "A" H-802)

An Act to Encourage the Establishment or Expansion of Certain Residency Programs Relating to Emergency Medicine Physicians

H.P. 1254 L.D. 1681  
(C "A" H-796)

(See Action Later Today)

An Act to Exempt Schools from Certain Fees

H.P. 1287 L.D. 1735  
(C "A" H-797)

An Act to Make Certain Revisions to the Maine Emergency Medical Services Act of 1982

S.P. 646 L.D. 1805  
(H "A" H-821 to C "A" S-420)

An Act to Expedite Oil Spill Response Activities

H.P. 1390 L.D. 1888  
(C "A" H-808)

Which were **PASSED TO BE ENACTED** and having been signed by the President, were presented by the Secretary to the Governor for his approval.

On motion by Senator **PEARSON** of Penobscot, the Senate **RECONSIDERED** its action whereby it **PASSED TO BE ENACTED:**

An Act to Encourage the Establishment or Expansion of Certain Residency Programs Relating to Emergency Medicine Physicians

H.P. 1254 L.D. 1681  
(C "A" H-796)

(In Senate, March 24, 1994, **PASSED TO BE ENACTED**, in concurrence.)

On further motion by same Senator, placed on the **SPECIAL APPROPRIATIONS TABLE**, pending **ENACTMENT.**

An Act to Allow the Use of Advanced Lightweight Beverage Containers

H.P. 193 L.D. 256  
(C "B" H-798)

Senator **HANDY** of Androscoggin requested a Division.

On motion by Senator **BUSTIN** of Kennebec, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

**THE PRESIDENT:** The pending question before the Senate is **ENACTMENT.**

A vote of Yes will be in favor of **ENACTMENT.**

A vote of No will be opposed.



Is the Senate ready for the question?  
The Doorkeepers will secure the Chamber.  
The Secretary will call the Roll.

An Act to Establish the Lobster Promotion Council  
as a Public Instrumentality  
H.P. 1199 L.D. 1607  
(H "A" H-795 to C  
"A" H-774)

**ROLL CALL**

YEAS: Senators AMERO, BEGLEY, BERUBE, BUSTIN,  
BUTLAND, CAHILL, CAREY, CARPENTER,  
CIANCHETTE, FOSTER, GOULD, HALL,  
HANLEY, HARRIMAN, KIEFFER, LUDWIG,  
MARDEN, O'DEA, SUMMERS, WEBSTER, THE  
PRESIDENT - DENNIS L. DUTREMBLE

NAYS: Senators BRANNIGAN, CONLEY, ESTY,  
HANDY, LAWRENCE, LUTHER, MCCORMICK,  
PARADIS, PEARSON, TITCOMB, VOSE

ABSENT: Senators BALDACCI, CLEVELAND, PINGREE

21 Senators having voted in the affirmative and  
11 Senators having voted in the negative, with 3  
Senators being absent, the Bill was **PASSED TO BE  
ENACTED** and having been signed by the President, was  
presented by the Secretary to the Governor for his  
approval.

This being an Emergency Measure and having  
received the affirmative vote of 30 Members of the  
Senate, with No Senators having voted in the  
negative, and 30 being more than two-thirds of the  
entire elected Membership of the Senate, was **PASSED  
TO BE ENACTED** and having been signed by the  
President, was presented by the Secretary to the  
Governor for his approval.

**Emergency**

An Act to Apportion Districts for the Election of  
County Commissioners  
H.P. 1285 L.D. 1733  
(H "A" H-758; S "A"  
S-436 to C "A"  
H-741)

This being an Emergency Measure and having  
received the affirmative vote of 29 Members of the  
Senate, with No Senators having voted in the  
negative, and 29 being more than two-thirds of the  
entire elected Membership of the Senate, was **PASSED  
TO BE ENACTED** and having been signed by the  
President, was presented by the Secretary to the  
Governor for his approval.

**Resolve**

Resolve, to Study the Availability and Sources of  
Venture Capital in Maine

S.P. 656 L.D. 1825  
(C "A" S-435)

Which was **FINALLY PASSED** and having been signed  
by the President, was presented by the Secretary to  
the Governor for his approval.

**Emergency**

An Act to Improve the Notice Provisions for  
Municipal Development Districts  
S.P. 629 L.D. 1749  
(H "A" H-816)

**Mandate**

An Act to Extend the Sagadahoc County Budget  
Advisory Committee

H.P. 1348 L.D. 1814  
(C "A" H-810)

This being a Mandate and in accordance with the  
provisions of Section 21 of Article IX of the  
Constitution, and having received the affirmative  
vote of 28 Members of the Senate, with No Senators  
having voted in the negative, and 28 being more than  
two-thirds of the entire elected Membership of the  
Senate, was **PASSED TO BE ENACTED** and having been  
signed by the President, was presented by the  
Secretary to the Governor for his approval.

This being an Emergency Measure and having  
received the affirmative vote of 30 Members of the  
Senate, with No Senators having voted in the  
negative, and 30 being more than two-thirds of the  
entire elected Membership of the Senate, was **PASSED  
TO BE ENACTED** and having been signed by the  
President, was presented by the Secretary to the  
Governor for his approval.

**Emergency**

An Act to Establish the Administrative Operating  
Budget for the Maine State Retirement System for the  
Fiscal Year Ending June 30, 1995  
H.P. 1332 L.D. 1795  
(C "A" H-807)

**Emergency**

This being an Emergency Measure and having received the affirmative vote of 30 Members of the Senate, with No Senators having voted in the negative, and 30 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

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**Emergency**

An Act to Revise Certain Fish and Wildlife Laws (Governor's Bill)

H.P. 1338 L.D. 1801  
(C "A" H-804)

This being an Emergency Measure and having received the affirmative vote of 30 Members of the Senate, with No Senators having voted in the negative, and 30 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

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**Emergency**

An Act Concerning the Importation of Salmon

S.P. 685 L.D. 1871  
(C "A" S-426; S "A" S-433)

This being an Emergency Measure and having received the affirmative vote of 31 Members of the Senate, with No Senators having voted in the negative, and 31 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

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**Emergency**

An Act to Redistrict the Knox County Budget Committee District

H.P. 1411 L.D. 1921

This being an Emergency Measure and having received the affirmative vote of 28 Members of the Senate, with No Senators having voted in the negative, and 28 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

**Emergency Resolve**

Resolve, for Laying of the County Taxes and Authorizing Expenditures of York County for the Year 1994

H.P. 1444 L.D. 1971

This being an Emergency Measure and having received the affirmative vote of 30 Members of the Senate, with No Senators having voted in the negative, and 30 being more than two-thirds of the entire elected Membership of the Senate, was **FINALLY PASSED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

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**HELD BILL**

**THE PRESIDENT:** The Chair recognizes the Senator from Waldo, Senator Gould.

Senator **GOULD:** Mr. President, is the Senate in possession of L.D. 733?

**THE PRESIDENT:** The Chair would answer in the affirmative, the Bill having been held at the Senators request.

Bill "An Act to Amend the Laws Governing Protective Custody"

S.P. 240 L.D. 733  
(C "A" S-469)

(In Senate, March 22, 1994, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-469).**)

(In House, March 23, 1994, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-469) AS AMENDED BY HOUSE AMENDMENT "A" (H-873)** thereto, in **NON-CONCURRENCE.**)

(In Senate, March 23, 1994, **INSISTED.**)

On motion by Senator **GOULD** of Waldo, the Senate **RECONSIDERED** its action whereby it **INSISTED.**

The same Senator moved that the Senate **RECEDE** and **CONCUR.**

On motion by Senator **ESTY** of Cumberland, Tabled until Later in Today's Session, pending the motion by Senator **GOULD** of Waldo that the Senate **RECEDE** and **CONCUR.**

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**ORDERS OF THE DAY**

**Unfinished Business**

The following matters in the consideration of which the Senate was engaged at the time of Adjournment, have preference in the Orders of the Day and continue with such preference until disposed of as provided by Senate Rule 29.

The Chair laid before the Senate the Tabled and Later Assigned (3/23/94) matter:

SENATE REPORTS - from the Committee on **JUDICIARY** on Bill "An Act to Establish a Limit on Noneconomic Damages in Medical Malpractice Actions" S.P. 293 L.D. 880

Majority - **Ought Not to Pass**

Minority - **Ought to Pass**

Tabled - March 23, 1994, by Senator **ESTY** of Cumberland.

Pending - **ACCEPTANCE OF EITHER REPORT**

(In Senate, March 23, 1994, Reports **READ**.)

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Off Record Remarks

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Senate at Ease

Senate called to order by the President.

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Senator **CONLEY** of Cumberland moved that the Senate **ACCEPT** the Majority **OUGHT NOT TO PASS** Report.

**THE PRESIDENT:** The Chair recognizes the Senator from Cumberland, Senator Conley.

Senator **CONLEY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I apologize to the members of the body for missing my cue. We are embarking upon a debate this morning that will essentially entail four bills and are somewhat confusing sometimes. I will try to make sure for those who are unfamiliar with the issues that we stay on the bill which is before the body. In fact, in these four bills there are really only two basic concepts and they will repeat themselves as we move from one bill to another.

Tort reform, what can I say, it is not a new recipe for making some sort of a sweet, it is a term which has been around that I think came into being with disco music. That's how long it has been here. Unlike disco music it did not make the exit which it deserved. It has hung around and hung around and hung around. In all actuality the good Senator from Oxford and myself, having served on the same Committee since 1987, this is the eighth dance we will have had on this issue and thankfully it will be the last dance with him. I believe that these issues can be made fairly clear to people without taking a lot of time to debate the matter. The first bill that you have before you is "An Act to Establish a Limit on Noneconomic Damages in Medical Malpractice Actions". Another person I have gotten to know fairly well over these last eight years, and I don't

think I have ever agreed with him on anything, whether it was smoking or tort reform, is Gordon Smith. Usually lobbyists who are mentioned on the Record who are in the chamber then immediately make a move to get outside of this hall, but another reason for me having to leave the Legislature is I'm actually starting to get along with him very well now and that too is a sign that I am old and in the way. This bill is very much like a second bill that we will deal with here. What it does is establish a noneconomic cap for damages in the amount of \$250,000. What that means is that a person can come in and if they have been injured by a doctor in an operation or some other sort of diagnostic situation, they can go before the jury and establish whatever their economic damages are, which are their lost wages, their medical costs, and costs of care, and then the jury will have to, for the first time here in Maine, look at a second issue which is what their noneconomic damages are. That is their pain, their suffering, their disfigurement if that exists, or something else that is very difficult to put a dollar figure on. You can't say that is going to make me lose this amount of wages or I'm going to have to pay this amount of money for this type of care. It's really a fact that is against the jury, it is the human element of the case. How much has this person suffered? Can we possibly put a figure on this suffering? It is the very human element of a case. Once you establish that someone is at fault, that they have created harm to someone, the jury, if this bill passes, will be asked to limit, put a cap on damages against a doctor who is found to have harmed someone. This legislature has rejected this notion continuously ever since it came forward back in the early 1980's. We have rejected it for a good reason, because it is totally unfair to the victim. It is particularly unfair to women, to children, to senior citizens, those who are unable to go before a jury and say I'm a dentist and I'm not going to be able to make this amount of money for the rest of my life so please make me whole. It puts them in a terribly bad position. It really puts the most seriously injured in a bad position. You're not talking about the person who maybe didn't have his or her thumb set the right way, you're usually talking about somebody who may not be able to have a process of thought again for the rest of their life. Maine juries have always been fair in this area. We do not have extraordinary awards being given out to people in these areas. As a matter of fact, when these bills first came forward there was an alleged crisis in the insurance area for doctors. Doctors made a fairly convincing case that premiums were very high. Since that bill first came forward, right now in the last three years premiums have dropped some 20%. Claims in Maine are down 67%. In the insurance companies insuring doctors Maine is the seventh most profitable market in the country because claims are so low and awards are so low.

There is no crisis here, there is no need for this cap bill even though it may relate to doctors. We all have doctors, we like our personal doctors, but the bottom line is when somebody has been hurt they should have the opportunity to go to a Maine jury made up of people like you and I, to make their case and not try to confuse the issue by putting some sort of an arbitrary cap that is going to hurt a person who has been hurt the most severely. For that reason I ask that you adopt the Majority Ought Not to Pass Report, a strong bipartisan report I might note, and accept that report. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Androscoggin, Senator Berube.

Senator **BERUBE**: Thank you Mr. President, Ladies and Gentlemen of the Senate. In my next life I would love to go to law school and be as good as my co-chairman on the Judiciary Committee, whom I deeply respect. I cannot debate him effectively, I know, I can only tell you why I voted with the minority Ought to Pass report. Currently we all know, contrary to what you might hear sometimes, the liability premium rates for certain specialties in medicine are extraordinarily high. Much higher than the remaining States in our Country. As a result the cost of health care sometimes goes up because doctors must practice what we call defensive medicine and ask for diagnostic procedures which many times are very costly in order to protect themselves against unfair or unreasonable liability suits. The bill, as you just heard correctly, would limit the cap on noneconomic damages to a quarter of a million dollars, that sounds better than \$250,000, after everything else had been paid. Medical costs, for the future as well, anything that pertains, therapy, therapeutic instruments, whatever they might need, loss of wages, loss of perspective income for the remainder of their lives, that is part of the settlement. Over and above that, they or their spouse or whoever could access a quarter of a million dollars, rather than now they can access a million or two for whatever reason, some of them perhaps valid.

This is not a precedent because we currently, as many of you know, have the Dramshop Act law that was enacted in recent years that limits that to \$250,000. The State has a cap of \$300,00. You cannot sue for \$301,000, that is capped. Municipalities as well have caps. Wrongful death is only capped at \$75,000. So it is not a precedent and it would certainly help, according to statistics that I have read and verified with insurance companies, that indeed premium rates would be lowered. Recently, I'm a fan of talk radio and talk television programs, Dr. Everett Koop was interviewed. As you well know he is very much at the forefront in recent months with the proposed health care, he is very supportive of it according to him and others. He was asked the question by the commentator, how can we best address the rising cost of medical care? Quick as a flash he responded, address the cost of malpractice and tort claims. So I ask you to at least consider the minority report. Thank you.

**THE PRESIDENT**: The Chair recognizes the Senator from Aroostook, Senator Kieffer.

Senator **KIEFFER**: Thank you Mr. President, Ladies and Gentlemen of the Senate. I, too, stand to support the cap as presented in this bill. I have seen medical malpractice claims come and go and one thing that has not been touched on in the debate process is the direct premium cost to both doctors and medical facilities. In the insurance side of the medical malpractice claims, without this limit, claims under medical malpractice I have seen drag on for as long as fifteen years before they are settled. The companies, without this limit, set up a reserve to take care of the payments of that claim. I have seen those reserves to be a million and a half dollars. This enters into the rate making process and it stays there for a long period of time and is a direct cost to either that doctor or to the medical facility or the hospital involved. I think it is a very important consideration, for if this cap were in place that reserve would have to be limited to the noneconomic limit of the \$250,000. There is precedent for this, the Maine Tort Claims Act, for example, protects all municipalities as well as State

government with a cap of \$300,000. There isn't anything unusual about this and it isn't anything new. I would urge your support. Thank you.

**THE PRESIDENT**: The Chair recognizes the Senator from Kennebec, Senator McCormick.

Senator **MCCORMICK**: Thank you Mr. President, Ladies and Gentlemen of the Senate. I just want to clear up one thing. Tort reform is not health care reform. Bills such as these have been bandied about as health care reform but according to the Congressional Budget Office malpractice costs nationally account for less than 1% of our national health care costs. That means that if we entirely eliminated everyone's right to sue their doctor health care would decrease by less than 1%. These tort reform bills target such a small number of people and such a small percentage of malpractice cases that they would bring down the cost of health care by less than 1%. According to A.M. Best, which is an insurance industry database, the medical malpractice premiums in Maine dropped by 22% between 1988 and 1991. However, health care costs, during that same time as I think you know, did not drop at all. In fact, they continued to rise. This is not health care reform.

While it is admirable that we want to address the health care crisis, the answer in reforming our health care system lies not in trying to overhaul legal rights which have existed in the common law for hundreds and hundreds of years, the answer lies instead in dealing directly with the issues of access, cost controls, and universality of coverage. I urge a no vote on L.D. 880 for those reasons. Thank you.

**THE PRESIDENT**: The Chair recognizes the Senator from Somerset, Senator Cianchette.

Senator **CIANCHETTE**: Thank you Mr. President, Ladies and Gentlemen of the Senate. I'd like to urge the members of the Senate to vote against the pending motion and support the minority report. I think that I could stand here and go on for a long time and not give any member of this body any new information. I believe very strongly that we need caps on insurance for the benefit of Maine people and the benefit of moving this State forward. I urge you to vote against the pending motion and accept the minority report. Thank you.

**THE PRESIDENT**: The Chair recognizes the Senator from York, Senator Lawrence.

Senator **LAWRENCE**: Thank you Mr. President, Ladies and Gentlemen of the Senate. Two quick points regarding the debate that has already occurred. There is a clear distinction between the Maine Torts Claim Act, the Dramshop Act, and what is trying to be done here. The Dramshop Act doesn't create liability for wrongdoers, it creates liability for third parties. It didn't exist before the legislature acted. It was not a common law doctrine, it was not something that was a liability out there, we created it. When we created it we created it with a cap. Here we are trying to go back and undo something that was common law. In the Tort Claims Act there is a strong public policy of why you do not hold the government responsible to the people they are governing for tort claims. There is a strong public policy on that because those are the people who pay taxes, those are the people who would have to pay the claims themselves. There are two things in my experiences in life that people try to avoid. Number one is

taxes and number two is responsibility for their own actions. That's what is trying to be done here. For one small group they are trying to avoid responsibility for their own actions. Why shouldn't it be extended to building contractors, why shouldn't it be extended to real estate brokers, why shouldn't lawyers be exempted from their own malfeasance, why shouldn't pharmacists, why are we doing it for one small group. I urge you to vote against this bill. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Oxford, Senator Hanley.

Senator **HANLEY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I didn't plan to rise until two attorneys had stood and spoken in favor of the majority report and against the minority report to institute a cap on noneconomic damages. First let me point out that there are eight members of the Bar who serve on the Judiciary Committee, and that I was the only member of the Bar yesterday to vote in favor of a cap on noneconomic damages. Let me tell you why. I enjoyed the dissertation by my good friend from York, Senator Lawrence, as far as the common law doctrine. I guess I, too, look to the common law and exactly what tort actions are all about. Why, if someone has been hurt, what action they have. The common law says you have an action to put yourself in a similar position where you would have been, but for that accident. Men and women of the Senate we are not talking, at all, about the economic damages that a person suffers through medical malpractice. All of the medical costs, as the good Senator from Androscoggin, Senator Berube, pointed out, any rehabilitation costs, costs associated with carrying them through, whatever adjustments in their lives that need to be made, their loss of income, all of those figures that are hard and fast and that you can put a dollar figure on, whatever that amount is, half a million, one million, two million, whatever that amount is, that is what it will be. This bill will have no impact on that whatsoever. Noneconomic damages address the pain and suffering that that individual has gone through. The loss of consortium that that person is going to endure. Men and women of the Senate that is a difficult item to ascertain. If someone is in a tremendous amount of pain, probably no amount of money will make them feel better. Whether it is a quarter of a million or a half a million, the pain is still there. It is not quantifiable though. I think that is what we have to keep in mind during the debate this morning.

The good Senator from Kennebec, Senator McCormick, had pointed out that insurance premiums are only 1% of the total cost of health care. Something she neglected to point out was the fact that the cost of defensive medicine, what doctors have to go through so they will not be sued, is over 40% of the cost of health care. We have before us this morning an opportunity to take a stand to address the rising cost of malpractice insurance here for the doctors, which is automatically passed through to the patient and to the State, for those people who cannot afford health insurance. Let's keep in mind when we take the vote on this this morning that there will not be a cap on economic, but purely noneconomic, a very subjective qualification. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Cumberland, Senator Titcomb.

Senator **TITCOMB:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I think a very telling statement has just been made by the good Senator from Oxford, Senator Hanley. I think it is one that we need to think about very carefully while we are determining where we are going to stand on this vote. That is that this clearly affects economic damages and noneconomic damages and I would like to point out that in many cases there are individuals in our population who do not have an economic basis upon which to make a judgement, upon which to make a judgement as to economic advantage that has been lost. I would cite children who do not have employment, and who in fact we cannot project what their employment would be. Women who have determined to stay home with a family and do not have jobs. How are we to measure the economic damage that has been done to those individuals? I think by accepting the minority report we are saying that the value of the loss will be clear and simple, \$250,000. Now if my child underwent surgery and lost his eyesight, he is not employed, how do you define his economic loss? Clearly, the loss of his eyesight will be capped at \$250,000, this does not seem justified to me. To me it is a very clear attack on those who are not employed, specifically children and, in many cases, women who choose to stay home with their children. I would encourage you to support the majority, and not the minority, report. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Oxford, Senator Hanley.

Senator **HANLEY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I couldn't let the comment of the good Senator from Cumberland, Senator Titcomb, go unanswered as far as her point on economic damages. I think the point she raised is an important one and I think it needs to be addressed. What of those young children who are not yet employed? Don't think for one minute that they don't have economic damages, if they have lost their eyesight the attorney will make the case that that has disadvantaged their potential income that they can make over the course of their lifetime. They can be and will be, as part of the economic damages, have that factored in. Any attorney who doesn't bring that forward would probably be faced with a malpractice suit himself, or herself, by not having forced that.

The other point that needs to be brought out is that a lot of attorneys in medical malpractice cases take them on on a contingency basis, which means a portion of whatever the award is will be taken out of the award. That same is true for noneconomic, if you have a cap of \$250,000, or whatever the amount is, that percentage will be taken out of the noneconomic as well. Thank you.

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Off Record Remarks

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On motion by Senator **CONLEY** of Cumberland, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

**THE PRESIDENT:** The pending question before the Senate is the motion of Senator **CONLEY** of Cumberland to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report.

A vote of Yes will be in favor of **ACCEPTANCE**.

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

**ROLL CALL**

**YEAS:** Senators AMERO, BRANNIGAN, BUSTIN, CONLEY, ESTY, FOSTER, HANDY, LAWRENCE, MCCORMICK, O'DEA, PARADIS, PEARSON, PINGREE, TITCOMB, VOSE, THE PRESIDENT - DENNIS L. DUTREMBLE

**NAYS:** Senators BEGLEY, BERUBE, BUTLAND, CAHILL, CAREY, CARPENTER, CIANCHETTE, GOULD, HALL, HANLEY, HARRIMAN, KIEFFER, LUDWIG, LUTHER, MARDEN, SUMMERS

**ABSENT:** Senators BALDACCI, CLEVELAND, WEBSTER

16 Senators having voted in the affirmative and 16 Senators having voted in the negative, with 3 Senators being absent, the motion of Senator **CONLEY** of Cumberland, to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, **FAILED**.

**THE PRESIDENT:** The pending question before the Senate is **ACCEPTANCE** of the Minority **OUGHT TO PASS** Report.

On motion by Senator **CONLEY** of Cumberland, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

**THE PRESIDENT:** The pending question before the Senate is **ACCEPTANCE** of the Minority **OUGHT TO PASS** Report.

A vote of Yes will be in favor of **ACCEPTANCE**.

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

**ROLL CALL**

**YEAS:** Senators BEGLEY, BERUBE, BUTLAND, CAHILL, CAREY, CARPENTER, CIANCHETTE, GOULD, HALL, HANLEY, HARRIMAN, KIEFFER, LUDWIG, LUTHER, MARDEN, SUMMERS

**NAYS:** Senators AMERO, BRANNIGAN, BUSTIN, CONLEY, ESTY, FOSTER, HANDY, LAWRENCE, MCCORMICK, O'DEA, PARADIS, PEARSON, PINGREE, TITCOMB, VOSE, THE PRESIDENT - DENNIS L. DUTREMBLE

**ABSENT:** Senators BALDACCI, CLEVELAND, WEBSTER

16 Senators having voted in the affirmative and 16 Senators having voted in the negative, with 3 Senators being absent, the motion to **ACCEPT** the Minority **OUGHT TO PASS** Report, **FAILED**.

Senator **CONLEY** of Cumberland moved that the Senate **ACCEPT** the Majority **OUGHT NOT TO PASS** Report.

On motion by Senator **CAHILL** of Sagadahoc, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

On motion by Senator **ESTY** of Cumberland, Tabled until Later in Today's Session, pending the motion by Senator **CONLEY** of Cumberland to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report. (Roll Call Ordered.)

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Off Record Remarks

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The Chair laid before the Senate the Tabled and Later Assigned (3/23/94) matter:

SENATE REPORTS - from the Committee on **JUDICIARY** on Bill "An Act to Modify Joint and Several Liability in Medical Malpractice Actions" S.P. 391 L.D. 1186

Majority - **Ought Not to Pass**

Minority - **Ought to Pass**

Tabled - March 23, 1994, by Senator **ESTY** of Cumberland.

Pending - **ACCEPTANCE OF EITHER REPORT**

(In Senate, March 23, 1994, Reports **READ**.)

Senator **CONLEY** of Cumberland moved that the Senate **ACCEPT** the Majority **OUGHT NOT TO PASS** Report.

**THE PRESIDENT:** The Chair recognizes the Senator from Cumberland, Senator Conley.

Senator **CONLEY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I'm not sure whether this will be deja vu all over again or not. In any case this is yet another tort reform issue. Again this issue deals with medical malpractice, once again this old chestnut has been around since tort reform was first mentioned. Basically the good doctors have been able to get us to focus on the joint and several doctrine as applied to their own situation. The next two bills that we are going to deal with, as I told you before, will also deal with tort reform issues. The same issues but for a larger group. So let's focus on the joint and several doctrine as it applies to doctors. Joint and several is not a new carpenter's local, this is a doctrine which goes back some 200 years in English law. It is a doctrine which we have accepted here in America and holds strong in most of the fifty states. With good

reason, once again when somebody is injured, and you have to prove that you have been injured, in this case, the medical malpractice case, a person would have to prove that he or she was injured while under the care or treatment of a physician. What we have accepted as principal in this country for two hundred years is if you are injured, and let's say you are injured in an operation, you don't know who injured you. Most of you are out, you have no idea who was wielding the scapel, who was holding the sponge, who was doing the work related to your operation. All you know is that you have been hurt. Under our law once you establish that you are hurt and you can figure out who was in that room and may have had a role in it then you can bring it to the jury, and here in Maine we have good juries, it's a good State with a good legal system, that jury has always been able to sort through that and say you hurt this person, you hurt this person, and you hurt this person. You may have all been responsible for a different role in that operation but you are all 100% responsible for his or her harm. We are not going to sit around, and we have said once before that once the victim has established that he or she has been hurt, we are not going to allow the defendant to point fingers, he did it, she did it, I only did a little bit. That would only confuse the jury. We hold everybody equally responsible in a situation of medical malpractice, all of the doctors or health care providers will be equally responsible. That insures that the person who was harmed is made whole. Once again, this change in our legal doctrine has been rejected consistently by this legislature and now by growing numbers of members on the Judiciary Committee, they have chosen to reject this because it is a bad law. It will only make a lot of insurance companies happier and richer and hurt a lot of victims. For that reason, once again, I ask you to go along with the majority ought not to pass report. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Somerset, Senator Cianchette.

Senator **CIANCHETTE:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I would like to speak briefly to this issue. We have heard one version very eloquently from our Senator from Cumberland, Senator Conley, but there is a lot he didn't say about joint and several liability. What it usually is referred to is the 'Deep Pockets Theory' and the person or company or whoever has the deepest pockets are the ones who get nailed for the big claims. Let me give you an example of what I am talking about. I think it was in 1984 or 1985, one of my older brothers bought a new airplane from Cessna Aircraft. It was the last of that model that Cessna had built in over 30 years. It was a very popular model, a single engine that was used for float planes and ski planes. It is a workhorse and is a great old airplane and anyone in the flying business knows that the Cessna 185 line is the workhorse of the aircraft fleet. He bought the last one that they built and he paid \$100,000 for it. When he went out to the factory to take delivery of the airplane they met him and made a little ceremony of the thing and they announced at that time that the reason why they were not building these airplanes anymore was because there were not enough buyers to pay the price. If they did not have to pay a liability policy claim on that airplane they could have sold him that airplane for \$50,000, because it cost Cessna Aircraft \$50,000 to buy the liability policy that goes along with selling that airplane. They are not building them anymore.

There is a great story about Piper Aircraft. These great pioneers, William Piper and Clyde Cessna and Mr. Taylor, all of these pioneers that designed and started the whole aircraft industry would not be able to do anything like that today. They are building airplanes now overseas and selling them in this country but they are not building them in this country in any amount these days because of liability insurance. Piper Aircraft has been put out of business. One of the premier aircraft builders of the world has been put out of business, and it is well documented, that the only reason they are out of business is because of liability insurance and their deep pockets. There have been cases, and I could quote you a number of cases but I won't do that, where in the remotest of instances could Piper aircraft ever be responsible for the accident and the damage that was caused because of an accident, yet they have paid out millions of dollars for these claims where the most far reaching concepts would make them responsible. They are still responsible today for aircraft they built in the 1930's, no matter how many times that airplane has been rebuilt, no matter how many times that airplane has been illegally rebuilt, no matter if it was an illegal pilot operating in an illegal procedure and they have an accident, it ends up back at Piper Aircraft, because they have the deep pockets. I'm telling you this joint and several liability is one of the biggest problems industry has in this country today. Someday some legislature or some Congress is going to change the rules relative to joint and several liability. It is wrong, it is not working for this country, it is chasing away manufacturing in droves and I would just hope that this Senate would take a very bold step here and do away with joint and several liability in Maine, and perhaps we can get some manufacturers here in Maine doing business in Maine and creating some jobs. Thank you.

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Off Record Remarks

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**THE PRESIDENT:** The Chair recognizes the Senator from Aroostook, Senator Kieffer.

Senator **KIEFFER:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I think it is also important to point out some hidden costs other than the insurance premiums when you are talking about medical malpractice and joint and several liability. We have a doctor that practices in our local hospital that came from Montreal. In Montreal he practiced in a group of nine physicians, they had three clerical on their staff handling the nine physicians. In Caribou he operates alone and has nine people on his staff. Three of them are specifically there for his practice of defensive medicine and I think that is sad. I think it is sad that that kind of cost is passed on to us as health care buyers only because he has to be looking back over his shoulder fulltime to be sure that he doesn't end up in court. I think we should take that into very serious consideration. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Kennebec, Senator McCormick.

Senator **MCCORMICK**: Thank you Mr. President, Ladies and Gentlemen of the Senate. I have to respond to the comment from the good Senator from Aroostook because, once again, I think we are confusing the issues of tort reform and health care reform. There have been numerous studies of the amount of paperwork in the American system of health care versus the Canadian system of health care where the doctor from Montreal practiced. The difference is the paper chase. The difference is that studies have shown that approximately 40% more cost attributable to paperwork in our forms in the American system. The Congressional Budget office has shown that on average physicians employ two clerical workers to take care of the approximately 1200 insurance forms that they get every day. No one has asserted that those clerical workers have anything to do with malpractice or defensive medicine. Defensive medicine is an illusory concept, it is a concept that I would like us to separate from the notion of unnecessary tests, or tests that are done to increase one's income. In fact, Harvard College of Medicine studied the whole issue of defensive medicine and although the doctors that they polled said that they did practice medicine defensively they could not and did not change their practice at all when they were sued. So researchers concluded that their method of practice, their modus operandi if you will, had much more to do with the advances in science and technology of medicine and changes in societal expectations as to what constitutes appropriate care than it did in defensive medicine. Lastly I just want to make the point, since we are talking about medical malpractice here, just to make sure that we understand the context that we are in, that is one of decreasing premiums. The system is working, our system of handling malpractice has been featured on the front page of the Wall Street Journal, featured in the President's health care plan, featured on NBC news, and the reason is because it is lowering malpractice premiums. In fact Medical Mutual of Maine, which is a doctor owned malpractice insurance company, is paying dividends to their insurers rather than reducing premiums still. Those dividends, as the Banking and Insurance Committee heard testimony on this year, are going to be about 10% to 15% for each of the last three years. Let's just keep in mind the context that we are operating in and what we have been doing is working, so let us not break with a solution that is not needed. Thank you.

**THE PRESIDENT**: The Chair recognizes the Senator from Oxford, Senator Hanley.

Senator **HANLEY**: Thank you Mr. President, Ladies and Gentlemen of the Senate. If I could just direct your attention to the Bill itself because I think we are getting off the mark and sometimes we don't take the time to review exactly what the legislation that is proposed will do. It is a very simple bill and it is a very modest proposal, it is two pages. I think the easiest way to understand is to take two levels. For medical malpractice if you have an economic damage claim, and we reviewed that in the last debate, if you have an economic damage claim, that will not be impacted by the bill before us. Joint and several liability will still be enforced, that doctrine will still be enforced for economic damage claims. If you are even 1% responsible and the other party is 99% or if it is distributed otherwise, that party which is 1% responsible will be held for 100% of the economic claim. Having said that let's take the next path for a noneconomic damage claim. That being the pain and suffering, the loss of consortium, if you have a claim for pain and suffering and you are less than

25% liable you will no longer be held jointly liable for that, only severally. You will only be held responsible for whatever your percentage below 25% would be, thus if you are 26% liable and, as the good Senator from Cumberland, Senator Conley, pointed out, I have utmost faith in our jury process that they can make that distinction when asked by the Judge what is their level of blame, what is their level of responsibility. If it is 26% they are already on the hook for everything on the economic damage claim, now they are on the hook for everything on the noneconomic damage claim, whatever that may be. It is very important to keep in mind that this only affects the noneconomic damage claim and only those individuals who are less than 25% liable for the damage. Thank you.

On motion by Senator **CONLEY** of Cumberland, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

**THE PRESIDENT**: The Chair recognizes the Senator from Lincoln, Senator Begley.

Senator **BEGLEY**: Thank you Mr. President, Ladies and Gentlemen of the Senate. To muddy the water a little, I'm not a businessman, I'm not a lawyer, I'm not a doctor, I am a citizen with shallow pockets and little or nothing filling them up, and one of the reasons for that is that every doctor, every businessman, every medical organization has to carry this insurance. Has to just to protect their own sanity. As a person who is using these facilities I am paying their insurance because certainly they are passing it onto me. Simply as a private citizen who is looking after the benefits, not only to the injured, but also those who pay, I definitely think that you should not support the motion. Thank you.

**THE PRESIDENT**: The Chair recognizes the Senator from York, Senator Lawrence.

Senator **LAWRENCE**: Thank you Mr. President, Ladies and Gentlemen of the Senate. I just wanted to clarify a point that was raised earlier. I don't practice personal injury law so I am no expert on joint and several liability, but I did have my eyes cross and my hair fall out a few times in law school trying to figure out exactly what joint and several liability was. I can tell you that if anybody tells you that a person who was 1% liable is going to be 100% liable for the damages, that is a direct misstatement of the law in Maine, that is not what happens. If two people, two medical people, who are performing an operation, each of them first has to be found to be the proximate cause of the injury and then they have to be more negligent than the plaintiff. Otherwise there is no liability at all, if the plaintiff is 51% negligent there is no liability at all. It only when they are found to be both the proximate cause of the liability, they they are jointly and severally responsible for the injury 100%, but it is up to them to figure it out between themselves who pays which share. So this impression that is created that a person who is 1% liable can be somehow sucked into being 100% liable creates an incorrect impression. The law protects the person who is 1% liable. Thank you.

**THE PRESIDENT**: The Chair recognizes the Senator from Cumberland, Senator Summers.

Senator **SUMMERS**: Thank you Mr. President, Ladies and Gentlemen of the Senate. I would like to pose a question through the Chair. On average a



physician in Maine is paying three to four times as much for their medical malpractice insurance as they did ten years ago. I was wondering if some of the members of the Bar would care to comment. Thank you.

**THE PRESIDENT:** The Senator from Cumberland, Senator Summers, has posed a question through the Chair to any Senator who may care to respond. The Chair recognizes the Senator from Cumberland, Senator Conley.

Senator **CONLEY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I don't have my figures on a piece of paper in front of me but the information that has been handed out to our Committee and has never been disputed, and you may have one of these yellow books, has indicated that premiums have dropped substantially, by some 20%, perhaps in excess of 20%, in the last three years. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Somerset, Senator Cianchette.

Senator **CIANCHETTE:** Thank you Mr. President, Ladies and Gentlemen of the Senate. In regards to the Senator from York, Senator Lawrence's, observation about the joint and several liability, some time ago, and I don't really mean to put the Chairman of the Appropriations Committee on the spot, but I did relate to him an incident that happened in Maine in the late 1970's. Again I'm going to talk about aircraft, not doctors. There was an aircraft accident where several people were killed landing an airplane down in the Trenton airport. It was a group of pilots, they had returned from a trip and it was a foggy night. The airport was well below minimums for I.F.R. flight. They made three passes at the airport trying to locate the runway in the fog, on the fourth pass they went too low and hit the trees. Unfortunately they crashed and burned. There was a big hearing and a big trial. The aircraft company, Cesna Aircraft, was found guilty of something like an \$8 million settlement because there was, in a maintenance log of that airplane, that one of the instruments had malfunctioned previously and had been worked on. Somehow, someway, the responsibility decided by the jury and the court was that Cesna Aircraft, who didn't even build the instrument in the first place, it was an old airplane and the instrument had been worked on, yet they were found guilty of something like an \$8 million charge in the State of Maine. I don't believe that Cesna Aircraft had any involvement in that accident. I think it is a stretch of the imagination, I can't imagine how they could have been found guilty of that but they were. If my understanding of the \$8 million settlement or judgement of the court is correct, it was later overturned and went down to something like \$2 million or \$3 million that they finally ended up paying. Why? Who pays for that and what has happened to the industry? I don't know, maybe there is a way that lawyers have of looking up these old cases and verifying what I said, I think it's the truth. It's not all about doctors folks, there are other things involved and it is driving more and more manufacturers out of this country every day. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Hancock, Senator Foster.

Senator **FOSTER:** Thank you Mr. President, Ladies and Gentlemen of the Senate. That accident happened in Hancock County, my town, my area. The four pilots were the Caruso father, son and number one and two pilots from Trenton. Four extremely well

trained pilots. They all left small children. One pilot left a child that was physically disabled. There was a court trial. From experience and from that trial, as the good Senator has said, the Aircraft company was found guilty. That is why we go to court. It isn't for us to say that it wasn't the fault of the Aircraft company, they were found guilty. Isn't that what courts are about? I say to you that is a prime example of our trial system and why we have it. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Cumberland, Senator Summers.

Senator **SUMMERS:** Thank you Mr. President, Ladies and Gentlemen of the Senate. There have been several points made here this morning in regards to medical malpractice costs, are claims actually going down and costs therefore decreasing. I would again ask for comment on a fact which I believe is very pertinent, that medical malpractice are, in fact, on the increase. We have seen increases by both major carriers in Maine in the past two years and this trend has also been reflected in rates set by medical malpractice insurance carriers throughout the country. The largest increases have fallen on primary care physicians, with increases of 20%. Studies by the Physicians Insurers Association of America have shown that diagnostic errors during interviews, evaluations, physical examinations and consultations are not only the most prevalent misadventures reported but they are among the most expensive misadventures in terms of indemnity payments. This claim of failure to diagnose is most often brought against primary care physicians. We heard a few minutes ago that we should not confuse this issue with health care reform. There is some other legislation pending regarding making primary care more available here in this State, and it would seem to me that if we can cut the cost of primary care, thus enabling more and more preventative medicine, then we should do everything in our power to ensure that that happens. I would just like to hear some further comment from some members of the Bar or anyone who would care to respond on this issue that I have just raised. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Oxford, Senator Hanley.

Senator **HANLEY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I would like to address some comments that have been made by my classmate in law school, the good Senator from York, Senator Lawrence, as far as exactly how to distinguish this joint and several liability. The good Senator has a point, that if you are not adjudicated to be guilty and the proximate cause hasn't been found to provide the plaintiff with the judgement then, he is absolutely correct, the doctrine of joint and several does not apply. I guess maybe I was assuming too much, the people in the chamber thought we were talking about judgments that had been granted. It is also true that currently judgment is granted and the doctrine of joint and several liability is in place, that it is between the parties to have the judgement paid. Something that Senator Lawrence had forgotten to state was that if one of the parties does not have the resources to make the judgement, the other party, even they are only 1% liable in the scheme of things, as far as for the damage, that that claimant is going to go to the person with the money and say hey, I've got a judgement here, I want my money. The court says I've got it, give it to me. I sat through the same classes that the good Senator sat through, that

is my understanding of how it works. I think it is important, as far as the good Senator from Kennebec raised some issues, and I will like her support, she said that the State of Maine has made some great inroads in the area of medical malpractice and, in fact, we have been quoted in front page news on the Wall Street Journal. I think she was referencing the prelitigation screening panels and we will have an opportunity to debate that on another divided report down the road. Currently premium rates for primary care physicians have increased over 20% over the last year. The claims in 1993 were the most they have ever had for Medical Mutual, that was 149 claims. The problem is not getting better, it is getting worse and it is time that we address it. This is a modest proposal. It doesn't take away any awards for economic damages, not one penny. On the issue of noneconomic it is only for those parties that have been found to be less than 25% liable to not be on the hook for the entire amount. They still would be on the hook for their percentage of responsibility. Thank you.

**THE PRESIDENT:** The pending question before the Senate is the motion by Senator **CONLEY** of Cumberland to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report.

A vote of Yes will be in favor of **ACCEPTANCE**.

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

**ROLL CALL**

**YEAS:** Senators AMERO, BRANNIGAN, BUSTIN, CAREY, CONLEY, ESTY, FOSTER, HANDY, LAWRENCE, LUTHER, MCCORMICK, O'DEA, PARADIS, PEARSON, PINGREE, TITCOMB, VOSE, THE PRESIDENT - DENNIS L. DUTREMBLE

**NAYS:** Senators BEGLEY, BERUBE, BUTLAND, CAHILL, CARPENTER, CIANCHETTE, GOULD, HALL, HANLEY, HARRIMAN, KIEFFER, LUDWIG, MARDEN, SUMMERS

**ABSENT:** Senators BALDACCI, CLEVELAND, WEBSTER

Senator **GOULD** of Waldo requested and received Leave of the Senate to change his vote from **YEA** to **NAY**.

18 Senators having voted in the affirmative and 14 Senators having voted in the negative, with 3 Senators being absent, the motion by Senator **CONLEY** of Cumberland, to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, **PREVAILED**.

Sent down for concurrence.

The Chair laid before the Senate the Tabled and Later Assigned (3/23/94) matter:

SENATE REPORTS - from the Committee on **JUDICIARY** on Bill "An Act to Create a Noneconomic Damages Award Act"

S.P. 446 L.D. 1413

Majority - **Ought Not to Pass**

Minority - **Ought to Pass**

Tabled - March 23, 1994, by Senator **ESTY** of Cumberland.

Pending - **ACCEPTANCE OF EITHER REPORT**

(In Senate, March 23, 1994, Reports **READ**.)

Senator **CONLEY** of Cumberland moved that the Senate **ACCEPT** the Majority **OUGHT NOT TO PASS** Report.

**THE PRESIDENT:** The Chair recognizes the Senator from Cumberland, Senator Conley.

Senator **CONLEY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. We have spent an hour this morning, not really a long time, debating noneconomic damages and a cap on noneconomic damages relating to doctors. This chamber was struggling with that issue, the vote was 16 to 16 on that issue and I can understand why people might feel some hesitancy on that matter when you are looking at doctors. Doctors, we would all agree, are there to try and help you, but still the overriding principal of putting a cap on somebody that has been hurt, you have a victim out there who has been hurt, we had a difficult time with that. I cannot believe that this chamber would then extend this cap and use this cap in all other types of personal injury cases. Would you really want a cap in a situation where a drunk driver came down and wiped out a family? Would you want a cap on noneconomic damages where an inexperienced pilot took out somebody's house or a couple of houses and their families? Would you want it in an instance where somebody may have lied in a newspaper article about somebody, or slandered someone? Would you want a cap on damages in a situation where someone created a defective product, a lawn mower that seriously injured somebody? These are not doctors we are talking about, doctors can make a case on their own and they have done a good job. This is everybody else in the world who hurts somebody and is established by a jury to have hurt someone. If it is not good for doctors, it certainly isn't good for people such as those I have mentioned. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Oxford, Senator Hanley.

Senator **HANLEY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I don't want to belabor this issue, I think we all have a fairly good grasp of it. I just want to point out once again that this is for noneconomic damages only, pain and suffering, loss of consortium. A topic that you really can't put a quantifiable price on, the one that is different from person to person. I would request a Division on this.

Senator **HANLEY** of Oxford requested a Division.

On motion by Senator **CONLEY** of Cumberland, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

**THE PRESIDENT:** The pending question before the Senate is the motion by Senator **CONLEY** of Cumberland to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report.

A vote of Yes will be in favor of **ACCEPTANCE**.

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

**ROLL CALL**

**YEAS:** Senators AMERO, BERUBE, BRANNIGAN, BUSTIN, BUTLAND, CONLEY, ESTY, FOSTER, HANDY, HARRIMAN, LAWRENCE, LUTHER, MCCORMICK, O'DEA, PARADIS, PINGREE, VOSE, THE PRESIDENT - DENNIS L. DUTREMBLE

**NAYS:** Senators BEGLEY, CAHILL, CAREY, CARPENTER, CIANCHETTE, GOULD, HALL, HANLEY, KIEFFER, LUDWIG, MARDEN, PEARSON, SUMMERS

**ABSENT:** Senators BALDACCI, CLEVELAND, TITCOMB, WEBSTER

18 Senators having voted in the affirmative and 13 Senators having voted in the negative, with 4 Senators being absent, the motion by Senator **CONLEY** of Cumberland, to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, **PREVAILED**.

Sent down for concurrence.

The Chair laid before the Senate the Tabled and Later Assigned (3/23/94) matter:

SENATE REPORTS - from the Committee on **JUDICIARY** on Bill "An Act to Modify the Legal Doctrine of Joint and Several Liability" S.P. 447 L.D. 1414

Majority - **Ought Not to Pass**

Minority - **Ought to Pass**

Tabled - March 23, 1994, by Senator **ESTY** of Cumberland.

Pending - **ACCEPTANCE OF EITHER REPORT**

(In Senate, March 23, 1994, Reports **READ**.)

Senator **CONLEY** of Cumberland moved that the Senate **ACCEPT** the Majority **OUGHT NOT TO PASS** Report.

**THE PRESIDENT:** The Chair recognizes the Senator from Cumberland, Senator Conley.

Senator **CONLEY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. Once again we have debated the concept of joint and several liability. If it is not good enough for doctors, a laudible group, it certainly is not good for the rest of the people who would end up in court in a civil action. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Somerset, Senator Cianchette.

Senator **CIANCHETTE:** Thank you Mr. President, Ladies and Gentlemen of the Senate. This is the bill that I sponsored and feel very strongly about for many of the same reasons that I have spoken of previously. I'm having a little trouble understanding why the resistance to doing something in the State of Maine that would reduce the cost for Maine citizens. For any time, in my opinion, that someone wins on this there is a whole host of losers. One point I would like to make, bear with me please, the reason I strongly support changing these laws is the fact that they are not working and they are costing this State and our citizens a lot of money and a lot of lost opportunities. We really should do something about this folks. This joint and several liability problem is going to continue and we are going to continue losing opportunities in this State. We have an opportunity to do something about it, this is one bill that we can actually do something about. Thank you.

Off Record Remarks

On motion by Senator **CONLEY** of Cumberland, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

**THE PRESIDENT:** The pending question before the Senate is the motion by Senator **CONLEY** of Cumberland to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report.

A vote of Yes will be in favor of **ACCEPTANCE**.

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

**ROLL CALL**

**YEAS:** Senators AMERO, BERUBE, BRANNIGAN, BUSTIN, CONLEY, ESTY, FOSTER, GOULD, HANDY, LAWRENCE, LUTHER, MCCORMICK, PARADIS, PINGREE, TITCOMB, VOSE, THE PRESIDENT - DENNIS L. DUTREMBLE

**NAYS:** Senators BEGLEY, BUTLAND, CAHILL, CAREY, CARPENTER, CIANCHETTE, HALL, HANLEY, HARRIMAN, KIEFFER, LUDWIG, MARDEN, O'DEA, PEARSON, SUMMERS

ABSENT: Senators BALDACCI, CLEVELAND, WEBSTER

17 Senators having voted in the affirmative and 15 Senators having voted in the negative, with 3 Senators being absent, the motion by Senator CONLEY of Cumberland, to ACCEPT the Majority OUGHT NOT TO PASS Report, PREVAILED.

Sent down for concurrence.

The Chair laid before the Senate the Tabled and Later Today Assigned matter:

SENATE REPORTS - from the Committee on JUDICIARY on Bill "An Act to Establish a Limit on Noneconomic Damages in Medical Malpractice Actions" S.P. 293 L.D. 880

Majority - Ought Not to Pass

Minority - Ought to Pass

Tabled - March 24, 1994, by Senator ESTY of Cumberland.

Pending - Motion by Senator CONLEY of Cumberland to ACCEPT the Majority OUGHT NOT TO PASS Report (Roll Call Ordered)

(In Senate, March 23, 1994, Motion to ACCEPT the Majority OUGHT NOT TO PASS Report FAILED. Motion to ACCEPT the Minority OUGHT TO PASS Report FAILED.)

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Pearson.

Senator PEARSON: Thank you Mr. President, Ladies and Gentlemen of the Senate. I certainly don't know a great deal about this subject material and you will have to forgive me for not being really knowledgeable. It's one of those things that I have seen come up year after year after year after year, ever since I have been here. I can't help but think that somebody is not serious about this because I think that after you have had that many lessons of it being defeated that the cap must be wrong. As I understand it it is a \$250,000 cap. Has anything else ever been tried, would the people be interested in a cap of say a million dollars? It almost seems like a lobbyist employment act, this bill. Every year it keeps coming back with the same figure on it and keeps failing and I'm wondering if they really want it to pass. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Conley.

Senator CONLEY: Thank you Mr. President, Ladies and Gentlemen of the Senate. I think that the good Senator from Penobscot makes an excellent point. I truly wish you could have been in our Committee room, and it has been the same type of hearing every time I have been on the Committee over the course of the last eight years, there are literally enough lawyers, doctor representatives, and insurance company representatives. They have so many meters running in there that there would have been enough energy generated to solve the CMP NUG problem, I'm convinced we wouldn't have that issue if we could

have tapped into the power, the money, that was being spent, in reference to these bills. You are right, the same issue has come up over and over again. A cap of \$250,000 was the only suggestion that was brought forward by the people who are in support of this measure and it always generates a lot of interest from victims. We had a lot of victims that came forward, real people who had actually been injured in medical malpractice cases, people who would tear your hearts out, showing up in wheelchairs and talking about the problems they have had with their lives because of a mistake, and it was a mistake that was made. No other solutions have ever been put forward. There are, and the good Senator from Oxford talked about contingency fee agreements. Yes, a few years ago, as a part of medical malpractice, contingency fee agreements were reduced for attorneys in those specific areas. What it really comes down to is who has the money to come forward and present a view. Mark Ledew, who worked downstairs in the Governor's office wrote an article for the Sunday Telegram a couple of weeks ago. I don't know if anybody here saw it but I thought it was one of the most revealing pieces that I have seen on what is happening in Augusta, why things aren't working in Augusta at times. The basic theory in his article was that in the old days decisions were made behind closed doors, smoke filled rooms, and things kind of got done. That wasn't right, but now we have opened up the process and what has happened is people who know how to use the process have done very well here. We have opened it up alright, for groups, interest groups who can come in and whatever their point of view may be advocate their position and never leave until the final gavel drops here on the last day. They have to have that type of time and money to expend in order to have their position vindicated. Still, the average person has very little access to what we do around here in Augusta. This bill is a perfect example, and there are plenty of others and we are all on different sides of them, but you have pointed out, I think in a perfect example, of how someone or a group can continue to have their issue debated over and over and over again here.

THE PRESIDENT: The Chair recognizes the Senator from Oxford, Senator Hanley.

Senator HANLEY: Thank you Mr. President, Ladies and Gentlemen of the Senate. I had to listen in a little bit of bemusement to my good friend, and he is my good friend even though we very rarely vote on the same line, about these issues and why they keep coming back. I guess in my eight years in this legislature I have seen many issues like that. One that comes readily to mind is sexual orientation, that my good friend has been the prime sponsor on for the last few sessions and that will continue to come until it is passed. There is an incredible amount of lobbying on that though I would argue more lobbying on that bill than on the bill before us. The issue of term limits, which I broached with this legislature in the 113th, I continue to bring back. Last November it passed. Some bills take time for people to fully comprehend, to fully understand the implications of. Men and women of the Senate, this is a public policy issue right from the outset. Whether or not we should place a cap on noneconomic damages, a classification of damages that we cannot put our finger right on. I separated my shoulder a few times playing football, both in High School and in College. It was a lot of pain, I inflicted it upon myself, I accepted that risk in playing football. If the situation had been different, if I had been hurt in medical malpractice and had the same

pain in my shoulder I could not tell you how to compensate me for that pain. There are various degrees of pain, but I think to say we are going to leave an open end on this when, in fact, Medical Mutual has agreed to have an automatic drop of 5% in their rates if this bill were to pass today, they have committed to that, a decrease of 5% in their premiums if this passes on noneconomic damages at a quarter of a million dollars. Men and women of the Senate that would go directly to the consumers and would benefit the consumers. As a public policy body we have to make these decisions as far as balancing. Balancing the good of one against the good of many and we continually have to ask ourselves this question as far as what is in the best interest of not only my constituents but of the entire State. We here in the Senate are faced with a more difficult responsibility, I believe, than our compatriots down the hall. Having served there for six years I can personally attest to that. We are charged with the responsibility of making decisions not for partisan reasons, not for our own parochial reasons, but for reasons affecting the entire citizenry of the State of Maine. This issue, if it is not passed this morning, undoubtedly will be in front of us again, those of us who are fortunate enough to be here in the 117th, it will be before us again, as will a number of other issues which have not yet passed. Lobbying will be done, a lot of money will be spent on both sides, but the bottom line is this is a very important public policy decision and that is why our constituents voted to send us here. The easy decisions anyone can make, the tougher decisions have to be made by those of us who have accepted the responsibility to be public servants. Men and women of the Senate the closeness of this vote, two ties and potentially additional ties as the day wears on, has got to give you some indication that this is not an issue which is set in stone. Sixteen members of the Senate stated that yes, this was in the best interest of the people of the State of Maine to have a cap of a quarter of a million dollars for noneconomic damages. The other sixteen said no, you can't sacrifice the good of many and put that on the backs of the few. This is a very close issue and is one that will probably divide this chamber in the years that lie ahead if it is not decided this morning. Men and women of the Senate, I just encourage you to think through the debate you have heard here this morning and render your decision accordingly. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Cumberland, Senator Summers.

Senator **SUMMERS:** Thank you Mr. President, Ladies and Gentlemen of the Senate. In response to both the Senator from Penobscot, Senator Pearson, and the Senator from Cumberland, Senator Conley, on their remarks regarding why these issues continue to come up and come up and come up. I find it especially interesting when Senator Conley, from Cumberland, mentioned that they had heard from all of the special interests, all of the lobbyists and even the victims had taken time to come before the Judicial Committee to discuss this issue. I'm assuming the victims he are talking about are people who have visited doctors and not the doctors themselves, and I would like to at least offer my thought on this, that being these issues are so many times the same. We hear it time and time again that the people who are out working and paying taxes and sending their kids to school and going to work every day are constantly strapped and the fruits of their labor are removed from them in order to make compassion possible for those who can't keep up in our competitive society. It is those same

people who are constantly gone back to and gone at, and they have to stay at their businesses and they have to make the money to pay the lawyers, to pay the lobbyists, to pay their taxes. I would just submit that maybe the picture wasn't complete in front of the Judicial Committee because obviously the physicians weren't there and perhaps it was because they were trying to tend to patients so they can pay their taxes and pay their malpractice insurance and pay for the cost of doing business. I think this whole issue revolves around one central thing in this State and that is a poor business climate, whether you are a businessman or a doctor it is constantly a victim mentality and it is just a shame that this thing just has to keep coming up again and again. The Senator from Oxford, my good friend Senator Hanley, I think made a very good point, that point being that they will continue to come back and I would say that the people who have been on the short end of this have followed the thoughts of Senator Everett Durkson, my birthplace and the birthplace of Senator Conley from Cumberland, who said that we will measure failure in inches and success in feet. I look forward to the day when we can bring the yardsticks out. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Penobscot, Senator Pearson.

Senator **PEARSON:** Thank you Mr. President, Ladies and Gentlemen of the Senate. The good Senator from Cumberland just said the doctors weren't there. I can tell you from my own personal point the doctor is with me and always will be. My father was a doctor, my mother and I ended up paying malpractice insurance after he had a series of strokes and had to carry it on him for seven years. It was not a very pleasant thing to do but we had to do that in order to protect ourselves from liability. It was costly, too costly, and I understand that very much but I also understand that \$250,000 isn't much money anymore. It isn't very much money. If you keep plugging in that same figure of \$250,000 year after year and it keeps failing year after year, maybe the figure ought to be different and then maybe it would pass. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Somerset, Senator Cianchette.

Senator **CIANCHETTE:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I'm guilty. I need you to know that I am showing my age and my PTA showed up, that's Part Time Alzheimers, this morning. I'm guilty of that, I'm also guilty of something else. I sponsored three of these bills. I was not encouraged by anybody else, I was not encouraged by any lobbying group. I didn't pay any lobbyists any money, I didn't do this for somebody else. I presented those bills for myself because I thought it was the right thing to do. You will be happy to know that I got over my PTA and remembered that very effective argument I was going to make to you. It has nothing to do with this bill, it had to do with the previous bill, so I will let you just believe me that it did come back to me but it is not pertinent to this bill and I won't bother you with it. The other thing I would like to say is if the Senator from Penobscot, Senator Pearson, would like to suggest maybe an amendment for a half a million dollars or something like that, maybe we could take an extra vote and break this tie. That would please me very much. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Lincoln, Senator Begley.

Senator **BEGLEY**: Thank you Mr. President, Ladies and Gentlemen of the Senate. Very briefly, please keep in mind that the lobbying that was not present in that room was the average citizen who is going to pay regardless of which way this vote goes, and he or she is going to pay it every time they buy a product or everytime they go to a hospital or see a doctor. Thank you.

**THE PRESIDENT**: The Chair recognizes the Senator from Oxford, Senator Hanley.

Senator **HANLEY**: Thank you Mr. President, Ladies and Gentlemen of the Senate. Eighteen other states across this country have adopted a cap on their noneconomic damages. As the good Senator from Penobscot has pointed out there is a great degree of difference from \$200,000 up to I believe the top end is \$750,000. There are some at a quarter of a million, some at \$350,000, some at \$400,000. I guess that should give us an indication that noneconomic damages, the pain and suffering, is an inexact science and is difficult to put a tab on. If the good Senator from Penobscot, and I would echo the sentiments of the good Senator from Somerset, Senator Cianchette, if there is a number out there that the good Senator would go along with maybe we could have this bill tabled for a short period to prepare an amendment to address that Senator's concerns. I don't want to belabor this, I was in hopes that maybe if in fact it was the level of compensation for noneconomic damages that was at issue that we could go forward, but maybe that will be for another day. Thank you.

**THE PRESIDENT**: The pending question before the Senate is the motion of Senator **CONLEY** of Cumberland to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report.

A vote of Yes will be in favor of **ACCEPTANCE**.

A vote of No will be opposed.

Is the Senate ready for the question?

Senator **LUTHER** of Oxford who would have voted **NAY** requested and received Leave of the Senate to pair her vote with Senator **CLEVELAND** of Androscoggin who would have voted **YEA**.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

**ROLL CALL**

**YEAS:** Senators **AMERO, BRANNIGAN, BUSTIN, CONLEY, ESTY, FOSTER, HANDY, LAWRENCE, MCCORMICK, O'DEA, PARADIS, PEARSON, PINGREE, TITCOMB, VOSE, THE PRESIDENT - DENNIS L. DUTREMBLE**

**NAYS:** Senators **BEGLEY, BERUBE, BUTLAND, CAHILL, CAREY, CARPENTER, CIANCHETTE, GOULD, HALL, HANLEY, HARRIMAN, KIEFFER, LUDWIG, MARDEN, SUMMERS, WEBSTER**

**ABSENT:** Senators **BALDACCI**

**PAIRED:** Senators **CLEVELAND, LUTHER**

16 Senators having voted in the affirmative and 16 Senators having voted in the negative, with 2 Senators having paired their votes and 1 Senator being absent, the motion of Senator **CONLEY** of Cumberland, to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, **FAILED**.

On motion by Senator **ESTY** of Cumberland, Tabled until Later in Today's Session, pending **ACCEPTANCE** of the Minority **OUGHT TO PASS** Report.

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Senate at Ease

Senate called to order by the President.

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On motion by Senator **MCCORMICK** of Kennebec, the Senate **RECONSIDERED** its action whereby it **PASSED TO BE ENGROSSED AS AMENDED**:

Bill "An Act to Promote Managed Care and to Otherwise Facilitate the Cost-effective Delivery of Health Care in the State"

S.P. 560 L.D. 1596  
(C "A" S-502)

(In Senate, March 24, 1994, **READ A SECOND TIME** and the Bill **PASSED TO BE ENGROSSED, As Amended**.)

**THE PRESIDENT**: The Chair recognizes the Senator from Kennebec, Senator McCormick.

Senator **MCCORMICK**: Thank you Mr. President, Ladies and Gentlemen of the Senate. A technical amendment needs to be put on this so until that comes up I would like to have this tabled. Thank you.

On motion by Senator **ESTY** of Cumberland, Tabled until Later in Today's Session, pending **PASSAGE TO BE ENGROSSED AS AMENDED**.

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The Chair laid before the Senate the Tabled and Later Assigned (3/23/94) matter:

**SENATE REPORTS** - from the Committee on **BANKING & INSURANCE** on Bill "An Act to Increase Access to and Affordability of Mental Health and Substance Abuse Treatment Services"

S.P. 356 L.D. 1070

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-505)**

Minority - **Ought Not to Pass**

Tabled - March 23, 1994, by Senator **ESTY** of Cumberland.

Pending - **ACCEPTANCE OF EITHER REPORT**

(In Senate, March 23, 1994, Reports **READ**.)

Senator **MCCORMICK** of Kennebec moved that the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report.

**THE PRESIDENT:** The Chair recognizes the Senator from Kennebec, Senator McCormick.

Senator **MCCORMICK:** Thank you Mr. President, Ladies and Gentlemen of the Senate. This bill, L.D. 1070, would allow four categories of therapists to be reimbursed. Licensed professional counselors, licensed clinical professional counselors, marriage and family counselors, and pastoral counselors. Each one of those has masters degree qualifications and are licensed in the State of Maine. There would be no increase in cost of total health care if we pass this bill because it will not increase the number of people who are covered, I will repeat that, it does not increase the number of people who are covered, it only increases the choices of the currently covered people and increases their choices to a more diverse group of very qualified therapists. In fact, there is a study by Massachusetts Blue Cross and Blue Shield, Blue Shield to be exact, that studied this issue and found that there was no increase in cost of reimbursement for mental health services. I believe there is a very good chance that costs will go down because these four categories of therapists that I have named to you charge about half of what licensed psychologists and psychiatrists and the other licensed reimbursable therapists do in Maine. Even if, I know what you are thinking, I know what you will say, you will say well but if we allow them to be reimbursed they will immediately raise the prices that they charge. We had testimony about that. There was a study that showed prices rising in different states after different clinical counselors had been approved for reimbursement. The rise in their cost is maybe 5% of what it was before. So it doesn't take a genius in mathematics to figure out that if a licensed clinical counselor is charging \$40 an hour and a psychologist is charging \$80 or \$70, and I think those are approximately correct but don't get nerved up if it's not exactly right, that we will still save a lot of money in Maine by increasing the pool of therapists that patients can choose from to a more cost effective and low cost group of therapists. I would urge you to support the Majority Ought to Pass as Amended report and I request a Division. Thank you.

Senator **MCCORMICK** of Kennebec requested a Division.

**THE PRESIDENT:** The Chair recognizes the Senator from Aroostook, Senator Kieffer.

Senator **KIEFFER:** Thank you Mr. President, Ladies and Gentlemen of the Senate. Certainly no one on the minority side of this bill opposes the treatment of anyone with any type of a mental health problem. The problem that we have on this bill is that it is, in my opinion at least, it is an any willing provider bill. It provides that anyone who has the qualifications as spelled out in this bill must automatically be included under the coverage provided by health care providers. I'm not happy with having someone who is barely licensed and can obtain a license by their education and training treat me, and I'm not sure that my widow would understand that either. I believe that the health care provider should be able to set standards and set qualifications for their own providers that are standards in excess of the bare minimum requirements that are provided by the State. Other than that, and

the fiscal note is self explanatory on it, I certainly don't quarrel with the purpose of the bill. It's just that we are mandating, through the health care providers, that the minimum standard requirements for the State is the acceptable level that they have to provide and therefore if someone qualifies at that they have to be paid under their program. I think that they should have the option to have higher standards than the minimum State requirements so that they can compete on a quality basis and not just on the basis of State standards. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Aroostook, Senator Paradis.

Senator **PARADIS:** Thank you Mr. President, Ladies and Gentlemen of the Senate. Senator McCormick is absolutely right. We, on the Human Resources Committee, worked with this issue quite a bit and at first glance we thought we were expanding the program. We found out that there are very highly educated, highly trained, not minimal at all, that will make a greater pool and will end up saving us money not costing us more. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Androscoggin, Senator Berube.

Senator **BERUBE:** Thank you Mr. President. I guess I have a couple of questions that I don't understand. By adding categories over the years to insurance programs, State paid insurance programs for example, the cost has risen every time we add a new category of people who do some sort of treatment. The more you add obviously the more costly it gets, but if it's indeed going to be a decrease in cost, why is the fiscal note so high to the cost to the State of Maine annually? I have another question while I am on my feet. It says that this program would be extended to other counseling professionals, could we have an example of what the other counseling professionals would be? Thank you.

**THE PRESIDENT:** The Senator from Androscoggin, Senator Berube, has posed a question through the Chair to any Senator who may care to respond. The Chair recognizes the Senator from Kennebec, Senator McCormick.

Senator **MCCORMICK:** Thank you Mr. President, Ladies and Gentlemen of the Senate. First of all I would like to clarify that we are on L.D. 1070, I think, and the good Senator from Aroostook, Senator Kieffer, has just given you a great argument for his cause on the next bill that we will be debating, so he has sort of jumped the gun on me there. Either that or I am wrong but I think the Chair cleared up that we are on L.D. 1070. As to the questions from the good Senator from Androscoggin, this bill does not create another category of services to be mandated. It did not trigger the mandate rules. If it had we would have had to have a mandate study from the Bureau of Insurance. What this bill does is say for people who already have mental health coverage in their insurance policies, they would be able to choose from four more categories of counselors than they currently can now. Currently now they have four that they can choose from, psychiatrists, psychologists, social workers, and psychiatric nurses. This would allow us, we people who might need mental health services, to also choose to get our therapy from licensed professional counselors, licensed clinical professional counselors, licensed marriage and family counselors, or licensed pastoral counselors. As I said, recently, I think in 1989,

down in Massachusetts, Blue Shield studied this and found that increasing the number, and it was a mental health situation there too, the number of therapists to choose from did not increase the overall reimbursements for mental health. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Aroostook, Senator Kieffer.

Senator **KIEFFER:** Thank you Mr. President, Ladies and Gentlemen of the Senate. As far as these two bills are concerned I think they have some very similar characteristics to them. The second bill, L.D. 1624, makes some difference in the payment of pair party providers, and I have the same fundamental problems with both bills. Thank you.

On motion by Senator **MCCORMICK** of Kennebec, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

**THE PRESIDENT:** The pending question before the Senate is the motion of Senator **MCCORMICK** of Kennebec to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report.

A vote of Yes will be in favor of **ACCEPTANCE**.

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

**ROLL CALL**

**YEAS:** Senators BRANNIGAN, BUSTIN, CAREY, CIANCHETTE, CONLEY, ESTY, HANDY, LAWRENCE, LUTHER, MCCORMICK, O'DEA, PARADIS, PEARSON, PINGREE, VOSE, THE PRESIDENT - DENNIS L. DUTREMBLE

**NAYS:** Senators AMERO, BEGLEY, BERUBE, BUTLAND, CAHILL, CARPENTER, FOSTER, GOULD, HALL, HANLEY, HARRIMAN, KIEFFER, LUDWIG, MARDEN, SUMMERS, WEBSTER

**ABSENT:** Senators BALDACCI, CLEVELAND, TITCOMB

16 Senators having voted in the affirmative and 16 Senators having voted in the negative, with 3 Senators being absent, the motion of Senator **MCCORMICK** of Kennebec, to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, **FAILED**.

Senator **CAHILL** of Sagadahoc moved that the Senate **ACCEPT** the Minority **OUGHT NOT TO PASS** Report.

On further motion by same Senator, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

**THE PRESIDENT:** The Chair recognizes the Senator from Somerset, Senator Cianchette.

Senator **CIANCHETTE:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I have a question relative to this bill. I'm just looking at it now and I guess it's a procedural question Mr. President. If this bill were a mandate how would that show up and who would have the decision on

whether or not it is a mandate. I ask the question because this bill was before the Business Legislation Committee and my recollection is that we had information from the Department that this would be a mandate. I'm just not clear on when it shows up and how it shows up. Can anyone answer that question for me? Thank you.

**THE PRESIDENT:** The Senator from Somerset, Senator Cianchette, has posed a question through the Chair to any Senator who may care to respond. The Chair recognizes the Senator from Penobscot, Senator Pearson.

Senator **PEARSON:** Thank you Mr. President, Ladies and Gentlemen of the Senate. Whether or not it is a mandate is determined by the office of Fiscal and Program Review downstairs, it would appear on final enactment as to whether or not it was a mandate. Thank you.

**THE PRESIDENT:** The pending question before the Senate is the motion of Senator **CAHILL** of Sagadahoc to **ACCEPT** the Minority **OUGHT NOT TO PASS** Report.

A vote of Yes will be in favor of **ACCEPTANCE**.

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

**ROLL CALL**

**YEAS:** Senators AMERO, BEGLEY, BERUBE, BUTLAND, CAHILL, CARPENTER, FOSTER, GOULD, HALL, HANLEY, HARRIMAN, KIEFFER, LUDWIG, MARDEN, SUMMERS, WEBSTER

**NAYS:** Senators BRANNIGAN, BUSTIN, CAREY, CIANCHETTE, CONLEY, ESTY, HANDY, LAWRENCE, LUTHER, MCCORMICK, O'DEA, PARADIS, PEARSON, PINGREE, TITCOMB, VOSE, THE PRESIDENT - DENNIS L. DUTREMBLE

**ABSENT:** Senators BALDACCI, CLEVELAND

Senator **LUTHER** of Oxford requested and received Leave of the Senate to change her vote from **YEA** to **NAY**.

16 Senators having voted in the affirmative and 17 Senators having voted in the negative, with 2 Senators being absent, the motion of Senator **CAHILL** of Sagadahoc, to **ACCEPT** the Minority **OUGHT NOT TO PASS** Report, **FAILED**.

The Majority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED**.

The Bill **READ ONCE**.

Committee Amendment "A" (S-505) **READ** and **ADOPTED**.

The Bill, as **Amended**, **LATER ASSIGNED FOR SECOND READING**.



Off Record Remarks

The Chair laid before the Senate the Tabled and Later Assigned (3/23/94) matter:

SENATE REPORTS - from the Committee on **BANKING & INSURANCE** on Bill "An Act to Ensure Quality Psychological Services"

S.P. 580 L.D. 1624

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-504)**

Minority - **Ought Not to Pass**

Tabled - March 23, 1994, by Senator **ESTY** of Cumberland.

Pending - **ACCEPTANCE OF EITHER REPORT**

(In Senate, March 23, 1994, Reports **READ.**)

Senator **MCCORMICK** of Kennebec moved that the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report.

**THE PRESIDENT:** The Chair recognizes the Senator from Kennebec, Senator McCormick.

Senator **MCCORMICK:** Thank you Mr. President, Ladies and Gentlemen of the Senate. This bill is a very narrow bill. I cannot stress that enough. It is so narrow that it is like a crack. The issue has arisen that certain HMO's or preferred provider groups in Maine are disqualifying professionals who are licensed to practice in Maine from consideration because the out of state manager, or utilization review group, requires professional and licensing standards that are different than those licensing standards set by the State of Maine. These out of state HMO's and preferred provider groups and utilization review groups are huge. The main one that everyone is all nerved up about is based in Maryland. It dwarfs many States. We felt, the majority of the Committee felt, that it was very important to assert that the licensing standards of Maine should prevail. Only the licensing standards. This bill states that if professionals, like psychologists, who are licensed by Maine standards to practice in the State of Maine, they must be eligible to be considered for participation as providers for that HMO, providers of care for that HMO. The HMO or preferred provider group can then select for participation any provider that they wish based on quality standards that they create, based on geography, based on cost, based on the scope of services or a host of other characteristics. This bill does not require that the group use any or all providers, it merely states that the group, meaning the HMO, cannot use licensing and professional standards different than Maine's as a way to arbitrarily screen out providers from consideration. It is a small technical bill that allows Maine people and Maine regulators to set the standards of practice for our professions. I urge you to vote yes. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Aroostook, Senator Kieffer.

Senator **KIEFFER:** Thank you Mr. President, Ladies and Gentlemen of the Senate. As I mentioned before the minority of this Committee has about the same type of feeling on this bill. It is our position that the minimum standards are not necessarily adequate. While it does allow, as the Statement of Fact reads, it says this amendment adds quality of care to the list of factors among others and may be considered in selective contracting in health care. It substitutes licensing standards for credentials in the provision regarding State licensure. We still believe that it should be up to the HMO or the providing service to set their own standards higher than the State standards and they should not be required to necessarily consider lower standards because of their competitive nature and the competitive field that they are in. Thank you.

**THE PRESIDENT:** The pending question before the Senate is the motion by Senator **MCCORMICK** of Kennebec, to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report.

The Chair ordered a Division.

Will all those in favor please rise in their places and remain standing until counted.

Will all those opposed please rise in their places and remain standing until counted.

16 Senators having voted in the affirmative and 14 Senators having voted in the negative, the motion by Senator **MCCORMICK** of Kennebec, to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, **PREVAILED.**

The Bill **READ ONCE.**

Committee Amendment "A" (S-504) **READ** and **ADOPTED.**

The Bill, as **Amended**, **LATER ASSIGNED FOR SECOND READING.**

The Chair laid before the Senate the Tabled and Later Assigned (3/22/94) matter:

SENATE REPORTS - from the Committee on **AGRICULTURE** on Bill "An Act to Require Labeling on Genetically Engineered Food"

S.P. 713 L.D. 1928

Majority - **Ought Not to Pass**

Minority - **Ought to Pass as Amended by Committee Amendment "A" (S-480)**

Tabled - March 22, 1994, by Senator **ESTY** of Cumberland.

Pending - **ACCEPTANCE OF EITHER REPORT**

(In Senate, March 22, 1994, Reports **READ.**)

Senator **PARADIS** of Aroostook moved that the Senate **ACCEPT** the Majority **OUGHT NOT TO PASS** Report.

**THE PRESIDENT:** The Chair recognizes the Senator from Aroostook, Senator Paradis.

Senator **PARADIS:** Thank you Mr. President, Ladies and Gentlemen of the Senate. The Committee felt that we were a little bit premature on this issue. As we would be the only State making such a requirement. We have a fledgling biotechnical industry right now in Maine and we do not want to be sending out the signal that we are not in support of having this industry in Maine. The federal government is in the process of formulating rules and they will be leading the charge on this, this is not something that we need to lead. I would appreciate your support on the ought not to pass report. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Cumberland, Senator Titcomb.

Senator **TITCOMB:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I would like to speak very briefly on this bill. I know that during the hearings and the work sessions that it became apparent that it was not a bill that the Committee on Agriculture was prepared to move on this year. I'm not going to prolong the debate on this issue but I cannot let it pass without making a few comments that I think have some significance right now. I think that this bill is a symptom of a public concern about what may well be a very positive, but clearly is a new wave of technology that we in Maine, and other states, have been and will continue to be seeing over the next several years. The fact is is that we are on the brink of new technology that ten years ago we might not have even imagined. With that technology come wonderful and very positive things, especially in the field of agriculture. With it as well comes the reality that many consumers, and I would say a very broad percentage of consumers, have very real concerns that they be kept aware and abreast of the issues that will impact them and their families directly. I have been contacted by a number of constituents and by a number of people outside my district out of concern that with new changes in how we produce food with such things as genetic engineering where we are literally crossing genes of totally unrelated plants and creating things that have never existed before, there is a real concern to the public that there be public notice so the people can make decisions on their own, to make choices on their own, about what they and their families will be consuming on a daily basis. This bill may not have been the answer, or clearly it was not to find favor in the Agriculture Committee, but I think that as a legislature we need to be very alert that this is an issue that is ongoing, that it is going to magnify over the next several years as we see the results of new technology. I think that the whole issue of public knowledge and informing the public about what we are doing is going to become increasingly important. So, although I am not going to battle that we fight for the minority report I hope that we leave this chamber today knowing that it is certainly not a closed book and it is an issue that does bring a great deal of public concern. Thank you.

Senator **HANDY** of Androscoggin requested a Division.

**THE PRESIDENT:** The pending question before the Senate is the motion by Senator **PARADIS** of Aroostook, to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report.

A Division has been requested.

Will all those in favor please rise in their places and remain standing until counted.

Will all those opposed please rise in their places and remain standing until counted.

19 Senators having voted in the affirmative and 10 Senators having voted in the negative, the motion by Senator **PARADIS** of Aroostook, to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, **PREVAILED**.

Sent down for concurrence.

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Under suspension of the Rules, all matters thus acted upon were ordered sent down forthwith for concurrence.

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Off Record Remarks

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The Chair laid before the Senate the Tabled and Specially Assigned (3/23/94) matter:

Bill "An Act to Enhance the Effectiveness of the Office of the Public Advocate"

S.P. 693 L.D. 1879  
(C "A" S-445)

Tabled - March 22, 1994, by Senator **ESTY** of Cumberland.

Pending - **PASSAGE TO BE ENGROSSED AS AMENDED**

(In Senate, March 22, 1994, **READ A SECOND TIME**.)

On motion by Senator **VOSE** of Washington, Senate Amendment "A" (S-514) **READ** and **ADOPTED**.

Which was **PASSED TO BE ENGROSSED, As Amended**.

Sent down for concurrence.

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Under suspension of the Rules, all matters thus acted upon were ordered sent down forthwith for concurrence.

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Off Record Remarks

On motion by Senator **CIANCHETTE** of Somerset, **RECESSED** until 4:00 this afternoon.

After Recess

Senate called to order by the President.

Off Record Remarks

Out of order and under suspension of the Rules, the Senate considered the following:

**COMMITTEE REPORTS**

**House**

**Ought to Pass As Amended**

The Committee on **HUMAN RESOURCES** on Bill "An Act to Enable Parents to Retain Custody in Voluntary Placements"

H.P. 1377 L.D. 1864

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-902).**

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-902).**

Which Report was **READ** and **ACCEPTED**, in concurrence.

The Bill **READ ONCE.**

Committee Amendment "A" (H-902) **READ** and **ADOPTED**, in concurrence.

The Bill as **Amended, TOMORROW ASSIGNED FOR SECOND READING.**

The Committee on **JUDICIARY** on Bill "An Act Concerning Child Sexual Abuse Laws"

H.P. 919 L.D. 1243

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-898).**

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-898).**

Which Report was **READ** and **ACCEPTED**, in concurrence.

The Bill **READ ONCE.**

Committee Amendment "A" (H-898) **READ** and **ADOPTED**, in concurrence.

The Bill as **Amended, TOMORROW ASSIGNED FOR SECOND READING.**

The Committee on **JUDICIARY** on Bill "An Act to Amend the Provisions Relating to Mental Examination and Observation of Persons Accused of a Crime"

H.P. 1214 L.D. 1633

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-897).**

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-897).**

Which Report was **READ** and **ACCEPTED**, in concurrence.

The Bill **READ ONCE.**

Committee Amendment "A" (H-897) **READ** and **ADOPTED**, in concurrence.

The Bill as **Amended, TOMORROW ASSIGNED FOR SECOND READING.**

The Committee on **JUDICIARY** on Bill "An Act Relating to Access for People with Disabilities"

H.P. 1321 L.D. 1783

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-894).**

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-894).**

Which Report was **READ** and **ACCEPTED**, in concurrence.

The Bill **READ ONCE.**

Committee Amendment "A" (H-894) **READ** and **ADOPTED**, in concurrence.

The Bill as **Amended, TOMORROW ASSIGNED FOR SECOND READING.**

The Committee on **JUDICIARY** on Bill "An Act to Amend the Laws Regarding Protective Custody"

H.P. 1322 L.D. 1784

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A" (H-896)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-896)**.

Which Report was **READ** and **ACCEPTED**, in concurrence.

The Bill **READ ONCE**.

Committee Amendment "A" (H-896) **READ** and **ADOPTED**, in concurrence.

The Bill as **Amended, TOMORROW ASSIGNED FOR SECOND READING**.

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The Committee on **JUDICIARY** on Bill "An Act to Promote the Continued Use of Private Lands for Recreation"

H.P. 1342 L.D. 1809

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A" (H-895)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-895)**.

Which Report was **READ** and **ACCEPTED**, in concurrence.

The Bill **READ ONCE**.

Committee Amendment "A" (H-895) **READ** and **ADOPTED**, in concurrence.

The Bill as **Amended, TOMORROW ASSIGNED FOR SECOND READING**.

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The Committee on **LEGAL AFFAIRS** on Bill "An Act to Amend the Laws Governing Municipal Elections"

H.P. 1110 L.D. 1506

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A" (H-901)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-901)**.

Which Report was **READ** and **ACCEPTED**, in concurrence.

The Bill **READ ONCE**.

Committee Amendment "A" (H-901) **READ** and **ADOPTED**, in concurrence.

The Bill as **Amended, TOMORROW ASSIGNED FOR SECOND READING**.

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The Committee on **LEGAL AFFAIRS** on Bill "An Act to Continue Election Reform Efforts" (Governor's Bill)  
H.P. 1438 L.D. 1964

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A" (H-900)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-900)**.

Which Report was **READ** and **ACCEPTED**, in concurrence.

The Bill **READ ONCE**.

Committee Amendment "A" (H-900) **READ** and **ADOPTED**, in concurrence.

The Bill as **Amended, TOMORROW ASSIGNED FOR SECOND READING**.

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The Committee on **TAXATION** on Bill "An Act to Increase the County Share of the Real Estate Transfer Tax"

H.P. 464 L.D. 601

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A" (H-854)**.

Comes from the House with the Report **READ** and the Bill and Accompanying Papers **RECOMMITTED** to the Committee on **TAXATION**.

Which Report was **READ** and **ACCEPTED**.

The Bill **READ ONCE**.

On motion by Senator **CAREY** of Kennebec, the Bill and Accompanying Papers **RECOMMITTED** to the Committee on **TAXATION**, in concurrence.

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Off Record Remarks

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#### Divided Report

The Majority of the Committee on **APPROPRIATIONS & FINANCIAL AFFAIRS** on **RESOLUTION**, to Amend the Constitution of Maine Regarding the Rainy Day Fund  
H.P. 234 L.D. 302

Reported that the same **Ought Not to Pass**.

Signed:

Senators:

PEARSON of Penobscot  
TITCOMB of Cumberland

Representatives:

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

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-843).**

Signed:

Senator:

FOSTER of Hancock

Representatives:

FOSS of Yarmouth  
MACBRIDE of Presque Isle  
REED of Falmouth

Comes from the House with the Majority **UGHT NOT TO PASS** Report **READ** and **ACCEPTED**.

Which Reports were **READ**.

The Majority **UGHT NOT TO PASS** Report **ACCEPTED**, in concurrence.

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**Divided Report**

The Majority of the Committee on **LEGAL AFFAIRS** on Bill "An Act to Ensure Appropriate and Equitable Penalties for Violation of Electoral Laws"

H.P. 1311 L.D. 1766

Reported that the same **Ought Not to Pass**.

Signed:

Senator:

HALL of Piscataquis

Representatives:

STEVENS of Sabattus  
BENNETT of Norway  
ROBICHAUD of Caribou  
TRUE of Fryeburg  
NASH of Camden

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-830).**

Signed:

Senators:

CAREY of Kennebec  
HANDY of Androscoggin

Representatives:

DAGGETT of Augusta  
BOWERS of Washington  
GAMACHE of Lewiston

Comes from the House with the Minority **UGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-830).**

Which Reports were **READ**.

On motion by Senator **ESTY** of Cumberland, Tabled until Later in Today's Session, pending **ACCEPTANCE** of **EITHER REPORT**.

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**Divided Report**

The Majority of the Committee on **STATE & LOCAL GOVERNMENT** on RESOLUTION, Proposing an Amendment to the Constitution of Maine to Provide for the Recall of Persons Holding Elective Civil Offices

H.P. 1402 L.D. 1911

Reported that the same **Ought Not to Pass**.

Signed:

Senators:

BERUBE of Androscoggin  
ESTY of Cumberland  
BUTLAND of Cumberland

Representatives:

JOSEPH of Waterville  
GRAY of Sedgwick  
DUTREMBLE of Biddeford  
ROWE of Portland  
WALKER of Blue Hill  
LOOK of Jonesboro  
BENNETT of Norway  
YOUNG of Limestone

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-857).**

Signed:

Representatives:

KILKELLY of Wiscasset  
AHEARNE of Madawaska

Comes from the House with the Majority **UGHT NOT TO PASS** Report **READ** and **ACCEPTED**.

Which Reports were **READ**.

The Majority **UGHT NOT TO PASS** Report **ACCEPTED**, in concurrence.

**Divided Report**

The Majority of the Committee on **STATE & LOCAL GOVERNMENT** on RESOLUTION, Proposing An Amendment to the Constitution of Maine to Provide for the Election of a Lieutenant Governor and to Provide for Succession to the Office of Governor

H.P. 1422 L.D. 1936

Reported that the same **Ought Not to Pass.**

Signed:

Senators:

- BERUBE of Androscoggin
- ESTY of Cumberland
- BUTLAND of Cumberland

Representatives:

- JOSEPH of Waterville
- GRAY of Sedgwick
- DUTREMBLE of Biddeford
- LOOK of Jonesboro
- BENNETT of Norway
- YOUNG of Limestone

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-856).**

Signed:

Representatives:

- AHEARNE of Madawaska
- ROWE of Portland
- WALKER of Blue Hill
- KILKELLY of Wiscasset

Comes from the House with the Majority **UGHT NOT TO PASS** Report **READ** and **ACCEPTED.**

Which Reports were **READ.**

The Majority **UGHT NOT TO PASS** Report **ACCEPTED,** in concurrence.

**Divided Report**

The Majority of the Committee on **TAXATION** on Bill "An Act to Provide Equity in the Laws Concerning Tax Exemptions for Veterans"

H.P. 1413 L.D. 1923

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-837).**

Signed:

Senators:

- BALDACCI of Penobscot
- CAREY of Kennebec
- SUMMERS of Cumberland

Representatives:

- HOGLUND of Portland
- MURPHY of Berwick
- SIMONEAU of Thomaston
- DIPIETRO of South Portland
- SPEAR of Nobleboro

- RAND of Portland
- TARDY of Palmyra
- DORE of Auburn
- FARNSWORTH of Hallowell

The Minority of the same Committee on the same subject reported that the same **Ought Not to Pass.**

Signed:

Representative:

- NADEAU of Saco

Comes from the House with the Majority **UGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-837).**

Which Reports were **READ.**

The Majority **UGHT TO PASS AS AMENDED** Report **ACCEPTED,** in concurrence.

The Bill **READ ONCE.**

Committee Amendment "A" (H-837) **READ** and **ADOPTED,** in concurrence.

The Bill, as **Amended,** **TOMORROW ASSIGNED FOR SECOND READING.**

Out of order and under suspension of the Rules, the Senate considered the following:

**COMMUNICATIONS**

The Following Communication:

**COMMITTEE ON FISHERIES AND WILDLIFE  
ONE HUNDRED AND SIXTEENTH LEGISLATURE**

March 24, 1994

The Honorable Dennis L. Dutremble  
President of the Senate of Maine  
116th Maine Legislature  
State House  
Augusta, Maine 04333

Dear Mr. President:

In accordance with 3 M.R.S.A., Chapter 6, Section 151, and with Joint Rule 38 of the 116th Maine Legislature, the Joint Standing Committee on Fisheries and Wildlife has had under consideration the nomination of Stanley D. Milton of Andover, for appointment to the Inland Fisheries and Wildlife Advisory Council.

After public hearing and discussion on this nomination, the Committee proceeded to vote on the motion to recommend to the Senate that this nomination be confirmed. The Committee Clerk called the roll with the following result:

YEAS:	Sen. 3	Luther of Oxford,	O'Dea of
		Penobscot,	Hall of
		Piscataquis	

Rep. 10 Rotondi of Athens, Jacques of Waterville, Clark of Millinocket, Tracy of Rome, Swazey of Bucksport, Larrivee of Gorham, Greenlaw of Standish, Farren of Cherryfield, Heino of Boothbay, Nickerson of Turner

NAYS: 0

ABSENT: 0

Thirteen members of the Committee having voted in the affirmative and none in the negative, it was the vote of the Committee that the nomination of Stanley D. Milton of Andover, for appointment to the Inland Fisheries and Wildlife Advisory Council be confirmed.

Signed:

S/M. Ida Luther  
Senate Chair

S/Dorothy A. Rotondi  
House Chair

Which was **READ** and **ORDERED PLACED ON FILE**.

**THE PRESIDENT:** The Joint Standing Committee on Fisheries and Wildlife has recommended the nomination of Stanley D. Milton of Andover be confirmed.

The pending question before the Senate is: "Shall the recommendation of the Committee on Fisheries and Wildlife be overridden?"

In accordance with 3 M.R.S.A., Chapter 6, Section 151 and with Joint Rule 38 of the 116th Legislature, the vote will be taken by the Yeas and Nays.

A vote of Yes will be in favor of overriding the recommendation of the Committee.

A vote of No will be in favor of sustaining the recommendation of the Committee.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

**ROLL CALL**

YEAS: Senators None

NAYS: Senators AMERO, BEGLEY, BERUBE, BRANNIGAN, BUSTIN, BUTLAND, CAHILL, CAREY, CARPENTER, CIANCHETTE, CLEVELAND, CONLEY, ESTY, FOSTER, GOULD, HALL, HANDY, HANLEY, HARRIMAN, KIEFFER, LAWRENCE, LUDWIG, LUTHER, MARDEN, MCCORMICK, O'DEA, PARADIS, PEARSON, PINGREE, SUMMERS, TITCOMB, VOSE, WEBSTER, THE PRESIDENT - DENNIS L. DUTREMBLE

ABSENT: Senator BALDACCI

No Senators having voted in the affirmative and 34 Senators having voted in the negative, with 1 Senator being absent, and none being less than two-thirds of the Membership present, it was the vote of the Senate that the Committee's recommendation be **ACCEPTED** and the nomination of Stanley D. Milton, was **CONFIRMED**.

The Secretary has so informed the Speaker of the House.

The Following Communication:

**COMMITTEE ON FISHERIES AND WILDLIFE  
ONE HUNDRED AND SIXTEENTH LEGISLATURE**

March 24, 1994

The Honorable Dennis L. Dutremble  
President of the Senate of Maine  
116th Maine Legislature  
State House  
Augusta, Maine 04333

Dear Mr. President:

In accordance with 3 M.R.S.A., Chapter 6, Section 151, and with Joint Rule 38 of the 116th Maine Legislature, the Joint Standing Committee on Fisheries and Wildlife has had under consideration the nomination of Gary F. Cobb of North New Portland, for reappointment to the Inland Fisheries and Wildlife Advisory Council.

After public hearing and discussion on this nomination, the Committee proceeded to vote on the motion to recommend to the Senate that this nomination be confirmed. The Committee Clerk called the roll with the following result:

YEAS: Sen. 3 Luther of Oxford, O'Dea of Penobscot, Hall of Piscataquis

Rep. 10 Rotondi of Athens, Jacques of Waterville, Clark of Millinocket, Tracy of Rome, Swazey of Bucksport, Larrivee of Gorham, Greenlaw of Standish, Farren of Cherryfield, Heino of Boothbay, Nickerson of Turner

NAYS: 0

ABSENT: 0

Thirteen members of the Committee having voted in the affirmative and none in the negative, it was the vote of the Committee that the nomination of Gary F. Cobb of North New Portland, for reappointment to the Inland Fisheries and Wildlife Advisory Council be confirmed.

Signed:

S/M. Ida Luther  
Senate Chair

S/Dorothy A. Rotondi  
House Chair

Which was **READ** and **ORDERED PLACED ON FILE**.

**THE PRESIDENT:** The Joint Standing Committee on Fisheries and Wildlife has recommended the nomination of Gary F. Cobb of North New Portland be confirmed.

The pending question before the Senate is: "Shall the recommendation of the Committee on Fisheries and Wildlife be overridden?"

In accordance with 3 M.R.S.A., Chapter 6, Section 151 and with Joint Rule 38 of the 116th Legislature, the vote will be taken by the Yeas and Nays.

A vote of Yes will be in favor of overriding the recommendation of the Committee.

A vote of No will be in favor of sustaining the recommendation of the Committee.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

**ROLL CALL**

YEAS: Senators None

NAYS: Senators AMERO, BEGLEY, BERUBE, BRANNIGAN, BUSTIN, BUTLAND, CAHILL, CAREY, CARPENTER, CIANCHETTE, CLEVELAND, CONLEY, ESTY, FOSTER, GOULD, HALL, HANDY, HANLEY, HARRIMAN, KIEFFER, LAWRENCE, LUDWIG, LUTHER, MARDEN, MCCORMICK, O'DEA, PARADIS, PEARSON, PINGREE, SUMMERS, TITCOMB, VOSE, WEBSTER, THE PRESIDENT - DENNIS L. DUTREMBLE

ABSENT: Senator BALDACCI

No Senators having voted in the affirmative and 34 Senators having voted in the negative, with 1 Senator being absent, and none being less than two-thirds of the Membership present, it was the vote of the Senate that the Committee's recommendation be **ACCEPTED** and the nomination of Gary F. Cobb, was **CONFIRMED**.

The Secretary has so informed the Speaker of the House.

The Following Communication:

**COMMITTEE ON FISHERIES AND WILDLIFE  
ONE HUNDRED AND SIXTEENTH LEGISLATURE**

March 24, 1994

The Honorable Dennis L. Dutremble  
President of the Senate of Maine  
116th Maine Legislature  
State House  
Augusta, Maine 04333

Dear Mr. President:

In accordance with 3 M.R.S.A., Chapter 6, Section 151, and with Joint Rule 38 of the 116th Maine Legislature, the Joint Standing Committee on Fisheries and Wildlife has had under consideration the nomination of Carroll T. Cutting of E. Sebago, for reappointment to the Inland Fisheries and Wildlife Advisory Council.

After public hearing and discussion on this nomination, the Committee proceeded to vote on the motion to recommend to the Senate that this nomination be confirmed. The Committee Clerk called the roll with the following result:

YEAS:	Sen.	3	Luther of Oxford, O'Dea of Penobscot, Hall of Piscataquis
	Rep.	10	Rotondi of Athens, Jacques of Waterville, Clark of Millinocket, Tracy of Rome, Swazey of Bucksport, Larrivee of Gorham, Greenlaw of Standish, Farren of Cherryfield, Heino of Boothbay, Nickerson of Turner

NAYS: 0

ABSENT: 0

Thirteen members of the Committee having voted in the affirmative and none in the negative, it was the vote of the Committee that the nomination of Carroll T. Cutting of E. Sebago, for reappointment to the Inland Fisheries and Wildlife Advisory Council be confirmed.

Signed:

S/M. Ida Luther  
Senate Chair

S/Dorothy A. Rotondi  
House Chair

Which was **READ** and **ORDERED PLACED ON FILE**.

**THE PRESIDENT:** The Joint Standing Committee on Fisheries and Wildlife has recommended the nomination of Carroll T. Cutting of East Sebago be confirmed.

The pending question before the Senate is: "Shall the recommendation of the Committee on Fisheries and Wildlife be overridden?"

In accordance with 3 M.R.S.A., Chapter 6, Section 151 and with Joint Rule 38 of the 116th Legislature, the vote will be taken by the Yeas and Nays.

A vote of Yes will be in favor of overriding the recommendation of the Committee.

A vote of No will be in favor of sustaining the recommendation of the Committee.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.



**ROLL CALL**

YEAS: Senators None

NAYS: Senators AMERO, BEGLEY, BERUBE, BRANNIGAN, BUSTIN, BUTLAND, CAHILL, CAREY, CARPENTER, CIANCHETTE, CLEVELAND, CONLEY, ESTY, FOSTER, GOULD, HALL, HANDY, HANLEY, HARRIMAN, KIEFFER, LAWRENCE, LUDWIG, LUTHER, MARDEN, MCCORMICK, O'DEA, PARADIS, PEARSON, PINGREE, SUMMERS, TITCOMB, VOSE, WEBSTER, THE PRESIDENT - DENNIS L. DUTREMBLE

ABSENT: Senator BALDACCI

No Senators having voted in the affirmative and 34 Senators having voted in the negative, with 1 Senator being absent, and none being less than two-thirds of the Membership present, it was the vote of the Senate that the Committee's recommendation be **ACCEPTED** and the nomination of Carroll T. Cutting, was **CONFIRMED**.

The Secretary has so informed the Speaker of the House.

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Off Record Remarks

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The Following Communication:

**COMMITTEE ON FISHERIES AND WILDLIFE  
ONE HUNDRED AND SIXTEENTH LEGISLATURE**

March 24, 1994

The Honorable Dennis L. Dutremble  
President of the Senate of Maine  
116th Maine Legislature  
State House  
Augusta, Maine 04333

Dear Mr. President:

In accordance with 3 M.R.S.A., Chapter 6, Section 151, and with Joint Rule 38 of the 116th Maine Legislature, the Joint Standing Committee on Fisheries and Wildlife has had under consideration the nomination of C. Thomas Jagger of Springvale, for reappointment to the Inland Fisheries and Wildlife Advisory Council.

After public hearing and discussion on this nomination, the Committee proceeded to vote on the motion to recommend to the Senate that this nomination be confirmed. The Committee Clerk called the roll with the following result:

YEAS: Sen. 3 Luther of Oxford, O'Dea of Penobscot, Hall of Piscataquis

Rep. 10 Rotondi of Athens, Jacques of Waterville, Clark of Millinocket, Tracy of Rome, Swazey of Bucksport, Larrivee of Gorham, Greenlaw of Standish, Farren of Cherryfield, Heino of Boothbay, Nickerson of Turner

NAYS: 0

ABSENT: 0

Thirteen members of the Committee having voted in the affirmative and none in the negative, it was the vote of the Committee that the nomination of C. Thomas Jagger of Springvale, for reappointment to the Inland Fisheries and Wildlife Advisory Council be confirmed.

Signed:

S/M. Ida Luther  
Senate Chair

S/Dorothy A. Rotondi  
House Chair

Which was **READ** and **ORDERED PLACED ON FILE**.

**THE PRESIDENT:** The Joint Standing Committee on Fisheries and Wildlife has recommended the nomination of C. Thomas Jagger of Springvale be confirmed.

The pending question before the Senate is: "Shall the recommendation of the Committee on Fisheries and Wildlife be overridden?"

In accordance with 3 M.R.S.A., Chapter 6, Section 151 and with Joint Rule 38 of the 116th Legislature, the vote will be taken by the Yeas and Nays.

A vote of Yes will be in favor of overriding the recommendation of the Committee.

A vote of No will be in favor of sustaining the recommendation of the Committee.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

**ROLL CALL**

YEAS: Senators None

NAYS: Senators AMERO, BEGLEY, BERUBE, BRANNIGAN, BUSTIN, BUTLAND, CAHILL, CAREY, CARPENTER, CIANCHETTE, CLEVELAND, CONLEY, ESTY, FOSTER, GOULD, HALL, HANDY, HANLEY, HARRIMAN, KIEFFER, LAWRENCE, LUDWIG, LUTHER, MARDEN, MCCORMICK, O'DEA, PARADIS, PEARSON, PINGREE, SUMMERS, TITCOMB, VOSE, WEBSTER, THE PRESIDENT - DENNIS L. DUTREMBLE

ABSENT: Senator BALDACCI

No Senators having voted in the affirmative and 34 Senators having voted in the negative, with 1 Senator being absent, and none being less than two-thirds of the Membership present, it was the vote of the Senate that the Committee's recommendation be **ACCEPTED** and the nomination of C. Thomas Jagger, was **CONFIRMED**.

The Secretary has so informed the Speaker of the House.

Out of order and under suspension of the Rules, the Senate considered the following:

**COMMITTEE REPORTS**

**House**

**Divided Report**

The Majority of the Committee on **EDUCATION** on Bill "An Act Relating to Conferring of Degrees by the Research Institute for Semiological Mathematics" H.P. 594 L.D. 809

Reported that the same **Ought Not to Pass**.

Signed:

Senator:  
AMERO of Cumberland

Representatives:  
AULT of Wayne  
OLIVER of Portland  
PFEIFFER of Brunswick  
SIMONDS of Cape Elizabeth  
NORTON of Winthrop  
SMALL of Bath

The Minority of the same Committee on the same subject reported that the same **Ought to Pass**.

Signed:

Senators:  
O'DEA of Penobscot  
LAWRENCE of York

Representatives:  
PINETTE of Fort Kent  
STEVENS of Orono  
CLOUTIER of South Portland  
MITCHELL of Vassalboro

Comes from the House with the Majority **UGHT NOT TO PASS** Report **READ** and **ACCEPTED**.

Which Reports were **READ**.

On motion by Senator **ESTY** of Cumberland, Tabled until Later in Today's Session, pending **ACCEPTANCE OF EITHER REPORT**.

**Divided Report**

The Majority of the Committee on **ENERGY & NATURAL RESOURCES** on Bill "An Act to Refund Money Collected from the Disposal Fee on Major Appliances and Tires to Municipalities"

H.P. 1314 L.D. 1776

Reported that the same **Ought Not to Pass**.

Signed:

Senators:  
LAWRENCE of York  
CIANCHETTE of Somerset  
LUDWIG of Aroostook

Representatives:  
MARTIN of Eagle Lake  
COLES of Harpswell  
MARSH of West Gardiner  
CONSTANTINE of Bar Harbor  
POULIN of Oakland  
MITCHELL of Freeport  
WENTWORTH of Kennebunkport  
ANDERSON of Woodland  
GOULD of Greenville

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-842)**.

Signed:

Representative:  
LORD of Waterboro

Comes from the House with the Majority **UGHT NOT TO PASS** Report **READ** and **ACCEPTED**.

Which Reports were **READ**.

On motion by Senator **ESTY** of Cumberland, Tabled until Later in Today's Session, pending **ACCEPTANCE OF EITHER REPORT**.

**Senate**

**Divided Report**

The Majority of the Committee on **HUMAN RESOURCES** on Bill "An Act to Strengthen the Coordinated Delivery of Substance Abuse Services in the State"

S.P. 655 L.D. 1824

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-508)**.

Signed:

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

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "B" (S-509).**

Signed:

Senator:

HARRIMAN of Cumberland

Representative:

BRENNAN of Portland

Which Reports were **READ**.

On motion by Senator **ESTY** of Cumberland, Tabled until Later in Today's Session, pending **ACCEPTANCE OF EITHER REPORT**.

Out of order and under suspension of the Rules, the Senate considered the following:

**COMMITTEE REPORTS**

**Senate**

**Ought to Pass As Amended**

Senator **O'DEA** for the Committee on **EDUCATION** on Bill "An Act Regarding Maine's Comprehensive Early Intervention System for Infants and Children, Ages Zero to Five" (Emergency)

S.P. 663 L.D. 1831

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-510).**

Which Report was **READ** and **ACCEPTED**.

The Bill **READ ONCE**.

Committee Amendment "A" (S-510) **READ** and **ADOPTED**.

The Bill as **Amended, TOMORROW ASSIGNED FOR SECOND READING**.

Senator **O'DEA** for the Committee on **EDUCATION** on Bill "An Act to Establish the Maine School of Science and Mathematics and the Task Force on the Maine School of Visual and Performing Arts" (Governor's Bill)

S.P. 733 L.D. 1958

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-511).**

Which Report was **READ** and **ACCEPTED**.

The Bill **READ ONCE**.

Committee Amendment "A" (S-511) **READ** and **ADOPTED**.

The Bill as **Amended, TOMORROW ASSIGNED FOR SECOND READING**.

Senator **HANDY** for the Committee on **LEGAL AFFAIRS** on Bill "An Act to Clarify Liquor Licensing Authority"

S.P. 614 L.D. 1712

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-518).**

Which Report was **READ** and **ACCEPTED**.

The Bill **READ ONCE**.

Committee Amendment "A" (S-518) **READ** and **ADOPTED**.

The Bill as **Amended, TOMORROW ASSIGNED FOR SECOND READING**.

**Divided Report**

Eight Members of the Committee on **AGING, RETIREMENT & VETERANS** on **RESOLUTION**, Proposing an Amendment to the Constitution of Maine to Establish a Contractual Obligation for Members of the Maine State Retirement System

S.P. 653 L.D. 1822

Report in Report **A** that the same **Ought to Pass as Amended by Committee Amendment "A" (S-515)**

Signed:

Senators:

TITCOMB of Cumberland  
MCCORMICK of Kennebec

Representatives:

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

One Member of the Same Committee on the same subject reported in Report **B** that the same **Ought to Pass as Amended by Committee Amendment "B" (S-516)**

Signed:

Senator:

WEBSTER of Franklin

Four Members of the Same Committee on the same subject report in Report **C** that the same **Ought Not to Pass**

Signed:

**SECOND READERS**

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

The Committee on **Bills in the Second Reading** reported the following:

**House As Amended**

Bill "An Act to Amend Certain Motor Vehicle Laws"  
H.P. 1270 L.D. 1697  
(C "A" H-886)

Bill "An Act Regarding the Workers' Compensation Residual Market Mechanism" (Emergency)  
H.P. 1291 L.D. 1739  
(C "A" H-887)

Bill "An Act to Implement the Recommendations of the Maine Sardine Council" (Emergency)  
H.P. 1386 L.D. 1885  
(C "A" H-806; H "A" H-850)

Bill "An Act to Establish the Municipal Cost Component for Unorganized Territory Services to Be Rendered in Fiscal Year 1994-95" (Emergency)  
H.P. 1410 L.D. 1920  
(C "A" H-890)

Which were **READ A SECOND TIME** and **PASSED TO BE ENGROSSED, As Amended**, in concurrence.

**Senate As Amended**

Bill "An Act to Increase Access to and Affordability of Mental Health and Substance Abuse Treatment Services"  
S.P. 356 L.D. 1070  
(C "A" S-505)

Bill "An Act to Ensure Quality Psychological Services"  
S.P. 580 L.D. 1624  
(C "A" S-504)

Which were **READ A SECOND TIME** and **PASSED TO BE ENGROSSED, As Amended**.

Sent down for concurrence.

Out of order and under suspension of the Rules, the Senate considered the following:

**ENACTORS**

The Committee on **Engrossed Bills** reported as truly and strictly engrossed the following:

Which Reports were **READ**.

On motion by Senator **ESTY** of Cumberland, Tabled until Later in Today's Session, pending **ACCEPTANCE OF ANY REPORT**.

**Divided Report**

The Majority of the Committee on **LABOR** on Bill "An Act to Extend Penalty Sanctions to Employee Health Benefit Plans"  
S.P. 671 L.D. 1843

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-512)**.

Signed:

Senators:  
HANDY of Androscoggin  
LUTHER of Oxford

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

The Minority of the same Committee on the same subject reported that the same **Ought Not to Pass**.

Signed:

Senator:  
BEGLEY of Lincoln

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

Which Reports were **READ**.

On motion by Senator **ESTY** of Cumberland, Tabled 1 Legislative Day, pending **ACCEPTANCE OF EITHER REPORT**.

Out of order and under suspension of the Rules, the Senate considered the following:

An Act to Allow the Growth and Sale of Cultivated Ginseng in Maine

H.P. 1236 L.D. 1663  
(H "A" H-824 to C  
"A" H-761)

Which was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Out of order and under suspension of the Rules, the Senate considered the following:

**PAPERS FROM THE HOUSE**

**Non-concurrent Matter**

HOUSE REPORTS - from the Committee on **FISHERIES & WILDLIFE** on Bill "An Act to Exempt Owners of Shooting Ranges from any Civil or Criminal Action Relating to Noise Pollution"

H.P. 724 L.D. 983

Majority - **Change of Reference**

Minority - **Ought Not to Pass**

In House, March 23, 1994, the Majority **CHANGE OF REFERENCE** Report **READ** and **ACCEPTED** and the Bill and Accompanying Papers **REFERRED** to the Committee on **ENERGY & NATURAL RESOURCES**.

In Senate, March 23, 1994, Bill and Accompanying Papers **INDEFINITELY POSTPONED** in **NON-CONCURRENCE**.

Comes from the House, that Body **ADHERED**.

Senator **ESTY** of Cumberland moved that the Senate **ADHERE**.

Senator **HANLEY** of Oxford moved that the Senate **RECEDE** and **CONCUR**.

The Chair ordered a Division.

On motion by Senator **ESTY** of Cumberland, Tabled until Later in Today's Session, pending the motion by Senator **HANLEY** of Oxford to **RECEDE** and **CONCUR**. (Division ordered.)

**COMMUNICATIONS**

The Following Communication:

**JOINT SELECT COMMITTEE ON CORRECTIONS  
ONE HUNDRED AND SIXTEENTH LEGISLATURE**

March 23, 1994

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

Dear President Dutremble and Speaker Gwadosky:

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

L.D. 901 An Act to Reinstate a System of Parole

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

Sincerely,

S/Sen. Beverly M. Bustin  
Senate Chair

S/Rep. Anne M. Larrivee  
House Chair

Which was **READ** and with Accompanying Bills **ORDERED PLACED ON FILE**.

The Following Communication:

**COMMITTEE ON HUMAN RESOURCES  
ONE HUNDRED AND SIXTEENTH LEGISLATURE**

March 23, 1994

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

Dear President Dutremble and Speaker Gwadosky:

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

L.D. 999 An Act to Establish the Child Assistance Demonstration Program

L.D. 1835 An Act to Regulate Revenues for Merged Hospitals

L.D. 1875 An Act to Authorize and Regulate the Integrated Delivery of Services by the Licensed Acute Care Hospitals in the City of Portland

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

Sincerely,

S/Sen. Judy Paradis  
Senate Chair

S/Rep. Sharon Anglin Treat  
House Chair

Which was **READ** and with Accompanying Bills  
**ORDERED PLACED ON FILE.**

The Following Communication:

**COMMITTEE ON JUDICIARY  
ONE HUNDRED AND SIXTEENTH LEGISLATURE**

March 23, 1994

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

Dear President Dutremble and Speaker Gwadosky:

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

L.D. 1707 An Act to Provide Better Information  
Concerning Tort Reform

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

Sincerely,

S/Sen. Gerard P. Conley, Jr. S/Rep. Constance D. Cote  
Senate Chair House Chair

Which was **READ** and with Accompanying Bills  
**ORDERED PLACED ON FILE.**

Senator **ESTY** of Cumberland was granted  
unanimous consent to address the Senate off the  
Record.

Senator **CARPENTER** of York was granted unanimous  
consent to address the Senate off the Record.

On motion by Senator **ESTY** of Cumberland,  
**RECESSED** until the sound of the bell.

After Recess

Senate called to order by the President.

Out of order and under suspension of the Rules,  
the Senate considered the following:

**COMMITTEE REPORTS**

**Senate**

**Divided Report**

The Majority of the Committee on **AGING,  
RETIREMENT & VETERANS** on RESOLUTION, Proposing an  
Amendment to the Constitution of Maine to Establish a  
Schedule for Paying Off the Unfunded Liability of the  
Maine State Retirement System

S.P. 607 L.D. 1705

Reported that the same **Ought Not to Pass.**

Signed:

Senators:

TITCOMB of Cumberland  
WEBSTER of Franklin

Representatives:

JALBERT of Lisbon  
CATHCART of Orono  
WENTWORTH of Kennebunkport  
VIGUE of Winslow  
BARTH of Bethel  
CLUKEY of Houlton  
JOY of Island Falls  
BIRNEY of Paris  
TUFTS of Stockton Springs

The Minority of the same Committee on the same  
subject reported that the same **Ought to Pass as  
Amended by Committee Amendment "A" (S-520).**

Signed:

Senator:

MCCORMICK of Kennebec

Representative:

HATCH of Skowhegan

Which Reports were **READ.**

Senator **ESTY** of Cumberland moved to Tabled 1  
Legislative Day, pending **ACCEPTANCE OF EITHER  
REPORT.**

Senator **ESTY** of Cumberland requested and  
received leave of the Senate to withdraw his motion  
to Table 1 Legislative Day, pending **ACCEPTANCE OF  
EITHER REPORT.**

On motion by Senator **ESTY** of Cumberland, Tabled until Later in Today's Session, pending **ACCEPTANCE OF EITHER REPORT**.

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**ORDERS OF THE DAY**

The Chair laid before the Senate the Tabled and Later Today Assigned matter:

SENATE REPORTS - from the Committee on **AGING, RETIREMENT & VETERANS** on RESOLUTION, Proposing an Amendment to the Constitution of Maine to Establish a Schedule for Paying Off the Unfunded Liability of the Maine State Retirement System

S.P. 607 L.D. 1705

Majority - **Ought Not to Pass**

Minority - **Ought to Pass as Amended by Committee Amendment "A" (S-520)**

Tabled - March 24, 1994, by Senator **ESTY** of Cumberland.

Pending - **ACCEPTANCE OF EITHER REPORT**

(In Senate, March 24, 1994, Reports **READ**.)

The Majority **OUGHT NOT TO PASS** Report **ACCEPTED**.

Sent down for concurrence.

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The Chair laid before the Senate the Tabled and Later Today Assigned matter:

Bill "An Act to Define Responsibilities of the Commission on Biotechnology and Genetic Engineering"  
H.P. 1015 L.D. 1361  
(C "A" H-877)

Tabled - March 24, 1994, by Senator **ESTY** of Cumberland.

Pending - **PASSAGE TO BE ENGROSSED AS AMENDED**, in concurrence

(In Senate, March 24, 1994, **READ A SECOND TIME**.)

(In House, March 23, 1994, **PASSED TO BE ENGROSSED, As Amended**.)

On motion by Senator **ESTY** of Cumberland, Tabled 1 Legislative Day, pending **PASSAGE TO BE ENGROSSED AS AMENDED**, in concurrence.

The Chair laid before the Senate the Tabled and Later Today Assigned matter:

HOUSE REPORTS - from the Committee on **EDUCATION** on Bill "An Act Relating to Conferring of Degrees by the Research Institute for Semiological Mathematics"  
H.P. 594 L.D. 809

Majority - **Ought Not to Pass**

Minority - **Ought to Pass**

Tabled - March 24, 1994, by Senator **ESTY** of Cumberland.

Pending - **ACCEPTANCE OF EITHER REPORT**

(In Senate, March 24, 1994, Reports **READ**.)

(In House, March 23, 1994, Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.)

The Majority **OUGHT NOT TO PASS** Report **ACCEPTED**, in concurrence.

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The Chair laid before the Senate the Tabled and Later Today Assigned matter:

HOUSE REPORTS - from the Committee on **ENERGY & NATURAL RESOURCES** on Bill "An Act to Refund Money Collected from the Disposal Fee on Major Appliances and Tires to Municipalities"  
H.P. 1314 L.D. 1776

Majority - **Ought Not to Pass**

Minority - **Ought to Pass as Amended by Committee Amendment "A" (H-842)**

Tabled - March 24, 1994, by Senator **ESTY** of Cumberland.

Pending - **ACCEPTANCE OF EITHER REPORT**

(In Senate, March 24, 1994, Reports **READ**.)

(In House, March 23, 1994, Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.)

The Chair moved that the Senate **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, in concurrence.

Senator **SUMMERS** of Cumberland requested a Division.

**THE PRESIDENT:** The pending question before the Senate is **ACCEPTANCE** of the Majority **OUGHT NOT TO PASS** Report, in concurrence.

A Division has been requested.

Will all those in favor please rise in their places and remain standing until counted.

Will all those opposed please rise in their places and remain standing until counted.

22 Senators having voted in the affirmative and 3 Senators having voted in the negative, **ACCEPTANCE** of the Majority **OUGHT NOT TO PASS** Report, in concurrence, **PREVAILED**.

Sent down for concurrence.

The Chair laid before the Senate the Tabled and Later Today Assigned matter:

The Chair laid before the Senate the Tabled and Later Today Assigned matter:

SENATE REPORTS - from the Committee on **HUMAN RESOURCES** on Bill "An Act to Strengthen the Coordinated Delivery of Substance Abuse Services in the State"

SENATE REPORTS - from the Committee on **AGING, RETIREMENT & VETERANS** on RESOLUTION, Proposing an Amendment to the Constitution of Maine to Establish a Contractual Obligation for Members of the Maine State Retirement System

S.P. 653 L.D. 1822

S.P. 655 L.D. 1824

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-508)**

Report **A** - **Ought to Pass as Amended by Committee Amendment "A" (S-515)**

Minority - **Ought to Pass as Amended by Committee Amendment "B" (S-509)**

Report **B** - **Ought to Pass as Amended by Committee Amendment "B" (S-516)**

Tabled - March 24, 1994, by Senator **ESTY** of Cumberland.

Report **C** - **Ought Not to Pass**

Tabled - March 24, 1994, by Senator **ESTY** of Cumberland.

Pending **ACCEPTANCE OF EITHER REPORT**

Pending - **ACCEPTANCE OF ANY REPORT**

(In Senate, March 24, 1994, Reports **READ**.)

(In Senate, March 24, 1994, Reports **READ**.)

On motion by Senator **ESTY** of Cumberland, Tabled 1 Legislative Day, pending **ACCEPTANCE OF EITHER REPORT**.

On motion by Senator **ESTY** of Cumberland, Tabled 2 Legislative Days, pending **ACCEPTANCE OF ANY REPORT**.

The Chair laid before the Senate the Tabled and Later Today Assigned matter:

The Chair laid before the Senate the Tabled and Later Today Assigned matter:

Bill "An Act to Promote Managed Care and to Otherwise Facilitate the Cost-effective Delivery of Health Care in the State"

HOUSE REPORTS - from the Committee on **FISHERIES & WILDLIFE** on Bill "An Act to Exempt Owners of Shooting Ranges from any Civil or Criminal Action Relating to Noise Pollution"

S.P. 560 L.D. 1596  
(C "A" S-502)

H.P. 724 L.D. 983

Tabled - March 24, 1994, by Senator **ESTY** of Cumberland.

Majority - **Change of Reference**

Pending - **PASSAGE TO BE ENGROSSED AS AMENDED**

Minority - **Ought Not to Pass**

(In Senate, March 24, 1994, **PASSED TO BE ENGROSSED, As Amended**. Subsequently **RECONSIDERED**.)

Tabled - March 24, 1994, by Senator **ESTY** of Cumberland.

Pending - Motion by Senator **HANLEY** of Oxford to **RECEDE** and **CONCUR** (Division ordered.)

On motion by Senator **MCCORMICK** of Kennebec, the Senate **RECONSIDERED** its action whereby it **ADOPTED** Committee Amendment "A" (S-502).

(In House, March 23, 1994, Majority **CHANGE OF REFERENCE** Report **READ** and **ACCEPTED** and the Bill and Accompanying Papers **REFERRED** to the Committee on **ENERGY & NATURAL RESOURCES**.)

On further motion by same Senator, Senate Amendment "A" (S-517) to Committee Amendment "A" (S-502) **READ** and **ADOPTED**.

(In Senate, March 23, 1994, Reports **READ**. Bill and Accompanying Papers **INDEFINITELY POSTPONED** in **NON-CONCURRENCE**.)

Committee Amendment "A" (S-502) as Amended by Senate Amendment "A" (S-517) thereto, **ADOPTED**.

Which was **PASSED TO BE ENGROSSED, As Amended**.

(In House, March 24, 1994, that Body **ADHERED**.)



**THE PRESIDENT:** The pending question before the Senate is the motion of Senator **HANLEY** of Oxford that the Senate **RECEDE** and **CONCUR**.

The Chair ordered a Division.

Will all those in favor please rise in their places and remain standing until counted.

Will all those opposed please rise in their places and remain standing until counted.

10 Senators having voted in the affirmative and 18 Senators having voted in the negative, the motion of Senator **HANLEY** of Oxford to **RECEDE** and **CONCUR**, **FAILED**.

The Senate **ADHERED**.

The Secretary has so informed the Speaker of the House.

The Chair laid before the Senate the Tabled and Later Today Assigned matter:

HOUSE REPORTS - from the Committee on **LEGAL AFFAIRS** on Bill "An Act to Ensure Appropriate and Equitable Penalties for Violation of Electoral Laws" H.P. 1311 L.D. 1766

Majority - **Ought Not to Pass**

Minority - **Ought to Pass as Amended by Committee Amendment "A" (H-830)**

Tabled - March 24, 1994, by Senator **ESTY** of Cumberland.

Pending - **ACCEPTANCE OF EITHER REPORT**

(In Senate, March 24, 1994, Reports **READ**.)

(In House, March 24, 1994, the Minority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-830)**.)

Senator **HANDY** of Androscoggin moved that the Senate **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report, in concurrence.

**THE PRESIDENT:** The Chair recognizes the Senator from Piscataquis, Senator Hall.

Senator **HALL:** Thank you Mr. President, Ladies and Gentlemen of the Senate. Being on the Majority Ought Not to Pass Report I stand today to ask you to vote against the present motion for the very reason that I feel that our elections are very important to the citizens and I think that we should ensure that any violations of trust are swiftly met with as harsh a punishment as can be dealt out. This amendment reduces from a Class C crime down to a Class D crime. We are going from a felony to a misdemeanor. We are saying, well it's not right but it surely isn't that bad if you want to fool around with the election process in this State. I believe that is the wrong message to be putting out there. The Class C crime was given a lot of thought and I feel that we should keep them there. I urge each and everyone of

you to look at this amendment very closely and see what you think. If you want to go back home and tell the folks that we don't think this is as serious as we previously thought it was and we are going to reduce the penalties. I urge each and every one of you to please vote against the pending motion. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Androscoggin, Senator Handy.

Senator **HANDY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I, as well as the other members of the Legal Affairs Committee, take our task quite seriously, particularly given the events of the past year. This bill does nothing to change the law that we passed with respect to ballot tampering except to add the intent aspect. Over the last nine months or so the criminal law advisory committee, chaired by the former Senator from the district which I now represent, Senator Gauvreau, has met and reviewed the legislation that this body considered in the first session of the 116th. To review it and to look at the consistency of the classes of crimes as they relate to similar crimes currently on the books in the State of Maine. Indeed, some of those classes have been adjusted but we were very much cognizant of the issues regarding ballot tampering or damaging voting devices, balance cards or other records and equipment. We retained that classification of a Class C crime, but we inserted specifically the intent of engaging in those activities and retained that as a Class C crime, as we think it is critically important that the ballots and election process integrity be maintained. We also think it is critically important not to demean other crimes that hold certain classes and equate something that doesn't have the intent. Surely any kind of crime when it relates to one's access to the ballot should be severely and swiftly taken care of. I certainly wouldn't ask for the death penalty if a city clerk inadvertently removed someone's name. The Legal Affairs Committee, those members signed on the ought to pass report, feel it is critically important that intent has to be involved here and seriously considered. Thank you.

On motion by Senator **CAHILL** of Sagadahoc, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

**THE PRESIDENT:** The pending question before the Senate is the motion of Senator **HANDY** of Androscoggin to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report, in concurrence.

A vote of Yes will be in favor of **ACCEPTANCE**.

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

#### ROLL CALL

YEAS: Senators **BALDACC**I, **BERUBE**, **BRANNIGAN**, **BUSTIN**, **CAREY**, **CLEVELAND**, **CONLEY**, **ESTY**, **HANDY**, **LAWRENCE**, **LUTHER**, **MCCORMICK**, **O'DEA**, **PARADIS**, **PEARSON**, **PINGREE**, **TITCOMB**, **VOSE**, **THE PRESIDENT - DENNIS L. DUTREMBLE**

**NAYS:** Senators AMERO, BEGLEY, BUTLAND, CAHILL, CARPENTER, FOSTER, GOULD, HALL, HANLEY, HARRIMAN, KIEFFER, LUDWIG, MARDEN, SUMMERS

**ABSENT:** Senators CIANCHETTE, WEBSTER

19 Senators having voted in the affirmative and 14 Senators having voted in the negative, with 2 Senators being absent, the motion by Senator **HANDY** of Androscoggin, to **ACCEPT** the Minority **UGHT TO PASS AS AMENDED** Report, in concurrence, **PREVAILED**.

The Bill **READ ONCE**.

Committee Amendment "A" (H-830) **READ** and **ADOPTED**, in concurrence.

The Bill, as **Amended**, **TOMORROW ASSIGNED FOR SECOND READING**.

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Off Record Remarks

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The Chair laid before the Senate the Tabled and Later Today Assigned matter:

Bill "An Act to Amend the Laws Governing Protective Custody"

S.P. 240 L.D. 733  
(C "A" S-469)

Tabled - March 24, 1994, by Senator **ESTY** of Cumberland.

Pending - Motion by Senator **GOULD** of Waldo to **RECEDE** and **CONCUR**

(In Senate, March 24, 1994, **RECONSIDERED** whereby the Senate **INSISTED** to **PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-469).**)

(In House, March 23, 1994, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-469) AS AMENDED BY HOUSE AMENDMENT "A" (H-873)** thereto, in **NON-CONCURRENCE**.)

(In Senate, March 23, 1994, **INSISTED**.)

**THE PRESIDENT:** The Chair recognizes the Senator from Piscataquis, Senator Hall.

Senator **HALL:** Thank you Mr. President, Ladies and Gentlemen of the Senate. In reference to this bill, L.D. 733, with the amendment H-873, I would like to talk about the amendment, about the problems that have occurred when one of our municipal police officers or one of our deputy sheriffs has a person that is uncontrollable, who they feel is mentally retarded. Presently, these subjects either have to be held in one of the lock ups at the county or municipality, and they can hold them for up to eighteen hours while they are trying to get some paperwork done to be able to get them into one of our mental institutions. It's either that or they go and

stay with that subject at the mental institution for whatever length of time it takes, and sometimes it is very lengthy, it can run from ten to eighteen hours to get the paperwork done. Number one, if they go there they are tying up a police officer for that length of time, they are just sitting there waiting for the paperwork to be done. This is definitely unnecessary and not needed. Or if the subject is being held at the lock up, for example, very often they are very disruptive, there is chaos. Many of them don't have the proper facilities to handle these types of people. The amendment that is on this bill if it should pass, an agreement made be worked out with the mental institution so that this officer can take them there, and it has to be agreed to by the institution, they can't just take them and drop them off, but if an agreement can be worked out they can take them and leave them in the custody of the health officer or another police officer and the hospital will take care of them while the paperwork is being done. If, by chance, for whatever reason that person is not accepted at that institution then they will call the officer of the department who brought that person there and they will then return immediately and pick that person up and do something else with them. The only reason they will not be kept there is if they feel that they do not need to be kept there. I'm going to urge you to Recede and Concur.

**THE PRESIDENT:** The Chair recognizes the Senator from Kennebec, Senator Bustin.

Senator **BUSTIN:** Thank you Mr. President, Ladies and Gentlemen of the Senate. This is a bill that came out of the Corrections Committee unanimous. The amendment that is being referred to is an amendment that was put on in the House that really does the exact opposite of what the unanimous Committee reported intended. What the Committee report basically does is to allow law enforcement officers to work out with hospitals an agreement, it's a may instead of a shall, an agreement whereby their security, or however they want to treat these clients, would take over in the hospitals and the law enforcement officer could go home. It's a question of liability, it's a question of who has security and who doesn't have security and under the Committee bill we give them the ability to work out the agreements. Under the amendment that is suggested by the House it is a shall, that the hospital will have to take these people into protective custody and take it away from the law enforcement officers. All of us want the law enforcement officers to be able to just go home and leave those clients there but that puts an additional burden on the hospital that we think they ought to try and work out something before we make it a shall. Let's see what they can do out there and then we can make it a shall if that appears to be what we need. I would hope that you would defeat the Recede and Concur motion and go with the Insist motion which strips the amendment to this bill. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Piscataquis, Senator Hall.

Senator **HALL:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I would thank the good Senator for drawing my attention, she is correct in the fact that in reading the both of them a couple of times I did misinterpret some wrong information when I spoke before and I would like to clear that up. The latest amendment from the House does, indeed, require the mental health institution to admit for observation, if they then find that they are not needed to stay there then, of course, they will be

picked back up by which ever agency brought them there. This surely would relieve a lot of time and be able to put that officer back out on the street where I am sure we all want him to be. Thank you.

**THE PRESIDENT:** The pending question before the Senate is the motion of Senator **GOULD** of Waldo to **RECEDE** and **CONCUR**.

The Chair ordered a Division.

Will all those in favor please rise in their places and remain standing until counted.

Will all those opposed please rise in their places and remain standing until counted..

11 Senators having voted in the affirmative and 19 Senators having voted in the negative, the motion of Senator **GOULD** of Waldo to **RECEDE** and **CONCUR**, **FAILED**.

The Senate **INSISTED**.

Sent down for concurrence.

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The Chair laid before the Senate the Tabled and Specially Assigned (3/23/94) matter:

**SENATE REPORT** - from the Committee on **TRANSPORTATION** on Bill "An Act to Authorize Department of Transportation Bond Issues in the Amount of \$19,800,000 to Improve Passenger and Freight Rail Facilities and Make Improvements at State and Municipal Transportation Facilities" (Governor's Bill)

S.P. 697 L.D. 1895

Report - **Ought to Pass as Amended by Committee Amendment "A" (S-478)**

Tabled - March 22, 1994, by Senator **BRANNIGAN** of Cumberland.

Pending - **ACCEPTANCE OF REPORT**

(In Senate, March 22, 1994, Report **READ** and **ACCEPTED**. Subsequently, **RECONSIDERED**.)

On motion by Senator **ESTY** of Cumberland, Tabled 1 Legislative Day, pending **ACCEPTANCE OF REPORT**.

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The Chair laid before the Senate the Tabled and Specially Assigned (3/23/94) matter:

Bill "An Act Related to Periodic Justification of Departments and Agencies of State Government under the Maine Sunset Act" (Emergency)

H.P. 1368 L.D. 1851  
(H "A" H-817 to  
C "A" H-801)

Tabled - March 22, 1994, by Senator **ESTY** of Cumberland.

Pending - **PASSAGE TO BE ENGROSSED AS AMENDED**, in concurrence

(In Senate, March 22, 1994, **READ A SECOND TIME**.)

(In House, March 9, 1994, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-801) AS AMENDED BY HOUSE AMENDMENT "A" (S-817)** thereto.)

On motion by Senator **ESTY** of Cumberland, Tabled 1 Legislative Day, pending **PASSAGE TO BE ENGROSSED AS AMENDED**, in concurrence.

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The Chair laid before the Senate the Tabled and Later Assigned (3/23/94) matter:

**SENATE REPORTS** - from the Committee on **BUSINESS LEGISLATION** on Bill "An Act to Increase Access to Primary Care by Redefining the Practice of Advanced Nursing"

S.P. 390 L.D. 1185

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-454)**

Minority - **Ought Not to Pass**

Tabled - March 23, 1994, by Senator **ESTY** of Cumberland.

Pending - Motion by Senator **CIANCHETTE** of Somerset to **ACCEPT** the Majority **Ought to Pass as Amended Report**

(In Senate, March 22, 1994, Reports **READ**.)

On motion by Senator **ESTY** of Cumberland, Tabled 1 Legislative Day, pending motion by Senator **CIANCHETTE** of Somerset to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED Report**.

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The Chair laid before the Senate the Tabled and Later Assigned (3/23/94) matter:

**SENATE REPORTS** - from the Committee on **MARINE RESOURCES** on Bill "An Act to Prohibit the Use of Gill Nets in the Kennebec and Androscoggin Rivers" (Emergency)

S.P. 710 L.D. 1918

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-470)**

Minority - **Ought Not to Pass**

Tabled - March 23, 1994, by Senator **ESTY** of Cumberland.

Pending - **ACCEPTANCE OF EITHER REPORT**

(In Senate, March 22, 1994, Reports **READ**.)

The Majority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED**.

The Bill **READ ONCE**.

Committee Amendment "A" (S-470) **READ**.

Senator **ESTY** of Cumberland moved to Table 1 Legislative Day, pending **ADOPTION** of Committee Amendment "A" (S-470).

Senator **ESTY** of Cumberland requested and received leave of the Senate to withdraw his motion to Table 1 Legislative Day, pending **ADOPTION** of Committee Amendment "A" (S-470).

**THE PRESIDENT:** The Chair recognizes the Senator from Washington, Senator Vose.

Senator **VOSE:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I had hoped that we could give this Bill its first reading and then Table it because there is an amendment coming later this evening and that will put it in the posture where it can be amended. Thank you.

On motion by Senator **ESTY** of Cumberland, Tabled until Later in Today's Session, pending **ADOPTION** of Committee Amendment "A" (S-470).

The Chair laid before the Senate the Tabled and Today Assigned matter:

Bill "An Act to Amend the Public Smoking Laws"  
S.P. 724 L.D. 1945  
(C "A" S-488)

Tabled - March 23, 1994, by Senator **ESTY** of Cumberland.

Pending - **PASSAGE TO BE ENGROSSED AS AMENDED**

(In Senate, March 23, 1994, **READ A SECOND TIME**.)

On motion by Senator **ESTY** of Cumberland, Tabled 1 Legislative Day, pending **PASSAGE TO BE ENGROSSED AS AMENDED**.

Out of order and under suspension of the Rules, the Senate considered the following:

**COMMITTEE REPORTS**

**Senate**

**Ought to Pass As Amended**

Senator **PEARSON** for the Committee on **APPROPRIATIONS & FINANCIAL AFFAIRS** on Resolve, Concerning Reauthorization of the \$9,520,000 Bond Issue for Construction and Renovation of Juvenile Correctional Facilities

S.P. 673 L.D. 1845

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A" (S-522)**.

Which Report was **READ** and **ACCEPTED**.

The Resolve **READ ONCE**.

Committee Amendment "A" (S-522) **READ** and **ADOPTED**.

The Resolve as **Amended**, **TOMORROW ASSIGNED FOR SECOND READING**.

Under suspension of the Rules, all matters thus acted upon were ordered sent down forthwith for concurrence.

Off Record Remarks

Senator **CARPENTER** of York was granted unanimous consent to address the Senate off the Record.

Senator **ESTY** of Cumberland was granted unanimous consent to address the Senate off the Record.

Off Record Remarks

On motion by Senator **ESTY** of Cumberland, **ADJOURNED** until Friday, March 25, 1994, at 9:00 in the morning.