

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

LEGISLATIVE RECORD
OF THE
One Hundred And Seventeenth Legislature
OF THE
State Of Maine

VOLUME I

FIRST REGULAR SESSION

House of Representatives
December 7, 1994 to May 23, 1995

ONE HUNDRED AND SEVENTEENTH MAINE LEGISLATURE
FIRST REGULAR SESSION
18th Legislative Day
Thursday, February 23, 1995

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

Prayer by Reverend Norman Rust, Sebago Community Church.

The Journal of yesterday was read and approved.

SENATE PAPERS

Bill "An Act to Clarify Credit Union Common Bond Requirements" (S.P. 235) (L.D. 600)

Came from the Senate, referred to the Committee on **Banking and Insurance** and Ordered Printed.

Was referred to the Committee on **Banking and Insurance** in concurrence.

Bill "An Act to Increase Paid Health Insurance Benefits to Retired Teachers" (S.P. 232) (L.D. 597)

Bill "An Act to Reimburse Former Temporary Hearing Officers of the Workers' Compensation Board for Lapsed Vacation Time" (S.P. 234) (L.D. 599)

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

Were referred to the Committee on **Labor** in concurrence.

Bill "An Act to Establish Landowner Recognition Day" (S.P. 233) (L.D. 598)

Came from the Senate, referred to the Committee on **State and Local Government** and Ordered Printed.

Was referred to the Committee on **State and Local Government** in concurrence.

Non-Concurrent Matter

Bill "An Act to Implement the Recommendations of the Commission to Study the Statutory Procedures for Local Property Tax Abatement Appeals" (H.P. 425) (L.D. 582) which was referred to the Committee on **Taxation** in the House on February 17, 1995.

Came from the Senate referred to the Committee on **State and Local Government** in non-concurrence.

On motion of Representative NADEAU of Saco, the House voted to Insist.

At this point, a message came from the Senate, borne by Senator Kieffer of that Body, proposing a Joint Convention of both Branches to be held in the Hall of the House at 10:20 in the morning for the purpose of extending to the Honorable Daniel E. Wathen, Chief Justice of the Supreme Judicial Court, and members of the Judiciary an invitation to attend the Joint Convention and to make such communication as pleases them.

Thereupon the House voted to concur in the proposal for a Joint Convention to be held at 10:20 in the morning and the Speaker appointed Representative JACQUES of Waterville to convey this message to the Senate.

Subsequently, Representative JACQUES of Waterville reported that he had delivered the message with which he was charged.

At this point, the Senate came and a Joint Convention was formed.

IN CONVENTION

The President of the Senate, the Honorable Jeffrey H. Butland, in the Chair.

On motion of Senator Kieffer of Aroostook, it was **ORDERED**, that a committee be appointed to wait upon the Honorable Daniel E. Wathen, Chief Justice of the Supreme Judicial Court, the Associate Justices of the Supreme Judicial Court and members of the Judiciary and inform them that the two branches of the Legislature are in Convention assembled, ready to receive such communication as pleases them.

The Order was read and passed.

The Chairman appointed:

Senators:	MILLS of Somerset
	PENDEXTER of Cumberland
	FAIRCLOTH of Penobscot
Representatives:	TREAT of Gardiner
	LEMKE of Westbrook
	RICHARDSON of Portland
	JONES of Bar Harbor
	LAFOUNTAIN of Biddeford
	WATSON of Farmingdale
	PLOWMAN of Hampden
	HARTNETT of Freeport
	MADORE of Augusta
	NASS of Acton

Subsequently, Senator Mills of Somerset, for the Committee, reported that the Committee had delivered the message with which it was charged and were pleased to report that the Honorable members of the Judiciary will attend forthwith.

Whereupon, The Chairman welcomed the members of the Maine Supreme Judicial Court: Associate Justice David G. Roberts, Associate Justice Caroline D. Glassman, Associate Justice Robert W. Clifford, Associate Justice Paul L. Rudman, Associate Justice Howard H. Dana, Jr., Associate Justice Kermit V. Lipez.

The Maine Superior Court: Chief Justice Thomas E. Delahanty, II, Justice Nancy D. Mills.

The Maine District Court: Chief Judge Susan W. Calkins, Judge Joseph H. Field, Judge Peter J. Goranites, Judge Jane S. Bradley.

At this point, the Honorable Daniel E. Wathen, Chief Justice of the Supreme Judicial Court entered the Convention Hall amid prolonged applause, the audience rising.

Chief Justice Wathen then addressed the Convention as follows:

Mr. Speaker, Mr. President: I appreciate this opportunity to appear before the 117th Maine Legislature. I consider this an historic occasion.

Next month, on March 15th, our state celebrates its 175th anniversary. In all those years only 101 people have served on the Supreme Judicial Court. We are a small group, but every person in today's Judicial Branch takes pride in Maine's record of providing that most essential government service — individual justice. For 175 years, the three branches have worked together to provide the protection and the stability guaranteed by our Constitution. The rule of law hangs by a very slender thread in any society, and an independent and effective judiciary has been a vital part of Maine's government.

I believe that we are at a pivotal time in history. This is evidenced by the fact that Russia, some of the former Soviet Republics, Haiti, and many other nations throughout the world are trying to copy our form of government. The question they ask is — how do you make the law work? The answer is simple — we have the rule of law, and an independent judiciary to enforce it.

Why is the rule of law suddenly important? Because you can't do business in a global economy without stability, certainty, and efficiency in legal relationships. Most of these countries have impressive constitutions, but they have never had an effective and independent judiciary to enforce them. That is why we have been visited by judges from the Karelian Republic asking us how to conduct jury trials and learning how we educate our judges. That is why my colleague, Justice Roberts, lectured on judicial ethics in Estonia this past fall, that is why Kathryn Ainsworth, the former Director of the Commission on the Future of Maine's Courts, now works full time in Latvia.

The world has come to understand the critical importance of an independent judiciary in a constitutional government.

It is ironic that at the same time here in Maine, we are experiencing an unprecedented crisis in funding our courts. We have piled on responsibilities without resources. We have cut juror's fees to \$10 a day, and yet we charge civil litigants \$300 for the privilege of having a jury trial that is rarely scheduled. Justice has become a commodity to be paid for. Our court system, which is small and underfunded by any comparative standard, has deteriorated to the point that our judges and staff are discouraged and frustrated, and sometimes people's needs for protection have to be delayed and possibly never met.

I know I can speak frankly and candidly with you. Many of you have sat on the bench with judges in your local community, and all of you are invited to do so. In a word: we are stretched too thin, trying to do too much with too little. In a successful democracy you cannot ration justice. For some years now that is exactly what we have been doing.

Therefore, for me, today is more than just a speech — I hope that it marks the beginning of a dialogue between all three branches of government concerning the delivery of justice in Maine. The future is in our hands. The goal for the next century is clear; the people of Maine must have courts that are fair, fast, affordable, and effective.

Many of you, I am sure, have your own thoughts on the future of Maine's courts, but let me share some of my thinking with you. Obviously, we have to begin with funding that is adequate to keep the courthouse

doors open. I won't recount the painful history of chronic underfunding in recent times.

At least three authoritative studies have been conducted in the last twenty years, the Brennan Commission on the State Funded Court System in the 1970's, the Commission on Governmental Reorganization in the late 80's, and the Futures Commission in the 90's. They all came to the same conclusion: the law should require the Governor to include the judicial budget in his budget without revision. The purse string belongs to the Legislature, and you should consider the full needs of an independent and co-equal branch of government without first being forced to cut the budget elsewhere.

Unfortunately, that recommendation has never been enacted, but something important happened a couple of weeks ago. For the first time in at least the last twenty years, the Governor put most of the ordinary operating costs of the courts in the budget that he sent to this Legislature. Now, being funded at existing levels may not sound like a very historic development, but it really is, and I commend Governor King for his action. He didn't have to do it. He did it because it was the right thing to do. I urge you to support this portion of his budget.

This budget includes nothing extra, nothing new, no "so called" part two. But it does mean that for the first time in years, the Appropriations Committee won't have to search for cuts in other areas in order to keep the courts at our present level and enable us to meet the basic needs of the third branch.

At this point you might think that I should sit down. What else does the judiciary want? Don't they understand the budget problem? Yes, we do. But we need to talk with each one of you about the future of the third branch and the people you represent and every program that you support. The judiciary is only one of the three spokes in the governmental wheel, but when it buckles, the whole wheel stops. Law will hold our society together only so long as it is enforced.

What should we talk about? First and foremost, not all of our Part II requests can be dismissed as a wish list. We have legal and enforceable obligations to people with disabilities under both state and federal law whether they are litigants, jurors, witnesses, employees, or judges. We should talk about that. I am certain we all agree that any organization that handles twenty-three million dollars a year should have a full audit. We should talk about that. Maybe it is wishful thinking in these times to ask both for additional staff and computers, but we have to talk about the impossible situation created by the explosion of increasingly complex paper work and the sharp rise in the number of people who are forced to go to court without an attorney. If it weren't for the folks in the clerks' office, Pine Tree Legal Assistance, Legal Services for the Elderly, and the clinic at the Law School, I am not sure that poor folks in Maine would do. If the courts are to take up the front line in social services, and that is what the course is that has been established by this Legislature in recent years, we can't uphold the law if we are denied both staff and technology.

Similarly, there are many pressures on the criminal docket. For example, the Federal Crime Bill has already produced 88 new police officers for Maine, promises 400 more, and nothing for the courts in which they will work. In response to the

commendable efforts of Parents Against Tired Truckers, the State Police obtained a \$350,000 grant for overtime and issued 4500 additional trucking violations in the last four months. Those charges are filed in a court system that has no funds for clerical overtime, and is not scheduled to have any funds for the next two years. We need to talk about that.

Our ability to cover a growing criminal docket by neglecting and delaying civil litigation is beginning to affect our economic well being. No part of our society is more sensitive to delay and uncertainty than the business community that provides jobs and paychecks, and yet the way we are forced to schedule business litigation and regulatory proceedings in Maine is a crime. We need to talk about how much longer we can meet the needs of one segment of our people by taking from another. These are all subjects of critical importance, and they are all addressed in our Part II requests and in other legislation that we will propose for your consideration.

Well, is there any purpose to be served by our talking? I think so. Let me touch on three subjects. I have spoken a lot about computers in the past year and the unparalleled opportunity they offer to revolutionize the way courts work for people. Some of you who are new may not realize that with the exception of traffic tickets and criminal docket in the District Court, most clerical functions in the courts are manual. No desk top computers, no electronic data base, only typewriters, paper, and files. I ask you to imagine what would happen in these legislative halls or within the executive agencies if all record-keeping in State government was still handled manually?

We know what needs to be done. We have prepared a detailed technology plan. All that is missing is the money, but that is a big all. But we can make this plan work this year. There are two federal funding sources that are promising; equipment grants for a criminal record-keeping system under the Brady Bill, and equipment grant and reimbursements available under the Child Support Enforcement Act.

Sometimes disadvantages become advantages. We are one of the five states with the worst equipped criminal record-keeping system in the nation. Ordinarily we wouldn't brag about that, but it places us high on the list for money under the Brady Bill. Both of these sources are limited in terms of coverage. But with your cooperation, a little flexibility, and a relatively small appropriation, you can leave this session knowing that you have modernized Maine's courts.

I would also like to talk with you about creating a Court Improvement Fund. Whether it is raised from a surcharge on fines or a set-aside of court revenues is unimportant, but it is critical that we segregate a sum of money annually that we can plan on and use to improve Maine's courts. We have to systematically invest in our courts. Possible projects could include delay reduction programs, creation of a true family court, children's centers, improved expense reimbursement for jurors, differentiated case management for complex civil litigation, electronic information kiosks, the list is endless, but we have to start sometime.

I know that dedicated funds are not favored, but because we now collect, in addition to the twenty million dollars plus for the General Fund, an average

of three million dollars a year for nine other agencies of government in separate dedicated funds, the addition of one more fund neither shocks nor offends me. I am not sure that it is commonly understood how many special funds come from court revenues. Currently we collect for the "Keep Maine Scenic Funds," the "Fish and Game Fund," the "Watercraft Fund," the "Victim's Compensation Fund," which incidentally is a small but tremendously important program, the "Transportation Safety Fund," the "Highway Fund," the "Government Operations Surcharge Funds," the "Employment Security Fund," and the "Violations of Local Ordinances Fund." When you throw in a surcharge for drug testing, a surcharge for probation supervision and a jail reimbursement fee, you can understand why the most complex task that a judge performs is to calculate a fine, explain that calculation to a criminal defendant, and then try to collect it. No one wants another surcharge, but honestly, one way or another, isn't it time that we invested something in the goose that lays the golden eggs.

I also have to talk to you about judicial morale and compensation. Ask any knowledgeable person, and I am sure they will tell you the morale in the trial courts is very low. There are a number of contributing factors. In the District Court you have the stress on judges produced by crowded schedules overburdened with cases involving unrepresented parties in matters of domestic violence, child protection, and petitions for protection from abuse and harassment.

In the Superior Court you have the press of civil and criminal trials, together with increasingly complex cases involving review of state and municipal regulatory action. Just walk into any Superior Court Clerk's office and look at the thick files and boxes of records, right here in Kennebec particularly, and you can see how litigation has changed.

Judging in the trial courts is an isolating and lonely job, and in the last three years a practice has developed with regard to judicial compensation that has seriously eroded morale.

In your own business you would never promise a small group of your employees a cost of living adjustment in lieu of a raise, and then annually break that promise just days before it was to go into effect, particularly if you had given the rest of your employees a raise. That has happened to the judges over the last three years and the effects have been felt. Judges are the only employees in state government who have been denied any wage adjustment since July of 1991.

It is a complicated tale, but let me sketch it out. The last major change in judicial compensation began in 1982 when the state set out to reach pay parity with the then lowest paid federal judge. The increase was phased in over five years but by then the lowest paid federal judge had leaped ahead an additional thirty thousand dollars, and they have since gone out of sight. Abandoning parity in 1988, this Legislature enacted an annual cost of living adjustment with a cap of 4 percent that began July 1, 1991. In 1991 the adjustment was made, but for the next three years, in the closing days of each session, this Legislature deappropriated the funds budgeted for the adjustment. In the meantime, every other state employee, including many professional employees who earn significantly higher wages than judges, received wages.

It bears emphasis that we are not the highest paid state employees, only the most visible. Nationally, the compensation for our Supreme Court Justices ranks seventh from the bottom among the states. Last Spring I came over for a visit and spoke with the then President of the Senate and the Speaker of the House and asked them in the interest of morale to consider a small token payment in lieu of the two adjustments that had been withdrawn. Unfortunately, when the books were balanced late at night, no money was available, set aside, for retroactive payment and, in fact, to my surprise and dismay the cost of living adjustment was deappropriated for yet another year. I ask you not to let that happen this July. Let the small adjustment that is already included in Governor King's budget go into effect for next year. Dedicated and effective employees must be treated fairly and given some recognition and reward.

We have also submitted legislation calling for the appointment of a three member Commission on Judicial Compensation. One of the members would be appointed by the Speaker, one by the President, and one by the Governor. The Commission would be charged with preparing and presenting a biennial report to this Legislature on the subject of judicial compensation. This mechanism works successfully in a number of other states. It guarantees no judicial wage increases, but it addresses the need to insure that basic fairness applies in fixing adequate compensation for an independent judiciary. In exercising our constitutional powers, we are occasionally required to enter the political thicket and rule on matters such as legislative reapportionment and term limits. We frequently decide cases that have profound effects on the budget or public policy. That is the judiciary's role in our system of checks and balances, and never should it appear that the power of the purse is exercised in such a way as to attempt to influence the decisions of the judiciary.

Finally, I want to say a few words about law and order in our state. Fortunately we don't have the gang activity and the racial strife that we see on television. But there are disturbing trends: increased violence among our youth, serious social effects of drugs, particularly alcohol, domestic violence and sexual assaults hitting new highs, the growing number of property crimes and other crimes of violence. Look at the crimes reported in Lewiston this very week. Crime in Maine is different than what we see elsewhere, but we have serious criminal activity and many of the people who are most vulnerable are insecure in their person and in their homes.

We are witnessing a national debate on the causes of crime and its solutions. Some argue for more prisons, come for boot camps, some for electronic surveillance, and some for improved supervision with education and job training. I am sure that debate will take place in these halls. I don't have the answers, but I can tell you one thing — no criminal sanction will work until we speed up the trial process, and make the threat of punishment, whatever it is, immediate and real.

Recently, the newspapers reported on a criminal case involving a Maine Guide and a moose hunting violation. The crime occurred in 1991, he came to trial in 1993, and his appeal was finally decided in 1995.

This is not a typical time line, but four years is far too long and far too common. Nothing would please me more as Chief Justice, and nothing would more effectively address crime than to issue an order requiring that all criminal cases be brought to trial within 90 days. I could enter such an order. And that is that is the national standard. But we couldn't even come close to meeting it.

We must take the delay out of the ordinary administration of criminal justice. Efforts to get tough on crime by threatening a heavy sentence someday in the distant future are not effective. Tougher punishment or different punishment will work only if we modernize Maine's courts and impose a speedy trial. This is not a new thought. It has been in our Constitution since 1820. Justice delayed really is justice denied, and in this case, it is the people of Maine who are victimized by an underfunded and understaffed court system.

Today, people seem more concerned with what someone says rather than with what they think. I have attempted to share my thinking with you on some issues that are crucial to the judiciary. You may not agree with me. The issues are complex, and I have barely scratched the surface, but I doubt that we disagree about the importance of a vital and independent judiciary to the well being of our tri-partite form of government. We in the judiciary understand your budget problems and we can appreciate the cry for less government, but I have talked to a lot of people in the last year and I know you have as well. I am willing to bet that no one said they wanted less justice.

The question I leave with you today is simple and heartfelt — can we talk about the future of Maine's courts? Do you have time during this session to give me a call and sit down to talk? I don't care who you are or what committee you serve on. I am ready to talk. I have posed that same question to Governor King, leaders and members of Maine's business community, and groups as diverse as Parents Against Tired Truckers, the police, family crisis groups, prosecutors and Editorial Boards. In every case the answer has been yes and the resulting discussions have been positive.

Judges and legislators have to work together because we are partners. When a young mother goes into the busy District Court in Lewiston to get an order that will protect her and her children from an abusive mate, she doesn't distinguish between the law enacted in this Legislature, the judge, and the adequacy of the court system. In her view, it is one system. Either the law works and she is protected, or the law doesn't work, and she and her children remain in danger. The person in business uses that same test.

We hear a lot of talk about the fact that government has fallen into disfavor. I don't know whether that is true here in Maine or not, but I offer one very old solution. Alexander Hamilton wrote in the Federalist Papers: "The ordinary administration of criminal and civil justice contributes more than any other circumstance, to impressing on the minds of the people, esteem towards government." Donna Morgan, one of the Parents Against Tired Truckers, (I believe she is here somewhere today), said it quite well in the newspaper when she suggested that underfunded courts and lax enforcement should not put people's lives in jeopardy. She said, "If the system in place in not

adequate, it should be improved." I agree. You are going to enact hundreds of new laws this session, and yet at the same time laws as basic and simple as those regulating the safe operation of a truck require a special overtime project, and even then effective enforcement is compromised and undermined by a court system bogged down in paperwork. The three branches of government have one job — to make sure that the law continues to work for Maine people. To do that, we need to talk.

Thank you very much. (Applause)

At the conclusion of the address, the Chief Justice withdrew amid the applause of the Convention, the audience rising.

The purpose for which the convention was assembled, having been accomplished, the Chairman declare the same dissolved.

The Senate then retired to its Chamber amid the applause of the House, the audience rising.

In the House

The House was called to order by the Speaker.

PETITIONS, BILLS AND RESOLVES REQUIRING REFERENCE

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

Banking and Insurance

Bill "An Act to Include Loss of Tax Revenue to the State When Considering a Credit Union Application for Expansion" (H.P. 454) (L.D. 620) (Presented by Representative DONNELLY of Presque Isle) (Cosponsored by Representatives: BIRNEY of Paris, CAMERON of Rumford, CARLETON of Wells, DAGGETT of Augusta, GIERINGER of Portland, GOULD of Greenville, HEINO of Boothbay, JONES of Pittsfield, KNEELAND of Easton, LIBBY of Kennebunk, LOVETT of Scarborough, MAYO of Bath, McALEVEY of Waterboro, McELROY of Unity, RICE of South Bristol, SPEAR of Nobleboro, Senators: BEGLEY of Lincoln, HARRIMAN of Cumberland, KIEFFER of Aroostook)

Bill "An Act Regarding Checks Issued by Insurance Companies to Cover Losses" (H.P. 455) (L.D. 621) (Presented by Representative DIPIETRO of South Portland) (Cosponsored by Representatives: AHEARNE of Madawaska, FARNUM of South Berwick, FISHER of Brewer, KERR of Old Orchard Beach, MURPHY of Berwick, VIGUE of Winslow, Senator: CAREY of Kennebec)

Business and Economic Development

Resolve, to Extend the Reporting Date of the Commission to Study Biotechnology and Genetic Engineering (EMERGENCY) (H.P. 443) (L.D. 609) (Presented by Representative DAGGETT of Augusta)

Education and Cultural Affairs

Bill "An Act to Require the Provision of Transportation to Private School Students" (H.P. 447) (L.D. 613) (Presented by Representative MURPHY of Berwick) (Cosponsored by Representatives: BAILEY of Township 27, CAMERON of Rumford, CHICK of Lebanon, CLUKEY of Houlton, DIPIETRO of South Portland, FARNUM of South Berwick, FISHER of Brewer, HICHBORN of LaGrange, LEMONT of Kittery, LOOK of Jonesboro, MARSHALL of Eliot, MERES of Norridgewock, NADEAU of Saco, PERKINS of Penobscot, REED of Dexter, SAMSON of Jay, VIGUE of Winslow, Senators: CAREY of Kennebec, RUHLIN of Penobscot)

Human Resources

Bill "An Act to Expand the Jurisdiction of the Consumer Advisory Board of the Department of Mental Health and Mental Retardation by Giving Board Members and Its Staff Direct Access to All Areas of Agencies That Serve People with Autism" (H.P. 456) (L.D. 622) (Presented by Representative DAGGETT of Augusta) (Cosponsored by Senator BUSTIN of Kennebec)

Resolve, Establishing a Public Participation Process to Make Recommendations Concerning the Delivery of Health and Social Services (EMERGENCY) (H.P. 462) (L.D. 628) (Presented by Representative TREAT of Gardiner) (Cosponsored by Representatives: JONES of Bar Harbor, TOWNSEND of Portland, Senator: PARADIS of Aroostook)

Judiciary

Bill "An Act to Correct Problems Created in Implementing Recent Changes in the Adoption Laws" (H.P. 463) (L.D. 629) (Presented by Speaker GWADOSKY of Fairfield) (Cosponsored by Representatives: LaFOUNTAIN of Biddeford, MADORE of Augusta, RICHARDSON of Portland, Senator: HARRIMAN of Cumberland)

Bill "An Act to Require a 24-Hour Waiting Period before an Abortion May Be Performed" (H.P. 464) (L.D. 630) (Presented by Representative AHEARNE of Madawaska) (Cosponsored by Representatives: BAILEY of Township 27, CLARK of Millinocket, CLUKEY of Houlton, DESMOND of Mapleton, DEXTER of Kingfield, DRISCOLL of Calais, DUNN of Gray, GOULD of Greenville, HICHBORN of LaGrange, JOY of Crystal, KEANE of Old Town, KNEELAND of Easton, LANE of Enfield, LAYTON of Cherryfield, LOOK of Jonesboro, LUMBRA of Bangor, LUTHER of Mexico, MADORE of Augusta, MARSHALL of Eliot, MERES of Norridgewock, MURPHY of Berwick, O'NEAL of Limestone, PLOWMAN of Hampden, POIRIER of Saco, ROBICHAUD of Caribou, ROSEBUSH of East Millinocket, SIMONEAU of Thomaston, SIROIS of Caribou, STEDMAN of Hartland, STROUT of Corinth, TRIPP of Topsham, TUFTS of Stockton Springs, UNDERWOOD of Oxford, VIGUE of Winslow, WHEELER of Bridgewater, Senators: BERUBE of Androscoggin, CAREY of Kennebec, CASSIDY of Washington, HALL of Piscataquis, HANLEY of Oxford, KIEFFER of Aroostook, LORD of York, MICHAUD of Penobscot, PARADIS of Aroostook)

Bill "An Act to Reform the Child Custody Laws" (H.P. 466) (L.D. 632) (Presented by Speaker GWADOSKY of Fairfield) (Cosponsored by Representatives: HATCH of Skowhegan, ROTONDI of Madison, STEDMAN of Hartland, Senator: PENDEXTER of Cumberland)

Bill "An Act to Require Parental Notification for Minors Seeking Abortions" (H.P. 467) (L.D. 633) (Presented by Representative AHEARNE of Madawaska)

(Cosponsored by Representatives: BAILEY of Township 27, BARTH of Bethel, BIGL of Bucksport, BIRNEY of Paris, BOUFFARD of Lewiston, BUNKER of Kossuth Township, CAMERON of Rumford, CAMPBELL of Holden, CHICK of Lebanon, CLARK of Millinocket, CLUKEY of Houlton, CROSS of Dover-Foxcroft, DESMOND of Mapleton, DEXTER of Kingfield, DiPIETRO of South Portland, DRISCOLL of Calais, DUNN of Gray, FARNUM of South Berwick, GOULD of Greenville, GUERRETTE of Pittston, HARTNETT of Freeport, HICHBORN of LaGrange, JONES of Pittsfield, JOY of Crystal, JOYCE of Biddeford, JOYNER of Hollis, KEANE of Old Town, KNEELAND of Easton, LANE of Enfield, LAYTON of Cherryfield, LIBBY of Kennebunk, LOOK of Jonesboro, LUMBRA of Bangor, LUTHER of Mexico, MADORE of Augusta, MARSHALL of Eliot, MERES of Norridgewock, MURPHY of Berwick, NASS of Acton, NICKERSON of Turner, O'NEAL of Limestone, PINKHAM of Lamoine, PLOWMAN of Hampden, POIRIER of Saco, POULIOT of Lewiston, REED of Dexter, RICE of South Bristol, ROBICHAUD of Caribou, SIMONEAU of Thomaston, SIROIS of Caribou, STEDMAN of Hartland, STROUT of Corinth, TRIPP of Topsham, TUFTS of Stockton Springs, TUTTLE of Sanford, TYLER of Windham, UNDERWOOD of Oxford, VIGUE of Winslow, WATERHOUSE of Bridgton, WHEELER of Bridgewater, YACKOBITZ of Hermon, Senators: BEGLEY of Lincoln, BERUBE of Androscoggin, CAREY of Kennebec, CASSIDY of Washington, HALL of Piscataquis, HANLEY of Oxford, HATHAWAY of York, KIEFFER of Aroostook, LORD of York, MICHAUD of Penobscot, PARADIS of Aroostook)

Labor

Bill "An Act Concerning Binding Arbitration" (H.P. 458) (L.D. 624) (Presented by Representative ROTONDI of Madison) (Cosponsored by Representatives: HATCH of Skowhegan, HEESCHEN of Wilton, JOSEPH of Waterville, LUTHER of Mexico, MORRISON of Bangor, SHIAH of Bowdoinham, TREAT of Gardiner, Senator: BUSTIN of Kennebec)

Legal and Veterans Affairs

Bill "An Act to Create an Open Primary in the State" (H.P. 444) (L.D. 610) (Presented by Representative LEMKE of Westbrook) (Cosponsored by Representatives: GERRY of Auburn, GREEN of Monmouth, JONES of Bar Harbor)

Bill "An Act to Set Spending Limits for Legislative Campaigns" (H.P. 457) (L.D. 623) (Presented by Representative TUTTLE of Sanford)

Bill "An Act to Change the Reimbursement Procedure for Law Enforcement Personnel Testifying in Court" (H.P. 446) (L.D. 612) (Presented by Representative LEMONT of Kittery) (Cosponsored by Representatives: BAILEY of Township 27, CAMERON of Rumford, CAMPBELL of Holden, DiPIETRO of South Portland, GOOLEY of Farmington, GUERRETTE of Pittston, JONES of Pittsfield, LIBBY of Kennebunk, MARSHALL of Eliot, McALEVEY of Waterboro, MERES of Norridgewock, MURPHY of Berwick, STONE of Bangor, Senator: STEVENS of Androscoggin)

The Committee on Legal and Veterans Affairs was suggested.

On motion of Representative NADEAU of Saco, the Bill was tabled pending reference and later today assigned.

Marine Resources

Bill "An Act to Expand the Research Budget of the Department of Marine Resources" (H.P. 449) (L.D. 615) (Presented by Representative VOLENIK of Sedgwick) (Cosponsored by Representatives: BENEDIKT of Brunswick, CLOUTIER of South Portland, ETNIER of Harpswell, JONES of Bar Harbor)

Bill "An Act to Impose a Moratorium on New Lobster and Crab Fishing Licenses and to Develop a Resource Management Plan for the Lobster Industry" (EMERGENCY) (H.P. 460) (L.D. 626) (Presented by Representative DiPIETRO of South Portland) (Cosponsored by Representatives: FISHER of Brewer, KERR of Old Orchard Beach, LEMONT of Kittery, MURPHY of Berwick, VIGUE of Winslow)

Natural Resources

Bill "An Act to Change the Definitions of "River," "Stream" and "Brook" in the Environmental Laws" (H.P. 452) (L.D. 618) (Presented by Representative MARSHALL of Eliot) (Cosponsored by Representatives: BAILEY of Township 27, CAMERON of Rumford, DAMREN of Belgrade, DEXTER of Kingfield, KNEELAND of Easton, LIBBY of Kennebunk, MARSHALL of Eliot, UNDERWOOD of Oxford)

Resolve, to Reduce the Economic Impacts of the Clean Air Act on Maine's Citizens and Businesses (EMERGENCY) (H.P. 459) (L.D. 625) (Presented by Representative GOULD of Greenville) (Cosponsored by Representatives: BUNKER of Kossuth Township, DEXTER of Kingfield, POULIN of Oakland, ROBICHAUD of Caribou, Senator: LORD of York)

Bill "An Act to Increase Access to the Legislature and Government Services for Persons Who Are Deaf or Hard of Hearing and to Make Progress towards Compliance with the Americans with Disabilities Act" (H.P. 465) (L.D. 631) (Presented by Representative TREAT of Gardiner) (Cosponsored by Senator BENOIT of Franklin and Representatives: ADAMS of Portland, CLOUTIER of South Portland, DEXTER of Kingfield, DiPIETRO of South Portland, GOULD of Greenville, GREEN of Monmouth, HATCH of Skowhegan, JONES of Bar Harbor, MITCHELL of Vassalboro, RICHARDSON of Portland, ROTONDI of Madison, VIGUE of Winslow, WATSON of Farmingdale, Senators: MILLS of Somerset, PARADIS of Aroostook)

The Committee on State and Local Government was suggested.

On motion of Representative DAGGETT of Augusta, the Bill was referred to the Committee on Judiciary, ordered printed and sent up for concurrence.

Taxation

Bill "An Act to Reduce the State Sales Tax from 6% to 5%" (H.P. 445) (L.D. 611) (Presented by Representative UNDERWOOD of Oxford) (Cosponsored by Representatives: AIKMAN of Poland, BIRNEY of Paris, CLARK of Millinocket, HARTNETT of Freeport, KEANE of Old Town, LANE of Enfield, LUMBRA of Bangor, MARSHALL of Eliot, McALEVEY of Waterboro, TRUE of Fryeburg, TRUMAN of Biddeford, WATERHOUSE of Bridgton, WINSOR of Norway, Senators: HANLEY of Oxford, LAWRENCE of York)

Bill "An Act to Increase Levels of Property Tax Relief Found in the Maine Residents Property Tax Program" (H.P. 450) (L.D. 616) (Presented by

Representative ETNIER of Harpswell) (Cosponsored by Representatives: ADAMS of Portland, AHEARNE of Madawaska, BENEDIKT of Brunswick, BOUFFARD of Lewiston, BRENNAN of Portland, CHARTRAND of Rockland, DORE of Auburn, FITZPATRICK of Durham, JONES of Bar Harbor, LEMONT of Kittery, MITCHELL of Vassalboro, RICHARDSON of Portland, TOWNSEND of Portland, TUFTS of Stockton Springs, VOLENIK of Sedgwick, Senators: ABROMSON of Cumberland, CLEVELAND of Androscoggin, GOLDTHWAIT of Hancock, PARADIS of Aroostook, PINGREE of Knox)

Transportation

Bill "An Act to Improve Safety of School Buses" (H.P. 448) (L.D. 614) (Presented by Representative AULT of Wayne) (Cosponsored by Senator: STEVENS of Androscoggin)

Bill "An Act to Raise the Fee for Legislative Registration Plates" (H.P. 451) (L.D. 617) (Presented by Representative McELROY of Unity) (Cosponsored by Representatives: BIGL of Bucksport, CARLETON of Wells, CROSS of Dover-Foxcroft, RICE of South Bristol, STEDMAN of Hartland, STONE of Bangor, TRUE of Fryeburg, WHITCOMB of Waldo, Senators: ESTY of Cumberland, FERGUSON of Oxford, PINGREE of Knox)

Utilities and Energy

Bill "An Act Regarding Consumer-owned Electric Utilities" (H.P. 453) (L.D. 619) (Presented by Representative ADAMS of Portland)

Bill "An Act to Amend the Kennebec Water District Charter by Allowing the Town of Vassalboro and the Town of Benton to have a Permanent Member on the Board of Trustees" (H.P. 461) (L.D. 627) (Presented by Representative MITCHELL of Vassalboro) (Cosponsored by Senator BUSTIN of Kennebec)

ORDERS

On motion of Representative HICHBORN of LaGrange, the following Order: (H.O. 11)

ORDERED, that Representative Gail M. Chase of China be excused February 17 for legislative business.

AND BE IT FURTHER ORDERED, that Representative Susan E. Dore of Auburn be excused February 22 and 23 for personal reasons.

AND BE IT FURTHER ORDERED, that Representative Bonnie Green of Monmouth be excused February 22 to 24 for personal reasons.

AND BE IT FURTHER ORDERED, that Representative Jane W. Saxl of Bangor be excused February 17 for health reasons.

Was read and passed.

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

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

Bill "An Act to Change the Reimbursement Procedure for Law Enforcement Personnel Testifying in Court" (H.P. 446) (L.D. 612) which was tabled by Representative NADEAU of Saco pending reference.

On motion of Representative NADEAU of Saco, the Bill was referred to the Committee on **Judiciary**,

ordered printed and sent up for concurrence. -Ordered sent forthwith.

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

SENATE PAPERS

The following Joint Order: (S.P. 236)
ORDERED, the House concurring, that when the House and Senate adjourn, they do so until Tuesday, February 28, 1995, at 9:30 o'clock in the morning.
Came from the Senate, read and passed.
Was read and passed in concurrence.

Bill "An Act to Create the Maine Budget and Economic Stabilization Fund" (S.P. 241) (L.D. 638)

Came from the Senate, referred to the Committee on **Appropriations and Financial Affairs** and Ordered Printed.

Was referred to the Committee on **Appropriations and Financial Affairs** in concurrence.

Bill "An Act to Modify Joint and Several Liability in Medical Malpractice Actions" (S.P. 239) (L.D. 636)

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

Was referred to the Committee on **Judiciary** in concurrence.

Bill "An Act to Change the Commissions Payable to the State from Off-track Betting" (EMERGENCY) (S.P. 240) (L.D. 637)

Came from the Senate, referred to the Committee on **Legal and Veterans Affairs** and Ordered Printed.

Was referred to the Committee on **Legal and Veterans Affairs** in concurrence.

Resolve, to Study the Use of Wooden and Wire Lobster Traps in Coastal Waters (S.P. 238) (L.D. 635)

Came from the Senate, referred to the Committee on **Marine Resources** and Ordered Printed.

Was referred to the Committee on **Marine Resources** in concurrence.

Bill "An Act to Amend the Laws Pertaining to the Taxes Paid on Sales Involving Trade-in Equipment" (S.P. 237) (L.D. 634)

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

Was referred to the Committee on **Taxation** in concurrence.

COMMUNICATIONS

The following Communication: (H.C. 45)

**STATE OF MAINE
OFFICE OF THE GOVERNOR
AUGUSTA, MAINE
04333**

February 22, 1995

The Honorable Jeffrey Butland
President of the Senate
117th Maine Legislature
Capitol Building - Third Floor
Augusta, Maine 04333

The Honorable Dan Gwadosky
Speaker of the House
117th Maine Legislature
Capitol Building - Third Floor
Augusta, Maine 04333

Dear President Butland and Speaker Gwadosky:

As authorized by 1 M.R.S.A. §8, I am transmitting the notice received by the State of Maine from the United States Department of the Air Force proposing to retrocede all federal legislative jurisdiction over Loring Air Force Base, Loring Water System and the Loring Family House Annex.

Also enclosed are the comments and recommendations of the Maine Attorney General concluding that all necessary preconditions have apparently been met for approval of this offer of the federal government to relinquish its exclusive legislative jurisdiction over these lands to the State of Maine. The detailed recommendations also make clear that the State of Maine stands to benefit from the transfer of jurisdiction, as it will be empowered to enforce its criminal and civil laws on these lands after this relinquishment of exclusive jurisdiction. The Attorney General concluded that the State of Maine will not expose itself to new potential liability for any condition now existing on such lands if it accepts the transfer of legislative jurisdiction (as opposed to any fee interest).

In light of the Attorney General's support of this proposal, I recommend that the Legislature adopt an Act approving the proposed action as outlined in the notice received from the United States Department of the Air Force.

Please note that if the Legislature adopts this Act, the Governor is required by 1 M.R.S.A. §8 to record a duly authenticated copy of the Department of the Air Force notice and the state enabling Act in the appropriate Registry of Deeds before the transfer of jurisdiction may take effect.

Thank you for your attention to this matter.

Sincerely,
S/Angus S. King, Jr.
Governor

Was read and ordered placed on file.

SENATE PAPERS

The following Joint Resolution: (S.P. 252)

JOINT RESOLUTION MEMORIALIZING THE CONGRESS

OF THE UNITED STATES ON THE FUTURE OF THE

UNITED STATES NAVAL SHIPYARD AT KITTERY, MAINE

WE, your Memorialists, the members of the One Hundred and Seventeenth Legislature of the State of Maine, now assembled in the First Regular Session, most respectfully present and petition the Congress of the United States as follows:

WHEREAS, the Department of the Navy has maintained a shipyard at Kittery, Maine since June 12, 1800; and

WHEREAS, the United States Naval Shipyard at Kittery has performed duties in an exemplary manner throughout its almost 2 centuries of history; and

WHEREAS, the Kittery shipyard is one of the most up-to-date facilities available in the United States for the repair, overhauling and refueling of naval vessels; and

WHEREAS, the communities in Maine, New Hampshire and Massachusetts located near the Kittery shipyard offer an abundance of highly trained, skilled and experienced workers who have an outstanding work ethic; and

WHEREAS, the State of Maine is firmly committed to actively supporting the continuation of the United States Naval Shipyard at Kittery; now, therefore, be it

RESOLVED: That We, your Memorialists, respectfully recommend and urge the Congress of the United States to continue to operate, develop and diversify the United States Naval Shipyard at Kittery, Maine; and be it further

RESOLVED: That we further urge the Congress of the United States to take all necessary action to ensure that the Kittery shipyard remains an integral component in a post-Cold War defense strategy; and be it further

RESOLVED: That suitable copies of this Memorial, duly authenticated by the Secretary of State, be transmitted to the Honorable William J. Clinton, President of the United States, to the President of the Senate and the Speaker of the House of Representatives of the Congress of the United States and to each Member of the Maine Congressional Delegation.

Came from the Senate, read and adopted.

Was read and adopted in concurrence.

Non-Concurrent Matter

An Act to Transfer Legislative Jurisdiction over Loring Air Force Base from the United States to the State (EMERGENCY) (S.P. 125) (L.D. 308) which was passed to be enacted in the House on February 1, 1995.

Came from the Senate passed to be engrossed as amended by Senate Amendment "A" (S-13) in non-concurrence.

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

Bill "An Act to Modify the Motor Vehicle Emission Inspection Requirement for Vehicle Registration" (EMERGENCY) (S.P. 242) (L.D. 639) (Governor's Bill)

Came from the Senate, under suspension of the rules and without reference to a Committee, the Bill passed to be engrossed as amended by Senate Amendment "A" (S-12).

(The Committee on Reference of Bills had suggested reference to the Committee on Natural Resources.)

Under suspension of the rules the Bill was read once without reference to a Committee. Under further suspension of the rules and without reference to the Committee on Bills in the Second Reading the Bill was read a second time.

Senate Amendment "A" (S-12) was read by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Greenville, Representative Gould.

Representative GOULD: Mr. Speaker, pursuant to House Rule 31, is Senate Amendment "A" germane?

The SPEAKER: The Chair would like to respond to the request for a ruling by the Representative from Greenville, Representative Gould.

With reference to germaneness of Senate Amendment "A," pursuant to House Rule 31, House Rule 31 reads as follows: "No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment."

The provisions of L.D. 639 are restricted to Title 29A, the motor vehicle statutes. Senate Amendment "A" deals with both Title 29A and Title 38.

The past practice of the House in any rulings of my predecessors have been to consider the title of the state statute as a part of the consideration of germaneness. Senate Amendment "A" fails this test.

The actual title of L.D. 639 is, "An Act to Modify the Motor Vehicle Emission Inspection Requirement for Vehicle Registration." The scope of Senate Amendment "A" appears not to be germane to the title of L.D. 639. The amendment would repeal the motor vehicle emission inspection program without a public hearing, not modify the program.

The past practice of the House in rulings of my predecessors have been to consider the actual title of the bill as part of the consideration for germaneness. Once again Senate Amendment "A" fails this test.

Mason's Manual of Legislative Procedure details the requirements for an amendment to be germane. Mason's states in Section 402, subsection 3, to be germane the amendment is required only to relate to the same subject, it may entirely change the effect of or be in conflict with the spirit of the original motion or measure and still be germane to the subject.

It is clear to the Chair that Senate Amendment "A" deals with a different subject than L.D. 639, as I previously stated.

It is therefore the opinion of the Chair and I therefore rule that Senate Amendment "A" is not germane to L.D. 639.

The pending question now before the House is engrossment.

The Chair recognizes the Representative from Buxton, Representative Libby.

Representative LIBBY: Mr. Speaker, Men and Women of the House: I move to appeal the ruling of the Chair and I request the yeas and nays please.

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

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

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

Representative DIPIETRO: Mr. Speaker, Ladies and Gentlemen of the House: I would like to ask a question to the Representative that wants to appeal your judgment. I would like to ask why?

The SPEAKER: Representative DiPietro of South Portland has posed a question through the Chair to Representative Libby of Buxton who may respond if he so desires.

The Chair recognizes that Representative.

Representative LIBBY: Mr. Speaker, Men and Women of the House: In reviewing the situation I feel that it is germane. It is as simple as that.

The SPEAKER: A roll call has been ordered. The pending question before the House is shall the decision of the Chair stand as the judgment of the House. Those in favor of sustaining the decision of the Chair will vote yes; those opposed will vote no.

Roll Call No. 6

YEA - Adams, Ahearne, Benedikt, Berry, Bigl, Bouffard, Brennan, Bunker, Cameron, Campbell,

Chartrand, Chase, Chizmar, Clark, Cloutier, Clukey, Cross, Daggett, Davidson, Desmond, Dexter, DiPietro, Etnier, Farnum, Fisher, Fitzpatrick, Gamache, Gates, Gieringer, Gould, Greenlaw, Hatch, Heesch, Heino, Hichborn, Jacques, Johnson, Jones, K.; Joseph, Keane, Kilkelly, Kneeland, Kontos, Labrecque, Lafountain, Lemaire, Lemke, Libby JL; Lindahl, Look, Lovett, Martin, Marvin, Mayo, McAlevey, McElroy, Morrison, Murphy, Nadeau, Nickerson, O'Neal, Pendleton, Pinkham, Poulin, Pouliot, Povich, Reed, W; Rice, Richardson, Ricker, Rosebush, Rowe, Samson, Savage, Saxl, Shiah, Simoneau, Sirois, Stedman, Stevens, K.; Thompson, Townsend, Treat, Tripp, Tufts, Tuttle, Tyler, Volenik, Watson, Wheeler, Whitcomb, The Speaker.

NAY - Aikman, Ault, Bailey, Barth, Birney, Buck, Carleton, Chick, Donnelly, Dunn, Gerry, Gooley, Hartnett, Jones, S.; Joy, Joyce, Joyner, Lane, Layton, Libby JD; Lumbra, Luther, Madore, Marshall, Nass, Ott, Peavey, Perkins, Plowman, Poirier, Reed, G.; Robichaud, Taylor, Underwood, Waterhouse, Winglass, Winsor.

ABSENT - Damren, Dore, Driscoll, Green, Guerrette, Kerr, Lemont, Meres, Mitchell EH; Mitchell JE, O'Gara, Rotondi, Spear, Stone, Strout, True, Truman, Vigue, Winn, Yackobitz.

Yes, 92; No, 37; Absent, 20; Paired, 0; Excused, 0, Vacancy 2.

92 having voted in the affirmative and 37 in the negative, with 20 being absent and 2 vacancies, the decision of the Chair was sustained.

Subsequently, the Bill was passed to be engrossed in non-concurrence and sent up for concurrence. Ordered sent forthwith.

On motion of Representative LIBBY of Buxton, the House adjourned at 6:45 p.m. pursuant to the Joint Order (S.P. 236).