

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 II

FIRST REGULAR SESSION

House of Representatives
May 24, 1995 to June 30, 1995

ONE HUNDRED AND SEVENTEENTH MAINE LEGISLATURE
FIRST REGULAR SESSION
67th Legislative Day
Tuesday, June 27, 1995

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

Prayer by Pastor William Meyer, Winthrop Center Friends Church.

The Journal of yesterday was read and approved.

SENATE PAPERS

The following Communication: (H.C. 232)

Maine State Senate
State House Station 3
Augusta, Maine 04333

June 26, 1995

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

Dear Clerk Mayo:

Please be advised that the Senate today Adhered to its former action whereby it Accepted the Majority Ought Not to Pass Report from the Committee on Legal and Veterans Affairs on Resolve, Authorizing Glen Greenhalgh to Sue the State of Maine and the Department of Human Services (H.P. 786) (L.D. 1103).

Sincerely,

S/May M. Ross

Secretary of the Senate

Was read and ordered placed on file.

Divided Report

Majority Report of the Committee on **Banking and Insurance** reporting **"Ought Not to Pass"** on Bill "An Act to Provide for the Creation of a Health Insurance Purchasing Cooperative" (S.P. 539) (L.D. 1477)

Signed:

Senators:

ABROMSON of Cumberland
SMALL of Sagadahoc
CAMPBELL of Holden
GUERRETTE of Pittston
JONES of Pittsfield
LUMBRA of Bangor
MAYO of Bath
PAUL of Sanford

Representatives:

Minority Report of the same Committee reporting **"Ought to Pass"** as amended by Committee Amendment "A" (S-329) on same Bill.

Signed:

Senator:

Representatives:

McCORMICK of Kennebec
CHASE of China
GATES of Rockport
SAXL of Portland

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

Was read.

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

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

**REPORTS OF COMMITTEES
Ought to Pass as Amended**

Representative FITZPATRICK from the Committee on **Human Resources** on Bill "An Act Regarding the Functioning of the Department of Mental Health and Mental Retardation and Several Professional Regulatory Boards" (EMERGENCY) (H.P. 483) (L.D. 664) reporting **"Ought to Pass"** as amended by Committee Amendment "A" (H-626)

Report was read and accepted. The Bill read once. Committee Amendment "A" (H-626) was read by the Clerk and adopted.

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

Under further suspension of the rules, the Bill was passed to be engrossed as amended by Committee Amendment "A" (H-626) and sent up for concurrence.

CONSENT CALENDAR

First Day

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

(H.P. 1133) (L.D. 1577) Bill "An Act to Authorize Department of Transportation Bond Issues in the Amount of \$51,900,000 to Match up to \$135,000,000 in Federal Funds for Improvements to Highways, State and Local Bridges, Airports and Ports" (Governor's Bill) Committee on **Transportation** reporting **"Ought to Pass"** as amended by Committee Amendment "A" (H-627)

On objection of Representative GWADOSKY of Fairfield was removed from the First Day Consent Calendar.

The Report was read and accepted. The Bill was read once. Committee Amendment "A" (H-627) was read by the Clerk.

On motion of Representative STROUT of Corinth, tabled pending adoption of Committee Amendment "A" (H-627) and later today assigned.

Under suspension of the rules, members were allowed to remove their jackets.

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

UNFINISHED BUSINESS

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

HOUSE DIVIDED REPORT - Majority (10) **"Ought to Pass"** as amended by Committee Amendment "A" (H-601) - Minority (3) **"Ought to Pass"** as amended by Committee Amendment "B" (H-602) - Committee on **Judiciary** on Bill "An Act to Protect Constitutional Property Rights and to Provide Just Compensation" (H.P. 867) (L.D. 1217)

TABLED - June 26, 1995 (Till Later Today) by Representative TREAT of Gardiner.

PENDING - Acceptance of either Report.

Representative TREAT of Gardiner moved that the House accept the Minority **"Ought to Pass"** as amended Report.

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

Representative TREAT: Mr. Speaker, Men and Women of the House: I almost couldn't say that because I am on part of the 10 member majority on this takings bill. I very much wish you to vote against the pending motion, so that we can go on to accept the Majority "Ought to Pass" version of this bill. However, I have taken the unusual step today of moving the Minority Report for a number of reasons. This bill is a very controversial and important one, for many people here in the House and, I believe, across this state. In fact, when we were considering where this bill should be referred to, which committee ought to have jurisdiction, there was a lot of interest on the part of the prime sponsor and it going to Natural Resources, a committee where he has served for many years. The prime sponsor is Representative Dexter.

We already had one of these bills in the Judiciary Committee and since it deals especially with constitutional issues, which are the jurisdiction of the Judiciary Committee, we wanted very much to consider both bills in our committee. I made a commitment, at that time, to Representative Dexter and I believe all members of the Majority made the same commitment, that we wanted to see this issue debated fully and fairly on the floor of the House. The only way to really do that for those of us that are sticklers for the rule is to move the Minority Report so that we have the bill before us. The Majority Report does not include the provisions of the Minority Report and goes on to do a study of this issue. I think it is very important that we do have this debate. There is no interest on the part of the Majority in cutting off that debate and that is why I am taking this step. With that said, I really couldn't urge you more strongly to vote against the pending motion and, that is, to vote red.

Although life, liberty and the pursuit of happiness probably topped the list of what, we, Americans care about, it is enshrined in our political documents, the right to own private property is right up there on the list. This was made abundantly clear to the Judiciary Committee as we sat and listened to over 7 hours of public hearing testimony a couple months ago. I don't even remember how long ago it was. It seems like forever. This hearing started off, as some of you may recall, by the first testifier reaching into his shirt and essentially pretending to whip out a gun and then claiming if we didn't pass L.D. 1217 or similar legislation, he and others would bring out there guns having failed to achieve what they wanted by more peaceful means. Obviously property rights and the impact of regulations on people's ability to use and enjoy their own property is a very emotional subject. It is a legitimate subject though for study and it is also quite likely a legitimate study for state legislation. It deserves a thoughtful response, not an emotional one as embodies in the Minority Report on L.D. 1217.

The Judiciary Committee did vote 10 to 3 not to enact this so-called taking legislation at this time. I would like to urge you to vote with me, us against this report. The Majority "Ought to Pass" Report sets up a commission of legislators and stakeholders to further study the issue and it will make recommendations for legislation on this issue in December of this year. Why should you defeat the pending motion? The Minority Report on L.D. 1217 establishes a costly, complicated litigation

nightmare. It will tie the state and local governments in knots. The cost alone is over 15 million dollars over two years. It should be clear to you that this is a program that the State of Maine simply cannot afford at this time. Certainly without studying first to find out whether it is needed and how it might be implemented. Further, although the legislation purports to simply implement current protection in the U.S. and Maine Constitutions, I want to make it very clear it goes well beyond constitutional standards and creates brand new rights of compensation, which do not exist now in our constitution.

Specifically on the cost going through these points. I have handed out a pink fact sheet, which goes into what those costs are. I know that those who support the Minority Report may say to you that "Well, these are just inflated costs, because the Governor's Office really didn't like this bill, they came up with this whole bunch of costs and it is just a way to kill it." New Hampshire has also defeated legislation very similar to L.D. 1217. The study commission in that state came up with very similar figures, which are quoted on the pink sheet. I would just like to read from it. As takings claims are made against private property, appraisal and litigation services will be required to determine the fair market value of these properties and the level of compensation to be paid. Given the contentious nature of these claims, the complexity of determining fair market value and the amount of compensation at stake, it is likely that the litigation process will be quite costly. The New Hampshire figures came out with 200,000 to 700,000 for in-house services plus 2.7 million dollars for consultants, which would include, for example, appraisers. That is without paying out one penny in compensation. With that alone, you will see that those figures actually come in above the figures that came to us from the Attorney General's Office on the cost that they thought it would be to implement this. I don't think that those costs are inflated in the fiscal note.

Secondly, this bill would create a litigation nightmare. Make no mistake about it. The Judiciary Committee spent two hours just walking through this bill. We were trying to understand what every part of it meant and we were unsuccessful. Parts of it, we had questions about and the sponsors of this bill went back and tried to clarify the language, but even with the help of our policy analyst, who is a lawyer and very, very good, he had done these huge flip charts just trying to explain how this bill works and trying to explain the constitutional standards with side-by-side charts that you are familiar with. It took us two hours just to go through the bill. We spent a lot of time on it. We had several other work sessions following that. The point is there is a lot in this bill that has not been worked out and it is going to be resolved in the court, if it is passed. What that means is big bucks and lots of lawyers basically trying to decipher and interpret every word of the bill.

I will give you a couple of examples. One of the basic questions is what law or laws are going to be affected by this bill? The Attorney General's Office gave us an opinion about the original bill and the Minority Report that he just doesn't know. It could include a very large number of pieces of legislation including things that are implemented at the local level, including pesticide forestry, land use

planning, drinking water, site location, shoreland zoning and fishing and hunting laws. They could be affected by this. Secondly, the exemptions are very unclear. There was an attempt made to basically exempt out things that I think the sponsors thought were kind of terrible, pollution type things, and they did it through this nuisance exemption. I don't think anyone here can tell me what a nuisance is under this provision.

There is a Maine Law Court decision that says filling a wetland and flooding your neighbor's home and property is not a nuisance. Spilling 300,000 gallons of oil and contaminating the land in a Virginia neighborhood is also not a nuisance, under a similar kind of standard. Leaking underground storage tanks that contaminate property with toxic chemicals may be a really annoying thing, but it has not been held to be a nuisance in Massachusetts. There is a lot of potential around this that there is going to be litigation about that. If you think these provisions in the bill are easier to take, I would ask you to question that, because I don't think they really do what the sponsors think they do.

Other areas are reasonable, it is used all the time reasonable application, and then you get to go to court and get compensated for the value of your land. Reasonable is not a word used to define applications. You have completed applications, final applications and applications that have gone through hearings and appeals. This just means putting something together that is called reasonable and no one knows what that means. It is going to be litigated. I guarantee it.

I am not going to go on and on because I know there are a lot of other people who will, but the point is that there are many sections of this bill that are very undefined. They are going to lead to litigation. This is something that needs to be looked into. We need to spend the time on a study to really have a chance to decide what is really going on out there. Whose land is being affected? Is it being affected in the way the constitution is envisioning? Do we need to go beyond those constitutional standards? This bill also still impacts on towns. I think there is an attempt here to tell you that the towns are not going to be affected by this. In fact, they are. Even though the towns are not the ones that are going to be required to pay you. If a local regulation is mandated by the state, that local regulation comes under the net of this bill, towns could be told by the state not to apply regulations in certain situations. What you are going to have is one person on a lake has been told they don't have to apply to the regulation. They can build their house right up to the edge and the person next door goes and gets a whole lot of money from the state. I don't think that is going to lead to really good public relations in that town and an ability to do well with your enforcement.

Finally, I would just like to point out that this bill is not supported by many, many members of the business community including the Maine Alliance, Bath Iron Works, Maine Municipal Association, the Governor's Office, local lake associations, conservation groups and others. They are very opposed to this. They believe, as I do, and the majority of the Judiciary Committee, that the responsible thing is to really study this issue and take the next four months and appoint a bipartisan

study that involves members of both Judiciary and several other committees that have an interest, such as Natural Resources, Agriculture, State and Local Government and stakeholders, such as representatives of the real estate lobby of the property owner, conservation groups, state planning office and others. We need to look at various questions, which are important questions, we are not saying they are not. Are people able to get to the courthouse door? Is the current system too complicated and expensive? Is the constitutional standard in Maine adequate or should we go beyond it as this bill proposes? It is actually going to look specifically at 1217 and 170, which were both L.D.'s on this subject and look at the specific remedies put forward in these bills.

The Majority Report will study these questions and come up with any needed legislation. It is the appropriate way to go. I hope that you will join with me and the 10 majority members of the Judiciary Committee and vote down the pending motion.

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

Representative DEXTER: Mr. Speaker, Men and Women of the House: I have to change my testimony a little bit. I am a little bit surprised. I am going to be operating from a positive motion. I like that. I am the prime sponsor of this bill along with 105 other people. There were 10 others that indicated support for the bill and there were some that I didn't get around to see. Nothing has changed. Absolutely nothing, regardless of all the rhetoric that you may have seen in the paper and the media.

This issue reminds me of something that happened to me way back in 1940 on the river drive. I came out of the Kidney Mountains, when I worked for \$1.50 a day and board, and the river drive started up. It paid \$3 plus two meals. I signed up with, of course, about 100 other people. We took off from Kingfield and headed toward Sugarloaf. Most of you people know where Sugarloaf is. Just where you can look upon the mountain, the road bends and you come to "Oh-my-gosh-corner," where we have had a lot of accidents. There was a gentleman that knows where that is.

During the winter when the river was frozen, they put a walk rope across. Of course, they had lifted the gates in the pond in back of Sugarloaf, that was the head of water to drive the pulp. We got out of the truck, a 1936 ton-and-a-half sideboard and the foreman said, "This is where we separate the men from the boys." I looked at that rope, and remember the water is coming down the ice, and the only way across is hand over hand. Half the crew decided they didn't want to work for \$3 a day. I was still in my teens and weighed 110 pounds wringing wet. I strapped on a pickeroon and a pulp hook and I went across with a classmate of mine. Back then it was a man's world on the river, now we have the fairer sex here. So this will also separate the women from the girls.

We are talking about both reports, apparently, the Majority Report wants to study something we all agree is a problem. What are we going to study? In my opinion, just a plain old study is about as useless as a milk bucket under a bull. If we can pass this Minority Report, we will implement this and we will have something to study. I have been here 17 years and I have never seen as much untruths about a bill as this one, never. The scare tactics are unbelievable. Of course if you want to kill a bill that is the way to do it. I have used it myself.

Back when I was a young "fella," if you took something that belonged to somebody else without paying for it, it was called stealing. It wasn't called taking. I don't know where they get these inflated figures of millions and millions of dollars in the first year. Can you imagine the courts working fast enough to do anything? Besides, if you don't take anybody's property, where is the fiscal note? I will put my environmental record up against anyone.

I don't know whether you know the definition of an environmentalist or not, but I will give it to you. It is one who built his log cabin last year. Think about it. I get a kick out of reading these letters to the editor in the paper. I moved here to Maine because I like the quality of life and I have this property and so on. That person went out of the State of Maine to make the big bucks and then came back here and wants to preserve everything. Those of us who stayed here and worked hard, can't even afford to buy land because of things like that. I could say a lot more, but I am sure with 105 cosponsors probably I better sit down and let someone else talk for a while. Thank you.

The SPEAKER: The Chair recognizes the Representative from Acton, Representative Nass.

Representative NASS: Mr. Speaker, Men and Women of the House: This is a difficult issue. In my opinion, probably the most difficult issue that we will have to deal with this session. Judging from the number of cosponsors, almost everyone has a quick opinion of this. However, the more you look at this issue the more difficult it gets to be. I am going to suggest to you today that we are going to be talking about this probably, at least a decade from now. We still will be looking for the proper solution.

The hearing, I think, just the number of people that attended the hearing will give you an idea of the concern that is generated out there in the population about this. There was somewhere between 200 and 300 people over at the Augusta Civic Center where this issue now joins gay rights and abortion issues. We are going to be talking about this for a long time. The Chairman at the hearing did conduct a straw poll early on and roughly half the people who were there indicated that they were in favor or some kind of legislative changes relative to the takings issue. It was surprising to me. These people, as the testimony went on, for over 7 hours, turned out to be not necessarily your big developers in the state, but a lot of ordinary folks.

With all due respect, I would caution you about how you are going to vote on this. It is controversial and it is not just controversial with the big business interests in the state. It is controversial with all the little people in the state. The more you dig into this, the more that is going to become apparent. Let's talk a little bit about this constitutional right, because as we look for a solution to this, we are going to have to grapple with some of the very philosophical bearings that we hold to be true. The constitution, both the Maine and the U.S. Constitution provide that a property owner has the right for just compensation if the government takes their property physically or by regulation. That is what we are talking about, taking by way of regulation and even that statement is very controversial.

Currently if DOT takes your front yard; they pay you for it. There is a well established process for that. DEP comes in and takes your back yard, they just walk away. No one offers to pay you anything for that property. The purpose of this bill is first to ensure that the minimum steps are taken to protect this constitutional right by creating a statutory process for individuals to follow, the same as if there was a physical taking.

Second, this bill creates a commission to study the unresolved issues about the extent that this statute should reach in protecting these constitutional rights. We are offering today a statutory solution. It is a ghost of what was originally proposed. There is very little left in the original two bills. L.D. 1217 is not at all what the good Chairman from the Judiciary Committee talked about that was discussed at the hearing and in our first workshop. It is a ghost of its former self. This bill attempts to provide just the beginning in the solution to the problem faced by property owners trying to pursue their constitutional rights. This bill creates a statutory mechanism that will provide for predictability in approaching the courts. This is a big problem.

It is difficult to even get into court on any reasonable basis on one of these issues. It creates consistency in the laws governing this constitutional right by providing the framework for the courts to follow. The same kind of a framework that we have and it has been well tested for physical takings, the kind that the highway department would use. It makes the court more accessible to those pursuing their rights. Individuals will no longer be caught in the current system that can last a decade before providing an answer.

Finally, it ensures fairness by establishing reasonable standards for determining whether unconstitutional taking has occurred. After we produced this amendment, I have been asked a number of times why do we want to make a statutory change and then as the Minority Report provides for a study in Part B? To me, it makes a lot of sense. We are asking for the minimal changes, at this point, and we also realize that this is a long on-going process. We have therefore provided for a study.

Finally, I would just like to comment on the fiscal note. I am sure all of you have had this experience with a proposal of your own. The state agencies come in and as soon as it becomes apparent that they are opposed to it, in this particular case it happens to be the State Planning Office and the Attorney General's Office, and these are the same agencies that are also charged with providing major input to the fiscal note. It should be no surprise to me, as it probably is not to you, that the State Planning Office recommended that this would have a 15 million dollar fiscal impact over two years.

It is interesting to note that if you look at both the Minority and the Majority Reports that the actual fiscal note, the dollars that the Appropriations Committee is being asked to consider on the Minority Report is about half of what is asked to be considered on the Majority Report. That is about \$4,700 on the Minority Report for the study versus \$7,000 on the Majority Report. The actual dollars that are asked to be set aside for these two things deals primarily with the two studies. In the case of the Minority Report, it is, in fact, almost half of what the Majority Report is asking for. Thank you.

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

Representative PLOWMAN: Mr. Speaker, Men and Women of the House: This was a very long and difficult bill for us to work at. I urge you to support the Minority "Ought to Pass" as amended. I would like to go through this mini-takings bill with you and point out to you that there are many definitions. We talk about regulatory takings, which means how to figure the value. We talk about mandated regulation, which we already recognize as something that we do when we pass it on from the state to the local level. We talk about rightness, which is one of the hardest things for a property owner to have determined. When did he lose the value of his property? Then we set a statute of limitations saying he has six years from the time he lost that value, to bring a claim. This is not a forever and ever. There is a statute of limitations. There is a beginning and an end.

We put in for alternate relief, instead of paying the compensation, yes, you can choose not to apply the regulation. Personally, I can't think of another regulation that we could come up with, but I am sure they are out there. The exceptions are nuisance and anything in Title 38 regarding air quality, Title 38 regarding wastewater, Title 38 regarding solid and hazardous waste and for a catch all it precludes the intense development incompatible with the surrounding area as determined by a jury. Jury is a new word here. You don't get a jury trial right now. You don't get to go before your peers to determine if what the government is doing is a fair action. We did put in for a study and you will see that our study is 9 members versus 20. Nine members consisting of legislators from the Judiciary, Inland Fisheries and Wildlife and Natural Resources Committees.

We envision this study to be one long work session listening to testimony as we did on the TQM Committee. People coming in with various points of view and suggestions. I think it is a fair bill. I would like to see you support it. Let me just tell you about one situation. In Orrington, they filled in some wetlands a short time ago. DEP must find some other wetlands to remediate to make up for what they have done. They targeted Hampden, across the river. They picked a plot of land and the plot of land is used by probably 30 families. It is a beautiful place to walk. It is safe. Children play there. It is at the end of a road in the middle of nowhere. They ride their bicycles. They have a great time. DEP is going to remediate that into wetlands. There will be no more walking. There will be no more riding the bikes. The kids won't be able to play there, because this is now going to be turned into a wetland. Not only have they taken from the owner, but they have taken from the neighborhood, because the owner was thrilled to have the people using this land as it was.

Two weeks ago we discussed how to preserve land for Maine citizens. We are jumping through hoops to preserve land for Maine's citizens. We make it almost impossible for a citizen to preserve land for himself. If you could have seen the people that stood before us, the young father who spent his retirement, children's education fund and still managed to lose his whole back yard due to a DEP taking. His whole future and all of his financial security, because there wasn't a bend, compromise or

a way for him to go to court. We are asking to put this into statute and study it so that we can have a full policy.

I also would like to address the fiscal note. I think Representative Dexter said it best, but I will try to put it a little more delicately. If there is a case that makes it through the court system in the next one to two years, I would hope it would be the case I was involved in or that some of my friends were involved in civil actions, too, because they are not getting through. Those cases take forever. The 15 million dollar fiscal note is incredible. The regulatory process is prospective. The state will have to decide if it is important enough to pass this new regulation, what are the ramifications, something that is totally left out right now, how will it affect landowners and will it cost something? When you throw all those things in, we are going to see a slowdown in regulations. I would appreciate it if you would accept the Minority "Ought to Pass" Report. Thank you.

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

Representative GOULD: Mr. Speaker, Ladies and Gentlemen of the House: There is one point that I would like to explain to you on this pink sheet that says there is going to be a problem determining the fair-market value of these properties. Some of you may not be aware of this, but the fact is that municipalities are supposed to determine the fair-market value of properties within their jurisdiction, because it is the way that we make our property tax determination based upon the fair-market value of these and the state is also supposed to do the same thing. I hope you wouldn't use this as a reason not to vote for the Minority Report. Thank you.

The SPEAKER: The Chair recognizes the Representative from Freeport, Representative Hartnett.

Representative HARTNETT: Mr. Speaker, Men and Women of the House: I agree with the good House Chair of the Judiciary Committee, Representative Treat. It does seem like ages ago that we left the civic center at around 9:15 at night, having heard seven hours of spirited and divided testimony on the bill that you see before you. If I came away with any impression from that long, long afternoon of hearings, it was that there does exist in Maine today a problem with regulations depriving people of some of their land ownership rights, reasonable rights and uses that they expect to have.

As the workshop commenced on this bill, I was equally persuaded that this is an issue that needs to be studied further so that its full impact and implications could be understood. In both the Minority Report and the Majority Report, you have the proponents saying that we need a study. I know it is a bad word around here, but I would like to stress to you what we are talking about here is a fundamental reinterpretation of the Fifth Amendment of the United States Constitution. We have our 200 years of court rulings of what this amendment means and today the legislature must decide if it will, in one vote, completely change that definition. I dare say that is a step we don't want to take lightly.

As we wind up our session here and a lot of us go back to our regular lives, I might suggest that you take a correspondence course in real estate appraisal or maybe you could over the summer become an attorney. If this bill passes, there will certainly

be full employment in those fields. Again, remember we are going into what as a map maker we call terra incognita, unknown lands. As we all know when the average citizen tries to find out what is in those lands, sometimes the lawyers and the appraisers make money all along the way. There is an enormous fiscal note on this bill. I know the proponents of the Minority Report would say, see that just goes to show you how much land is being taken. It doesn't.

You know the moment a suit would be filed under this legislation the state must go into its battle mode armed with its appraiser, litigation specialist and begin defending the state. Interestingly in the Minority Report if the state prevails, in its case that a taking had not occurred, the taxpayers will simply have to swallow all the defense costs. If the plaintiff, the person who thinks there was a taking prevails, the state pays. It is kind of a lopsided one way street there, I think. This fiscal note, if it is nothing else, it is a leap into the financial darkness. We really may not know what this is going to cost. I don't think that is the way that a deliberative legislative body wants to conduct its business.

The Majority Report would give you a chance to assess what those costs would be and to incorporate them reasonably and with foresight into future budgets. Already this morning one cosponsor has said, "I am a cosponsor of the bill. Don't I have to go with the Minority Report?" Obviously we all get to change our minds. I have sat and told you about bills that I was a cosponsor on and then ended up voting against them. In this case you don't have to vote against the bill, you simply have to say that this is a big issue, let's accept the Majority Report and study the issue and proceed cautiously.

Another area of concern for me that came out through the workshop sessions on this bill was, how do we ensure that, if indeed, we need to reinterpret the Fifth Amendment and certainly there are strong arguments that we do, that the average person, the little guy or the little woman, has as much access to this new and expanded right as the large land speculators, wealthy businesses or those who are clever and wealthy enough to manipulate the system and land ownership and capitalize at the expense of the public treasury? That is a serious issue to me. Some of the very poignant testimony we had came from small landowners owning a lot for, let's say, for 40 years along a shorefront hoping one day to build that retirement cottage and then found that they couldn't. If there is a problem, that is the problem. If there is a person we want to help, that's the person.

Yet, I am not sure if we just accept the Minority Report, we are guaranteed that this person will be able to get through all the hurdles and incur all the expenses needed to prove their case. The AG's Office has estimated that with this Minority Report the fiscal note for FY 95-96 will be in excess of \$180,000. That is just to defend. I hope we all want the state to defend, we don't want them to roll over and be exploited by those who would say they have had a taking and give me money or rescind your law. In FY 96-97, this cost of defense would seem to be over \$470,000.

I agree that if a landowner can prove that a taking has taken place, they deserve compensation and we, as an elected body, need to pay that bill. Let's know what the bill might be. I urge you to reject

the Minority Report and not take this leap into the financial darkness and I urge you to carefully and in good conscience study this issue.

The SPEAKER: The Chair recognizes the Representative from Bridgton, Representative Waterhouse.

Representative WATERHOUSE: Mr. Speaker, Ladies and Gentlemen of the House: I am sure you have all had contact with your local code enforcement officers or your municipal officers. Quite a while back in May, I think it was, we had a Lion's Club, Journey for Sight in Bridgton and a member of our Lion's Club was the code enforcement officer and he came up to me and he said, "Paul, about this takings bill." I said, "Yes." He said, "It is horrible. We will have all kinds of litigation and we are going to have all kinds of pollution and we will not be able to protect our lakes and rivers and so on and so forth." I said to him, "Chet, how about if I send you the Maine Law Court Review on takings, which gives you a case history of taking issues in the Maine Law Court." He said, "Fine, why don't you do that." I sent him a bunch of it and it was about 40 pages and about three or four weeks after that, we had the Lion's Club final meeting and he came up to me and he said, "Paul, you know after reading that, I have changed my mind."

I disagree with the good Representative from Freeport, that we are going to be reinterpreting the Fifth Amendment of the Constitution. I am going to tell you why. I think the Supreme Court has already found regulatory takings in the Fifth Amendment of the Constitution. I am reading from the Maine Law Court Review right now. The United States Supreme Court held for property interest in two of the last three takings and this is the language.

"We realize that our present holdings will undoubtedly lessen to some extent the freedom and flexibility of land use planners and governing bodies of municipal corporations when enacting land use regulations. Such consequences necessarily flow from any decision upholding a claim of a constitutional right. Many of the provisions of the constitution are designed to limit the flexibility and freedom of governmental authorities and the just compensation clause of the Fifth Amendment is one of them."

As Justice Holmes happily noted more than 50 years ago, a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change. The taxpayer, I don't make too much money and I don't like to pay higher taxes, but if I am going to depreciate somebody's property value so much that we more or less after the 50 percent constitute a taking, I am willing to pay that extra price as a taxpayer. Believe me, I don't have that much money.

Further language in the Maine Law Court Review addresses the land use regulation. Some of the language is. "The word designation must leave the private landowner with use that represents significant real and immediate economic value." It goes on to talk about the guidelines for the comprehensive planning Land Use Regulation Act promulgated by the Department of Economic and Community Development to assist local planners in their rural areas. It tends to mislead planners on the constitutional scope of their ability to restrict private land use in the rural areas. This comment will show the advice of the guidelines in the Land

Use Regulation Guidebook. It is so excessive that if it had the force of law, it would constitute a takings on its face and no need for applied argument.

Consequently, the principal focus of the law court in takings cases has become a factual inquiry into the unique fact of each case. Because of this ad hoc approach it is difficult to develop any set formula for determining when justice and fairness require that economic injuries caused by public action be compensated by the government rather than remain disproportionately concentrated on a few individuals. Some people say that some of these takings for environmental reasons or whatever else is in the public interest, to give some benefit to the property owner and should we charge them for that?

A little more language from the Maine Law Court Review says, "Because the generalized benefit conferred on the affected landowner by the public programs that were so disproportionate to the deprivation of the use imposed on the landowner, application of the wetlands have constituted an unreasonable exercise of the state's fleet power, that was related to State vs. Johnson." What we are saying here is this Minority Report will establish standards. It is not a reinterpretation of the Fifth Amendment to the Constitution, the Supreme Court has already found regulatory takings. What we are going here with this Minority Report is setting a standard so we don't have this ad hoc approach. I urge you to support the Minority Report. Thank you.

The SPEAKER: The Chair recognizes the Representative from Farmingdale, Representative Watson.

Representative WATSON: Mr. Speaker, Men and Women of the House: The proponents of L.D. 1217 have claimed that the only people frightened of this legislation are the environmentalists. It is a reasonable piece of legislation. This is an unkind attack on the bill opponents, but more importantly it is simply not true. I want to speak for a moment about the widespread opposition stated at our public hearings on this bill.

From Bath Iron Works, we heard that L.D. 1217 was fiscally irresponsible, that it would undermine local control and that it would unfairly tip the balance between protection of private property rights and community rights to a safe and healthy environment. BIW opposes the Minority Report, as you can see from the letter on your desk.

From the Governor, we heard that the bill appears to say that the rights of property are so much greater than the public welfare, that it is necessary to pay the property owner not to harm others. The Governor opposes the Minority Report.

From the Maine Real Estate and Economic Development Association, we heard that while they were in strong support of some of the philosophical underpinnings of this bill, the specific language is so overreaching that they cannot support it.

MREEDA, specifically opposed the retroactive provisions of the bill, which they felt would eventually lead to dramatic changes in current, generally accepted levels of protection. MREEDA continues to oppose the bill as amended by the Minority Report.

Also, from the Maine Municipal Association, we heard that the bill substitutes the cumbersome overly legalistic and extremely expensive program instead of reform. MMA opposes the bill as amended.

We also heard from the director of the China Region Lake Alliance, we heard that inadequate land use regulations around China Lake has resulted in a smelly green lake and destruction of the salmon and trout fisheries and the economic profitability of the lake. These green lakes have reduced property values also.

We also heard from a forester who pointed out that the forest products industry, which is here complaining about the lake's negative effects of government regulation on private property values, in turn benefits from public policy through tax policy, such as the tree growth, Maine income tax credit and subsidies of forest management plans.

We heard from a real estate man that while the idea of compensating landowners seem right on the service, the long range effects would be a disaster and an economic burden on the very landowners the law is intended to help. He testified about the damaged cars by a lack of regulation on Emden Pond.

We heard from a Readfield selectman that said that L.D. 1217 would irrevocably cripple the Home Rule Rights enjoyed by Maine citizens. He pointed out that local decisions on land use ordinances were made with forethought, community involvement, and with care to balance the rights of the property owners with the rights of the public.

The Maine Public Health Association said that L.D. 1217 was bad medicine for Maine people and that it would bankrupt state and local governments.

Finally, we heard from an independent lumberman who manages a 2,100 acre wood lot that the regulations he must comply with are intelligent and sensible and force him to operate reasonably. He recognizes that he pays lower taxes in exchange for some of these responsibilities.

People from all walks of life oppose L.D. 1217 and continue to oppose the Minority version of the bill. They include the Governor, BIW, Attorney General, MMA, MREEDA, the League of Women Voters and environmental groups. I believe that they all have good reason to oppose this bill. I urge you to vote for the study of this issue proposed in the Majority Report. Thank you.

The SPEAKER: The Chair recognizes the Representative from Bar Harbor, Representative Jones.

Representative JONES: Mr. Speaker, Men and Women of the House: The proponents for the Minority Report claim they have significantly amended this bill from its original version. The Minority Report still goes well beyond the protection afforded by the Constitutions of Maine and the United States and would cost the Maine taxpayers a tremendous amount of money.

I believe in private property rights. I believe in the protection afforded under the U.S. and Maine Constitutions. Those protections should apply when the government takes property for public uses such as roads and schools. The government should pay when laws and regulations effectively take an individual's property. In fact, the Maine and U.S. Supreme Courts agree. They have said when the government takes property, the government must pay. The Minority Report is a significant departure from the constitution.

According to the Attorney General, this bill departs dramatically from the private property rights on the protection derived from the Constitutions of Maine and the United States. They would require landowner compensation far in excess of any that is

constitutionally mandated. According to the AG, this bill in both its original and amended versions would create an entirely new statutory program of landowner compensation funded by the public treasury.

This compensation would be paid by you, by me and by our constituents. It would add millions and millions to the existing tax burden of this state. Property rights are now protected under the constitution. The Minority Report goes far beyond the constitution and creates something that is simply not affordable to the Maine people. For this reason, I urge you to vote no on the Minority Report. Thank you.

The SPEAKER: The Chair recognizes the Representative from Penobscot, Representative Perkins.

Representative PERKINS: Mr. Speaker, Men and Women of the House: This is one of the most exciting and important bills, obviously, to come before us. Property owners have been getting the short shaft for decades and decades. The U.S. Supreme Court came down with a very important decision about three years ago on the Lucas Case down in South Carolina, out on the sand dunes. It got a lot of us excited. I think you are seeing the results of that first decision. Another one has come down since then, the Lopez Case.

I submitted a bill fairly early in this session, a very simple bill to compensate after 50 percent. Senator Hanley put one in earlier than I did. He got his name on the bill. After getting all the flack that I got, from even being a cosigner, I am kind of glad that I wasn't the prime sponsor on that. This is a very important issue and we need to do something. You don't have to be from Penobscot to realize we need to do something. Representative Dexter deserves a lot of credit for a lot of work he has done and a lot of courage to bring this forward. His bill is much superior to the Senator Hanley bill. I still have a problem with it, even though it has been fixed some.

It still has the retroactivity that I just don't see how we can deal with that. The property owners down our way have been given the back seat for so long that the planning and zoning board people, the makeup of those boards quite often, down our way, 90 percent of them are from out-of-state, there is nothing wrong with being from out-of-state, but it shows you the participation level of the locals, 80 percent of them already have their place on the shore and they want to regulate people that just buy a place on the shore, 70 percent of the places on the shore already have the trees cleared clear to the shore, they want to pass regulations. It is in the state shoreland zoning law now given the intricate formula of how many trees you can cut. You have to leave a dog leg in the path so that nobody in their yacht can see your cabin, but when you ask those regulators and the people that wrote those laws, why don't we force people to let their trees grow up on those fields, we hear grandfathered.

Grandfather usually applies to hardships. What kind of hardship is it to let your trees grow up? Ask those people that sometime. I have never heard an answer to it. As far as China Lake, that is a good example. A lot of those places, there is no vegetation between the home or the camp and the lake. We never think about asking them to let their trees grow up for that protection, but the person who goes in there and buys a place with a little wood lot on it, boy, they want to jump all over him to keep him from doing anything. I have to differ with my

friend, Representative Dexter on this. I really believe this is one area that needs more study. We don't like study commissions, but a legislative committee is a study commission.

In this case it is so complex, I just don't believe it had time and I am going to vote for the Majority Report for that reason. What I would like to see come out of this commission is something simpler, something equivalent, a regulatory equivalent of the physical takings that we all agreed to the concept of, of eminent domain. When the highway department wants to take part of your land, you can arbitrate the value of it, but we all agree with the concept. It is simple case by case property situations. I think that is the way this ought to be too.

If somebody wants to all of a sudden declare the eagle is valuable to society, mind you, when I was a kid, people shot them willy-nilly. In Alaska years ago, there was a bounty on them. They aren't inherently valuable. Society now deems them valuable. That is fine, they are beautiful critters. Somebody finds a nest on your property and you can't cut your wood lot or your firewood, that is a public interest in your land. You ought to be compensated, property by property, case by case. I don't think it would be so darned difficult. I realize eminent domain is 100 percent takings and that is a big problem. It doesn't seem to me that it would be too difficult for this study task force to come up with something that would give fractional takings. If the society decides that your old growth forest, back behind your house, is valuable, you ought to be able to come up with a value for it and you should be compensated.

I hope you will vote for the Majority Report to study this so we can come up with something soon. Thank you.

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

Representative HICHBORN: Mr. Speaker, Ladies and Gentlemen of the House: It is good to hear the words of wisdom coming from Representative Perkins, because it seems to me that represents a common sense approach as we hear this issue discussed. We are talking about the Attorney General, lawyers and dollars and cents. I think Representative Dexter presented the case quite well when he said it is a case of taking something that isn't ours. That in anybody's language ought to be interpreted as stealing.

My story that I am going to tell is a short story about a constituent who owns a couple hundred acres of land on the east bank of the Penobscot River. It is a beautiful lodge. There is the river and there is good fishing there. The water makes music as it goes down over the rocks, but he can't develop that because of regulations. You go back a little ways and that is a place Representative Dexter would call heaven, because the pines are tall and it is quiet and it is beautiful and it's restful.

He would like to go in there with his chain saw and cut them down. My constituent doesn't want to cut them down. He might like to do some work there, but he can't because the eagles find that a very favorite spot of theirs. There is good fishing in the river and good nesting. He can't use that. He knows this bill probably isn't going to help him a bit, but my constituent wanted me tell you of his story. Nobody has taken his land, it is true. The

land is there. This bill may not help him a bit, but I think we do have a problem and it is a problem that can't be solved by the people who are described as environmentalists.

It is a problem that can be handled by the use of common sense. The approach that Representative Perkins made is good. I have no more faith in studies than Representative Dexter or any of the rest of you. You all know what they amount to. If we got a report back, half of them go in the wastebasket and aren't even read. This is a problem that needs attention and I think perhaps this takings bill has gotten enough publicity in the papers so that it will help. We can't restrict everybody completely. We can't control everybody completely and we shouldn't. It is a matter of plain common sense. I hope that in order to demonstrate to the people that we hear this message and know what the problem is, that we will follow Representative Dexter's light and give him some credit for trying to do a job for the people of Maine. Thank you.

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

Representative LEMKE: Mr. Speaker, Men and Women of the House: I urge you to vote against the pending motion and I will be urging you to go the task force route. I would like to explain as simply as possible why I take this position. Because like many of you I was one of the original cosponsors of this bill, but as often is the case, we sign on the concept, but once you start to look at the problems and the fine print, then you have problems with the bill. That doesn't mean you have problems with the concept and want to deal with it.

I don't like task forces and I haven't voted for many and when I have voted for them, I have done it with less than enthusiasm. I think if ever there was a case where we should go to the task force route and this is only six months, we should on this. I was listening to my good friend, Representative Dexter and he was talking about the analogy of a study being as worth as much as having a pail under a bull. That is a good analogy, I suppose, but let me make an analogy too. I grew up in a coastal part of the state where on the shore and on the island, you had a lot of abandoned quarries and pits. On a hot day and in the summer, those things look awful attractive to jump in. The problem is if you jump in and you don't know the rocks and other things in there, you could get banged up pretty bad or worse.

Frankly, I think if you go for the pending motion, that is like looking to that wonderful water and you want to jump in, but you are going to get hurt. I think it is a good idea to spend a little time and recognize where the rocks and other things are before we go for this. I think the ramifications if we just jump in now might make the ramifications of Car Test look puny. I mean, this is a good problem. It has many side issues and elements to it. You can say that the issue of property rights versus common good and how you reconcile them has been building up for 200 years. I think we can spend six months trying to approach it better.

Finally, I want to say that a vote against this doesn't mean a vote against having takings legislation. Frankly, I want to see takings legislation, but I want to see it reasonable and I want to see legislation that can stand up constitutionally, so I am willing to take the time. I no way think that if you vote against this, we are

not going to have a takings bill. As far as I am concerned, as one member of the Judiciary Committee, we will have one, but it will be a responsible one. That is it folks, I urge you to vote against the pending motion.

The SPEAKER: The Chair recognizes the Representative from Rockport, Representative Gates.

Representative GATES: Mr. Speaker, Men and Women of the House: I rise in opposition to the Minority Report. I think the Representative from Acton is exactly correct. This is probably the most far reaching legislation that we have had this session and I think it is a tremendously important issue. I also think we have resolved that we are not talking about a Constitutional Fifth Amendment issue here. Our Fifth Amendment rights are secure. There is nothing we can do in this House that will substantially affect them at all. What we are talking about is simply a statutory scheme. The main problem with the bill for me and with the Minority Report is that it is just such a new standard for when a taking occurs.

The constitutional stand, the Fifth Amendment standard, the existing standard, is that a landowner has to be deprived of really all reasonable uses of his land before constitutional taking occurs. That, admittedly, is a tough standard and it is supposed to be. The standard in the Minority Report is that 50 percent of the value of your land is taken, then a taking has occurred. By the way, that 50 percent includes existing regulations. Things that have been passed years ago by this legislature can come into play in determining that 50 percent. You don't have to take my word for it. You can look at section 8 of the bill. It is retroactive in a limited way.

If you can just go forward and say that your land is worth twice as much if I can build whatever I want, where ever I want, then you prevail under this bill. I think that is way too low a threshold. The second marked departure from the existing law and the existing constitutional standard is that you don't have to consider the whole property. The current situation is that if you own 100 acres and if regulations take and reduce the value of your land so that you are deprived of reasonable use, you have to consider the whole 100 acres.

Under the Minority Report, you are allowed to partial or segment out any portion of it. If you have a stream running through your 100 acres and you have shoreland zoning saying that you have a 200 foot setback and you can't build in that 200 feet, you are permitted to say the value of that 200 foot strip has been reduced by 50 percent because I can't put a house there. It doesn't matter that the rest of your 100 acres hasn't been affected at all. That is a huge, huge change and one that was brought up during the hearing process, but they chose not to address. That really is remarkable. When you consider the different standard in conjunction with the fact that you can just segment out a small partial of land, it is really a very, very bad idea.

Lastly, regarding the fiscal note, I would just like you to bear in mind that section 13 of the bill does a lot for arbitration. We don't have to wait for the court system to start grinding out judgments in favor of landowners to start paying the price for this. Thank you.

The SPEAKER: The Chair recognizes the Representative from Biddeford, Representative LaFountain.

Representative LAFOUNTAIN: Mr. Speaker, Men and Women of the House: I encourage you to defeat the Minority "Ought to Pass" Report, so we can go on to accept the Majority Report. The good Representative from Freeport, Representative Hartnett indicated that this bill as amended would be a lawyer's dream and a real estate appraiser's dream. What may be one person's dream, is going to be a regulatory nightmare for others.

The good Representatives Perkins and Gates indicated briefly that this bill as amended would be applied retroactively. Proponents of the Minority Report at both public hearings and at the work sessions indicated that the bill as amended would apply only to new actions taken by the government. This is not so according to the Attorney General. The Attorney General said in a recent opinion that the amended bill, like the original, applies retroactively to a reductions in property value claimed to have been caused by state laws enacted prior to the effective date of the bill. I can think of several ways in which his amended bill would be retroactive. I will suggest one.

As an example, say after a vigorous public debate, the state shoreland zoning is amended to better protect lakes, water quality, prevent algae blooms that lower property value and avoid expensive water treatment costs. If that amendment reduces the value of any portion of the lake front owner's property by 10 percent or more and a combination of the amendment and existing protection reduce the value by 50 percent or more, then the property owner can sue the state and demand payment. There is no question that the Judiciary Committee took this issue seriously. In fact, if you look at the committee report, we are split 10 to 3. However, you see no member of that Judiciary Committee voting that this bill ought not to pass in any form. In fact, 10 of us suggest that this bill should go on to a study.

I still cannot comprehend and maybe someone can explain it to me, why you would implement law and then decide to study it? It seems to me that is simply putting the cart before the horse. I encourage you to defeat the Minority "Ought to Pass" Report.

The SPEAKER: The Chair recognizes the Representative from Skowhegan, Representative Hatch.

Representative HATCH: Mr. Speaker, Men and Women of the House: I just wanted to let you know that I am a cosponsor on this bill and I believe that the time has come, but if we pass the Minority Report on L.D. 1217, there will be some clear winners and losers. This bill is a gold mine for the lawyers of Maine. It is a disaster for the taxpayers, our children and our environment. This bill is a full employment act for lawyers. If it passes, it is hard to imagine who would not be able to hire a lawyer to bring a lawsuit in Superior Court. As the president of Bath Iron Works said, "Those who could not file a claim for compensation and request a jury trial would be few and far between." That is because laws and regulations that limit what we can do with our land touch all of us.

We have passed these laws to protect drinking water, the opportunity to fish, boat and swim in our lakes, the character of our community and wildlife we love to hunt, fish and watch. If the Minority Report passes, I can hire a lawyer and sue the state. I will claim that the plumbing code or wetlands protection or both have prevented me from earning

maximum benefits and profits for my land. Under this bill, I would probably win in court too. If the state cannot afford to pay me what my property is worth without the regulations, then it can waive the regulations. I don't think my neighbors would appreciate watching their basements flood or the drinking water quality decline. However, L.D. 1217 does not let them sue if their property values go down.

If we pass this bill, you know who will get rich. The lawyers will and including those who wrote this bill. They will pass their business cards out all over Maine to landowners who can file lawsuits against the state. They will ask taxpayers to pay property owners to obey the laws that you and I as well as former and future legislators enacted and will continue to enact to protect Maine people and their environment and economy. If you want your constituents to get a tax bill every April 15 that includes the exorbitant costs of this bill, then maybe you should vote for the Minority Report on L.D. 1217. If the idea that this might happen on your watch frightens you as it does me, I urge you to vote for the reasoned Majority Report and put this out to a study. Thank you.

The SPEAKER: The Chair recognizes the Representative from Farmington, Representative Gooley.

Representative GOOLEY: Mr. Speaker, Men and Women of the House: I believe in a just compensation for a taking. Presently there are too many examples of the regulatory process dipping into the landowner's pockets and changing a land use to one of environmental protection. I am all for environmental protection and during the last 40 years I have seen many examples of environmental degradation. L.D. 1217 is an important piece of legislation and there needs to be restitution to owners. I have seen cans of worms before and I guess Car Test might have been an example of that. When I started thinking of this takings bill I had thoughts of Car Test. I wouldn't like to see us get into another can of worms.

I have a problem with how the restitution would unfold for owners. There are thousands of acres of land under a varied number of regulations out there right now. I support the Majority Report, which would give us a study of protecting private property rights and how to proceed with this issue. This is a complex subject and needs a complete review which should, in my mind, include a series of statewide public meetings. I support the Majority Report and hope you will too. Thank you.

The SPEAKER: The Chair recognizes the Representative from Acton, Representative Nass.

Representative NASS: Mr. Speaker, Men and Women of the House: I would like to address two of the issues that have been discussed in the last few minutes. One is the retroactivity issue. My interpretation of the Minority Report is that there will be no takings or payments made on legitimate cases unless there is a change to the state regulations after the effective date of this bill. The 10-percent rule that was referred to, if there are prior regulations, for instance, shoreland zoning is the one most referred to, that has been in effect for a long time. A new regulation or a new change to shoreland zoning comes into effect and it affects about 10 percent of the value of the land, then you can use the old part of the regulations or the prior version of the shoreland zoning.

There is limited retroactivity here. You have no right to a taking and you have no entrance to court in my interpretation unless there is some change, whether there is 50 percent of the value or 10 percent of the value. There has to be some change to the current regulation that would take effect after the effective date of this bill. I felt that and I think the people that have looked at this bill felt that to be reasonable. There are three other things that I would like to add. I signed onto this, not as a cosponsor, one of the few people that did not, I began to talk to especially the selectmen because it became apparent that Maine Municipal was very interested and very concerned about this. If you talk to people, who are both municipal officials and who are landowners, you will find what is the inherent problem in this. People who realize the value of local and municipal planning efforts and also our landowners, recognize the problem.

As the municipal officials, they see the value of planning. As the landowners, they have certain expectations about what they can or might do with their land. For instance, one of the selectmen in Acton talked to me about a piece of property that he owns. He has, he thinks, the right to build another residence on an adjoining piece of land to where he lives now. He will probably never do this, but in his mind and in his expectation and future financial planning, that is one of the things he thinks he can do. He is, however, concerned that the fact that in the back of his property there are some wetlands. He knows that if we continue on our current course, he may lose the right to build another residence on an adjoining piece of land. Again, he probably will never do that. It is a financial plan and an expectation concerning his future and his family's future that he is particularly concerned about.

I would just bring your attention to a gentleman who spoke about private property rights about 15 years ago. He surprisingly enough was the publisher of The Maine Times. He cautioned us about a thing that I think, we, as a society, bought into wholesale. There is the assumption that if we put land aside or we somehow protect it by regulation, that it is better protected than it might be under private property ownership. I think he rightly recognized that private property ownership is something we ought to be supporting because it probably offers better protection in the long run than does state ownership, than by buying land outright or by regulating the use of land.

Finally, I have been a local planner for a long time, 12 years on a local planning board. We have worked awfully hard to develop the local land use controls we have in my community. I will have to tell you that one of the biggest disappointments is the expectations that are developed or build up when the state passes regulations, particularly DEP regulations. The expectations are there, but, in fact, the state is not going to enforce these regulations and when they don't enforce them, that leaves people like me who put a great deal of both effort and concern into local regulations, left holding the bag. My approach to this is from both sides. There are landowners out there who are concerned about the lack of ability to use their land for which they think are reasonable uses. There are the expectations that builds up when the state does pass regulations and then does not enforce them. It has no intention of enforcing them, despite the best

effort of people to point out the fact that they should be enforced. It is from both of these sides that I urge you to support the Minority "Ought to Pass" Report. I think this is a reasonable first step. It does not by any means solve the problem. It is a first step and will lead us into a study committee report, also provided for in the Minority Report. Thank you.

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

Representative MADORE: Mr. Speaker, Ladies and Gentlemen of the House: At the risk of sounding like a support group, I, too, am a cosponsor. I also serve on the Judiciary Committee and was on the sub-committee, which created the structure for the study and was on the Minority Report and later changed my vote to the Majority Report. That is what I want to spend just a moment on, is the reason why I switched between the two reports. There was a great philosophical difference between myself and the members of the Minority Report as to putting the bill out first and possibly making it come into law and then studying it after. As my good seat mate on Judiciary, Representative Lemke eluded to a few moments ago. This has all the makings of another Car Test and that scared me. I think we need to be responsible and look at this slowly and deal with the ramifications before it becomes law and not after. I urge you to defeat the pending motion and to support the Majority Report. When the vote is taken, I request the yeas and nays.

Representative MADORE of Augusta requested a roll call on the motion to accept the Minority "Ought to Pass" as amended Report.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call it must have the expressed desire of more than one-fifth of 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 Chair recognizes the Representative from Bridgton, Representative Waterhouse.

Representative WATERHOUSE: Mr. Speaker, Ladies and Gentlemen of the House: I thought I would take a minute to revisit a comment made by the good Representative from Rockport, Representative Gates. I believe he said that this bill would go beyond the present standards set in the Maine Constitution or the U.S. Constitution. I think that is inaccurate. The Maine Law Court has already found regulatory takings.

If I might read again from the Maine Law Court review. "The constraints placed upon state and local land use officials by the Maine Constitution takings clause is real and increasingly relative. As state and local land use regulations become more restrictive and all encompassing in the wake of the Growth Management Act passage, the right of private landowners to derive economically beneficial use of their land is being diminished. As state and local planners work to protect, not only natural resources in sensitive ecological areas, but rural character and open space as well. The tendency is to forget or fail to recognize that there is a constitutional limit to how far a regulation can go before it constitutes an illegal taking."

Again, I quote from State vs. Johnson. "It is still possible for a taking to occur when the state has regulated less intensively than to strip away all commercial value." Right then and there it shows you that you do not have to deprive somebody's land to the point where they have no economic value. I constantly hear the comment about being expensive, but ladies and gentlemen, we missed the point, that was the framers' intent. If you want to take somebody's property for the public good, you should pay for it. There is no getting around the fact that in the 20th century in 1994, our framers never dreamt that our government, at all levels, would be regulating somebody's use of their property to this extent. To the Maine Law Court reviews credit, they are recognizing this. The only thing this bill is doing is setting a standard for them to be consistent. I urge you to vote for the Minority "Ought to Pass." Thank you.

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

Representative TREAT: Mr. Speaker, Men and Women of the House: I did want to clarify something that was just brought up by the good Representative from Bridgton, Representative Waterhouse concerning what is and what is not in the State and U.S. Constitutions. There is no doubt in the mind of the 10 people on the Majority Report that this bill goes well beyond what is in the constitution. Yes, there is a takings clause in the constitution and it does say that even regulatory takings must be compensated, but this bill goes way beyond that.

In a recent letter from the Attorney General's Office, they listed five areas where it goes beyond the constitution. I will just mention three for you. Representative Nass from Acton has mentioned a story of an individual who had a reasonable expectation that certain things can happen on that property, then regulation occurs and they can't carry out that reasonable expectation. That is very interesting language. Reasonable expectation directly from the constitutional standard going way back into even the 1800 and 1900s, that is language that is not in this bill.

Secondly, this is a bill which allows someone, as has been mentioned, to take a little piece of their property and say this little piece has been affected by 50 percent, even if the bulk of their property actually benefited from the regulation, that is not in the constitution either. The constitution sets a much higher standard for compensation than even the 50 percent, but it also says you can't pick and choose what parts of your property you want to take to court and see whether or not you can get compensation. There is a lot of interest in doing something on this.

I think many of the concerns brought forward in this bill are very legitimate. The ability to get to court. Is it too complicated? When do you have that opportunity to go to court? Is the constitutional standard adequate, because it still goes way beyond it? The way to address it is in the Majority Report. It is not plunging in as Representative Lemke said and then finding out that there is a bunch of rocks down there. We have a good alternative in the Majority Report. I urge that you vote against the pending motion so that we can go on to actually do something positive in this area. Thank you.

The SPEAKER: The Chair recognizes the Representative from Cherryfield, Representative Layton.

Representative LAYTON: Mr. Speaker, Men and Women of the House: Just so that you have a better understanding of the implications of this bill, my own personal story and how it impacts me, basically what regulation has done to me. I have lost, due to the regulatory process, approximately 1,359,000 square feet of land. That little piece of land equates to about 34 acres. That is not very little. I cannot have full benefit of this property.

To respond to the good Representative Gates, the value of this property has not decreased one iota. The local tax assessors still, because it is water frontage, assess it at top dollar and the road frontage is assessed at top dollar. Keep in mind, a lot of you people have home lots of one size or another, but keep in mind 1,359,000 square feet. Thank you.

The SPEAKER: A roll call has been ordered. The pending question before the House is acceptance of the Minority "Ought to Pass" Report. All those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 247

YEA - Aikman, Bailey, Barth, Birney, Buck, Bunker, Campbell, Chizmar, Clukey, Cross, Damren, Dexter, DiPietro, Driscoll, Gerry, Gould, Greenlaw, Guerrette, Heino, Hichborn, Jacques, Jones, S.; Joy, Joyce, Kerr, Kilkelly, Kneeland, Labrecque, Lane, Layton, Lemont, Libby JL; Look, Lovett, Lumbr, Marshall, Martin, Marvin, McAlevey, Morrison, Nass, Nickerson, O'Gara, Paul, Pendleton, Pinkham, Plowman, Poirier, Pouliot, Reed, G.; Reed, W.; Rice, Robichaud, Rotondi, True, Tufts, Tuttle, Tyler, Underwood, Waterhouse, Wheeler, Whitcomb, Winsor.

NAY - Adams, Ahearne, Ault, Benedikt, Berry, Bigl, Bouffard, Brennan, Cameron, Carleton, Chartrand, Chase, Chick, Clark, Cloutier, Daggett, Davidson, Desmond, Donnelly, Dore, Dunn, Etnier, Farnum, Fisher, Fitzpatrick, Gamache, Gates, Gooley, Green, Hartnett, Hatch, Heeschen, Johnson, Jones, K.; Joseph, Joyner, Kontos, LaFountain, Lemaire, Lemke, Libby JD; Lindahl, Luther, Madore, McElroy, Meres, Mitchell EH; Mitchell JE; Nadeau, O'Neal, Peavey, Perkins, Povich, Richardson, Ricker, Rosebush, Rowe, Samson, Savage, Saxl, J.; Saxl, M.; Shiah, Simoneau, Sirois, Spear, Stedman, Stevens, Stone, Strout, Taylor, Thompson, Townsend, Treat, Tripp, Truman, Vigue, Volenik, Watson, Winglass, Winn, The Speaker.

ABSENT - Gieringer, Keane, Mayo, Murphy, Ott, Poulin, Yackobitz.

Yes, 63; No, 81; Absent, 7; Excused, 0.

63 having voted in the affirmative and 81 voted in the negative, with 7 being absent, the Minority "Ought to Pass" as amended Report was not accepted.

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

The Bill was read once. Committee Amendment "A" (H-601) was read by the Clerk and adopted.

On motion of Representative PLOWMAN of Hampden, the House reconsidered its action whereby Committee Amendment "A" (H-601) was adopted.

The same Representative presented House Amendment "A" (H-617) to Committee Amendment "A" (H-601) which was read by the Clerk.

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

Representative PLOWMAN: Mr. Speaker, Ladies and Gentlemen of the House: I am offering this House Amendment to redefine the commission that will be studying the takings bill. This lowers the committee down from 20 members to 9. As I stated earlier, this would put five members from Judiciary, one member from Inland Fisheries, one from State and Local, one from Agriculture and one from Natural Resources. So that we know how each component of the bill affects government, agriculture, fisheries and all of the issues that are studied by these joint committees. We narrowed it down to 9 members in order to make it a work session regarding what the state might do regarding takings. Twenty people seem to be a very unwieldy amount of people. This also cuts the fiscal note and I would ask to please adopt this House Amendment. I appreciate your support.

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

Representative TREAT: Mr. Speaker, Men and Women of the House: Please vote against the pending motion, so that we can retain the task force that was developed at great length and with a great deal of thought by the majority of the committee. With a great deal of input, by the way, from the minority members of the committee.

This amendment changes the task force in several ways. It wouldn't get started until October 1 and that is getting rid of two months of valuable time which, I believe will be needed if they are to do a good job in reporting back to this legislature by December of this year. Secondly, it eliminates all public members of the commission, leaving it to 9 members of the Legislature only. We debated this issue very hard in the committee. There were pros and cons on both sides. The ultimate conclusion was to come out with a balance of fair representation of different interests in the community as well as legislators, so that both the community and public and legislators will be able to buy into the final report.

Finally, it redefines the duties of the commission in ways which basically focus more on L.D. 1217. I want to make it clear that under the Majority Report the commission is mandated to look at 1217 as well as 170, the companion piece of legislation, and to report whether those provisions make sense and ought to be enacted. That will happen, but I believe the language in the amendment fuse it to basically favor those types of provisions because it would spend so much time on them. The amendment we have, the Majority Report, is a good report. It has been thoughtfully put together and it deserves your support. I hope you will stick with your vote and go with the Majority. Thank you.

The same Representative requested a roll call on adoption of House Amendment "A" (H-617) to Committee Amendment "A" (H-601).

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 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 Farmingdale, Representative Watson.

Representative WATSON: Mr. Speaker, Men and Women of the House: I am just going to take a brief moment to inform you that I was on the subcommittee with four Judiciary Committee members that did work on this task force that we are proposing that you support. Unlike the task force that Representative Plowman is putting forth, we do have on our task force expert constituency and I just wanted to reiterate that. We felt that it was very important that we have not only legislators, but those parties that would be most involved and impacted upon by the reporting out of the task force. We felt on the subcommittee that whatever the decision the task force makes or what legislation it comes forth with, that it would certainly have more support and more validity because of the membership involved.

Originally, we, as the subcommittee, had come forward with a 13-member committee and in full committee it was up to 20, so that we would be sure to include all constituents who have a stake in any kind of a task force report that we come out with. I urge you very strongly, on behalf of the majority in this regard, that you support the majority task force. Thank you.

The SPEAKER: A roll call has been ordered. The pending question before the House is adoption of House Amendment "A" (H-617) to Committee Amendment "A" (H-601). All those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 248

YEA - Aikman, Ault, Bailey, Bigl, Birney, Buck, Cameron, Campbell, Carleton, Chick, Clukey, Cross, Damm, Dexter, Donnelly, Gerry, Greenlaw, Guerrette, Jones, S.; Joy, Joyce, Joyner, Kerr, Kneeland, Labrecque, Lane, Layton, Look, Lumbr, Marshall, McAlevey, McElroy, Murphy, Nass, Nickerson, O'Gara, Pendleton, Perkins, Pinkham, Plowman, Poirier, Pouliot, Reed, W.; Robichaud, Stedman, Stone, Taylor, Tufts, Underwood, Waterhouse, Wheeler, Whitcomb, Winglass, Winsor.

NAY - Adams, Ahearne, Barth, Benedikt, Berry, Bouffard, Brennan, Bunker, Chartrand, Chase, Chizmar, Clark, Cloutier, Daggett, Davidson, Desmond, DiPietro, Dore, Driscoll, Dunn, Etnier, Farnum, Fisher, Fitzpatrick, Gamache, Gates, Gooley, Gould, Green, Hartnett, Hatch, Heesch, Heino, Hichborn, Jacques, Johnson, Jones, K.; Joseph, Kil Kelly, Kontos, LaFountain, Lemaire, Lemke, Lemont, Libby JD; Libby JL; Lindahl, Lovett, Luther, Madore, Martin, Marvin, Meres, Mitchell EH; Mitchell JE; Morrison, Nadeau, O'Neal, Paul, Peavey, Povich, Reed, G.; Rice, Richardson, Ricker, Rosebush, Rotondi, Rowe, Samson, Savage, Saxl, J.; Saxl, M.; Shiah, Simoneau, Sirois, Spear, Stevens, Strout, Thompson, Townsend, Treat, Tripp, True, Truman, Tuttle, Tyler, Vigue, Volenik, Watson, Winn, The Speaker.

ABSENT - Gieringer, Keane, Mayo, Ott, Poulin, Yackobitz.

Yes, 54; No, 91; Absent, 6; Excused, 0.

54 having voted in the affirmative and 91 voted in the negative, with 6 being absent, House Amendment "A" (H-617) to Committee Amendment "A" (H-601) was not adopted.

Subsequently, Committee Amendment "A" (H-601) was adopted.

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

Representative WATERHOUSE of Bridgton requested a roll call on passage to be engrossed.

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 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 pending question before the House is Passage to be Engrossed. All those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 249

YEA - Adams, Aikman, Ault, Benedikt, Berry, Bigl, Birney, Bouffard, Brennan, Buck, Bunker, Cameron, Campbell, Carleton, Chartrand, Chase, Chick, Chizmar, Clark, Cloutier, Clukey, Cross, Daggett, Damren, Davidson, Desmond, DiPietro, Donnelly, Dore, Driscoll, Dunn, Etnier, Fisher, Fitzpatrick, Gamache, Gates, Gerry, Gooley, Green, Greenlaw, Guerrette, Hartnett, Hatch, Heeschen, Heino, Hichborn, Jacques, Johnson, Jones, K.; Jones, S.; Joseph, Joy, Joyce, Joyner, Kil Kelly, Kneeland, Kontos, LaFountain, Lane, Layton, Lemaire, Lemke, Lemont, Libby JD; Libby JL; Lindahl, Look, Lumbra, Luther, Madore, Marshall, Martin, McAlevey, McElroy, Meres, Mitchell EH; Mitchell JE; Morrison, Murphy, Nadeau, Nass, O'Neal, Paul, Peavey, Perkins, Pinkham, Plowman, Poirier, Povich, Reed, G.; Reed, W.; Rice, Richardson, Ricker, Robichaud, Rosebush, Rotondi, Rowe, Samson, Savage, Saxl, J.; Saxl, M.; Shiah, Simoneau, Sirois, Spear, Stedman, Stevens, Stone, Strout, Taylor, Thompson, Townsend, Treat, Tripp, True, Truman, Tuttle, Tyler, Underwood, Vigue, Volenik, Waterhouse, Watson, Wheeler, Whitcomb, Winglass, Winsor, The Speaker.

NAY - Ahearne, Bailey, Barth, Dexter, Gould, Kerr, Labrecque, Lovett, Marvin, Nickerson, O'Gara, Pendleton, Pouliot, Tufts.

ABSENT - Farnum, Gieringer, Keane, Mayo, Ott, Poulin, Winn, Yackobitz.

Yes, 129; No, 14; Absent, 8; Excused, 0.

129 having voted in the affirmative and 14 voted in the negative, with 8 being absent, the Bill was passed to be engrossed as amended by Committee Amendment "A" (H-601) and sent up for concurrence.

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

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

CONSENT CALENDAR

First Day

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

(S.P. 251) (L.D. 648) Bill "An Act to Correct Errors and Inconsistencies in the Laws of Maine" (EMERGENCY) Committee on Judiciary reporting "Ought to Pass" as amended by Committee Amendment "A" (S-332)

Under suspension of the rules, Second Day Consent Calendar notification was given.

There being no objections, the Bill was passed to be engrossed as amended in concurrence.

BILL RECALLED FROM ENGROSSING DEPARTMENT

(Pursuant to Joint Order - House Paper 1141)

Bill "An Act to Modify the Licensure Act for Substance Abuse Counselors" (H.P. 1008) (L.D. 1419) - In House, passed to be engrossed as amended by Committee Amendment "A" (H-427) as amended by House Amendment "A" (H-583) and Senate Amendment "A" (S-326) thereto.

On motion of Representative TUTTLE of Sanford, the House reconsidered its action whereby L.D. 1419 was passed to be engrossed.

On further motion of the same Representative the House reconsidered its action whereby Committee Amendment "A" (H-427) as amended by House Amendment "A" (H-583) and Senate Amendment "A" (S-326) was adopted.

On further motion of the same Representative, under suspension of the rules, the House reconsidered its action whereby House Amendment "A" (H-583) to Committee Amendment "A" (H-427) was adopted.

On further motion of the same Representative, House Amendment "A" (H-583) to Committee Amendment "A" (H-427) was indefinitely postponed.

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

Representative TUTTLE: Mr. Speaker, Men and Women of the House: At the request of the Representative from Portland, Representative Rowe has asked that his amendment offered earlier, House Amendment "A", be indefinitely postponed. As Chair of the Committee on Engrossed Bills, I did so. Thank you.

Committee Amendment "A" (H-427) as amended by Senate Amendment "A" (S-326) thereto was adopted.

The Bill was passed to be engrossed as amended by Committee Amendment "A" (H-427) as amended by Senate Amendment "A" (S-326) thereto in non-concurrence and sent up for concurrence. Ordered sent forthwith.

SENATE PAPERS

The following Communication: (H.C. 233)

Maine State Senate
State House Station 3
Augusta, Maine 04333

June 27, 1995

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

Please be advised that the Senate today Adhered to its former action whereby it Indefinitely Postponed Bill and Accompanying Papers on Bill "An Act Regarding Timothy Harkins and Maine State Retirement System Benefits" (H.P. 1140) (L.D. 1583).

Sincerely,

S/May M. Ross

Secretary of the Senate

Was read and ordered placed on file.

Ought to Pass as Amended

Report of the Committee on Transportation reporting "Ought to Pass" as amended by Committee Amendment "A" (S-331) on Bill "An Act to Transfer Oversight of Commercial Driver Education Programs to the Secretary of State" (S.P. 477) (L.D. 1301)

Came from the Senate with the Report read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (S-331).

Report was read and accepted. The Bill read once. Committee Amendment "A" (S-331) was read by the Clerk and adopted.

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

Under further suspension of the rules, the Bill was passed to be engrossed as amended by Committee Amendment "A" (S-331) in concurrence.

Ought to Pass as Amended

Report of the Committee on Business and Economic Development reporting "Ought to Pass" as amended by Committee Amendment "A" (S-302) on Bill "An Act to Create the Propane and Natural Gas Professional Act of 1995" (S.P. 498) (L.D. 1357)

Came from the Senate with the Report read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (S-302).

Report was read and accepted. The Bill read once. Committee Amendment "A" (S-302) was read by the Clerk and adopted.

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

Under further suspension of the rules, the Bill was passed to be engrossed as amended by Committee Amendment "A" (S-302) in concurrence.

Ought to Pass as Amended

Report of the Committee on Natural Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (S-336) on Bill "An Act to Streamline Permit Procedures for Freshwater Wetlands in the State" (S.P. 570) (L.D. 1544)(Governor's Bill)

Came from the Senate with the Report read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (S-336).

Report was read and accepted. The Bill read once. Committee Amendment "A" (S-336) was read by the Clerk and adopted.

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

Under further suspension of the rules, the Bill was passed to be engrossed as amended by Committee Amendment "A" (S-336) in concurrence.

Non-Concurrent Matter

Bill "An Act to Require Notification to the Landowner When Land Is Being Considered for Placement in a Resource Protection Zone" (H.P. 609) (L.D. 819) on which the House insisted on its former action whereby the Majority "Ought to Pass" as amended Report of the Committee on Natural Resources was read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (H-492) as amended by House Amendment "A" (H-574) thereto in the House on June 26, 1995.

Came from the Senate with that Body having insisted on its former action whereby the Minority "Ought Not to Pass" Report of the Committee on Natural Resources was read and accepted and asked for a Committee of Conference in non-concurrence.

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

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

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

UNFINISHED BUSINESS

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

Resolve, Establishing the Maine Council on Privatization (EMERGENCY) (S.P. 81) (L.D. 169) - In House, Report "B" "Ought Not to Pass" of the Committee on State and Local Government read and accepted.

- In Senate, Senate Insisted on its former action whereby Report "A" "Ought to Pass" of the Committee on State and Local Government was read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (S-254).

- In House, House Receded and Concurred.

TABLED - June 19, 1995 by Representative DAGGETT of Augusta.

PENDING - Motion of same Representative to reconsider receding and concurring.

Subsequently, the House voted to Reconsider.

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

Representative DAGGETT: Mr. Speaker, Men and Women of the House: I hope you will oppose the motion to Recede and Concur. I would just like to remind you that this Council of Privatization is redundant and repetitive. We have already approved over a \$250,000 for the Productivity Realization Task Force and the mission is virtually the same.

The bill that is in front of you was never worked on by the committee. There are structural problems within the bill, because it was never worked on. It was felt that the Productivity Realization Task Force was actually the group that would be doing this work. In fact, the Productivity Realization Task Force has a subcommittee that's scope is the issue of privatization and will be dealing with specifically the issue of privatization. I hope you will agree and oppose the motion to recede and concur. Thank you.

The SPEAKER: The Chair recognizes the Representative from Crystal, Representative Joy.

Representative JOY: Mr. Speaker, Ladies and Gentlemen of the House: I rise and I have to differ with my good colleague from Augusta, Representative Daggett and would urge you to not recede and concur. The Productivity Task Force has a, b, c, d, e, f, g, h and i units in it, in which its scope of study is listed. Under i, which is almost is an afterthought comes an alternative system of service delivery including the potential, when applicable, for privatization. The problem that we have with this is when something is regulated to a last choice, then we have a little bit of a problem with it.

Also, you will note on item 3 on the unfinished business on your calendar that there is an emergency designation on here. That has been taken off in the

amendment. Whether the bill was worked in committee or not, I am really not certain. I was notified of about four or five different work sessions and unfortunately because of scheduling was unable to get there.

I think my earlier comment may have been in error. I think that I do want you to recede and concur. This was likened the other day to a cruise ship being followed by a rowboat. I would like to point out that on many, many situations that rowboat has been there to pick up the survivors when the cruise ship sank. I urge you to support the motion to recede and concur. Thank you.

The SPEAKER: The Chair recognizes the Representative from Wells, Representative Carleton.

Representative CARLETON: Mr. Speaker, Men and Women of the House: I would like to concur with the comments of the last speaker and to add only that this is only about the fourth bill coming out of the State and Local Government Committee in which an effort has been made to back the bill up and reconsider, only to go through the same process again and I urge you to keep that in mind when we vote on this particular issue. Thank you.

The Chair ordered a division on the motion to Recede and Concur.

Representative CARLETON of Wells requested a roll call on the motion to Recede and Concur.

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 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 pending question before the House is to Recede and Concur. All those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 250

YEA - Aikman, Barth, Bigl, Birney, Buck, Cameron, Campbell, Carleton, Chick, Clukey, Cross, Damren, Donnelly, Dunn, Farnum, Gerry, Gooley, Greenlaw, Hartnett, Heino, Jones, S.; Joy, Joyce, Joyner, Kneeland, Labrecque, Lane, Layton, Libby JD; Libby JL; Lindahl, Look, Lovett, Lumbra, Marshall, Marvin, McAlevey, McElroy, Murphy, Nass, Nickerson, Peavey, Perkins, Pinkham, Plowman, Poirier, Reed, W.; Rice, Robichaud, Savage, Simoneau, Spear, Stedman, Stone, Taylor, True, Tufts, Underwood, Waterhouse, Winglass.

NAY - Adams, Ahearne, Ault, Bailey, Benedikt, Berry, Bouffard, Brennan, Bunker, Chartrand, Chase, Chizmar, Clark, Cloutier, Daggett, Davidson, Desmond, DiPietro, Dore, Driscoll, Etnier, Fisher, Fitzpatrick, Gamache, Gates, Gould, Green, Guerrette, Hatch, Heeschen, Hichborn, Jacques, Johnson, Jones, K.; Joseph, Kerr, Kilkelly, Kontos, LaFountain, Lemaire, Lemke, Lemont, Luther, Madore, Martin, Meres, Mitchell EH; Mitchell JE; Morrison, Nadeau, O'Gara, O'Neal, Paul, Pendleton, Pouliot, Povich, Richardson, Ricker, Rosebush, Rotondi, Rowe, Samson, Saxl, J.; Saxl, M.; Shiah, Sirois, Stevens, Strout, Thompson, Townsend, Treat, Tripp, Truman, Tuttle, Tyler, Vigue, Volenik, Watson, Wheeler, Winn, The Speaker.

ABSENT - Dexter, Gieringer, Keane, Mayo, Ott, Poulin, Reed, G.; Whitcomb, Winsor, Yackobitz.

Yes, 60; No, 81; Absent, 10; Excused, 0.

60 having voted in the affirmative and 81 voted in the negative, with 10 being absent, the motion to Recede and Concur fails.

Subsequently, the House voted to Adhere.

RESOLUTION, Proposing an Amendment to the Constitution of Maine to Establish a Contractual Obligation for Members of the Maine State Retirement System (H.P. 680) (L.D. 931) (C. "A" H-314)

TABLED - June 20, 1995 (Till Later Today) by Representative MITCHELL of Vassalboro.

PENDING - Final Passage.

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

Representative LEMAIRE: Mr. Speaker, Men and Women of the House: I urge your support for enactment for this Constitutional Amendment to provide security for members of the Maine State Retirement System. In 1991-1993, legislative changes made to teachers and state workers were the worst changes made to any public employee pension plan in this country. Before I explain some things, I would like to respond to some misleading and false information that was given to me prior to today.

Claim, since it would be a contract under the Constitutional Amendment, it would be subject to collective bargaining based on two New York cases. This is irrefutably and completely false. On June 13, 1995, the Attorney General's opinion based on the two New York cases stated that the proposed amendment would not be, I repeat, would not be an obligation on state government to collectively bargain pension rights for state employees and teachers. I would like to emphasize that L.D. 931 has no impact on the unfunded liability or entry charges. It is irrelevant to L.D. 931 and is misleading. It is strictly limited to protecting benefits, I repeat, protecting benefits of those entering the system and it is perspective, it has nothing to do with anything that has been done in the past. The people of this state who are liable for the lion's share of this step, should be the ones to decide. This is a contracted obligation between the state and Maine State Retirement System.

Another claim that was made was members of the Legislature will be voting contracts for themselves and this would be a conflict of interest. I would like to explain something. What is a state employee? It is not the Legislature. Under Title 5 MRSA section 17001-40, state employees mean any classified or unclassified officer or employee in a department, employee of the Technical College System or any employee transferred from the division of higher education services to the Finance Authority of Maine who elects to be treated as a state employee, it is not a judge, it is not the State Police or a legislator who may be entitled to retirement benefits under Title 3, Chapter 29. Legislators are not state employees for retirement purposes, in language of 9-31. It is specific, let me repeat that, it is specific for teachers and state employees only.

Under federal law, it requires a five-year vesting period to protect them. Once vested your pension becomes a property right. It cannot be diminished. It cannot be impaired. This is enforced by U.S. courts. In response to the claim that it has already had litigation, that is true. The Speller decision stated that teachers do not have a contract and that is why we are here. It is always the right of an

advocacy group to seek redress through the courts. They would be remiss if they did not do so.

In closing, I would like to make a statement. Minority groups in this country have often fought recourse and redress to state, and national and constitutional amendments when needed to protect themselves from unreasonable acts of government. Teachers and state workers depend on your assistance in protecting their retirement system. Do I care about this bill? You bet. Do I personally benefit from it? No, because by the time you get back to going after the retirement system again, I am going to be gone. I believe this body represents the last avenue resort for teachers and state workers. Don't let them down. They deserve better from us. Thank you.

The SPEAKER: The Chair recognizes the Representative from Crystal, Representative Joy.

Representative JOY: Mr. Speaker, Ladies and Gentlemen of the House: You probably are aware that most of the comments which came from this, came from a paper which was put out by the MSEA, in response to some talking points that I had prepared for members of the Republican caucus. I think it is interesting. I haven't seen a paper which had a point/counterpoint situation like this since the last time I had an unfair labor practice filed against me. I was exonerated in that one and I think that I will be in this one too.

If you read down through the counterpoint issues and items that are all listed here and compare them with the items on the left-hand side you will find that most of these have absolutely no bearing or no relation to the issue that is on the left-hand side. I regret the necessity to stand and talk on this today and it is going to make me violate one of my premises that I like to limit my comments to about seven minutes. Unfortunately in order to respond to these, it is going to be impossible. The first rebuttal up here says the purpose of the National and State Constitutions is to protect citizens from unreasonable acts of government. I couldn't agree more. However, there is one very important word up there that is left out and that word is "all" citizens.

The next comment that is here has absolutely nothing to do with the statement that was made on the left. It says 1991 and 1993 legislative changes made to Maine teachers and state employees were the most radical changes made to any public employee pension plan in this country. I don't believe there is a single teacher or state employee who has retired since 1991 or 1993 that has lost one penny in retirement benefits. There is no one in the system who will lose one penny in retirement benefits if they follow the rules as they were changed. They were changed to try to protect the system, not to penalize employees. For example, teachers who were vested in the system could still retire with a 2 1/8 percent penalty a year early retirement. People who were not vested had changes made that required a 6 percent payment. That seems like a tremendous increase and yet the 6 percent that is there does not cover the cost for the Maine State Retirement System for one year of early retirement. That is why that change was made. Yet, if this person goes on to reach retirement age, they will not lose one single penny of their retirement benefits.

Yes, the retirement age was changed to those who were nonvested to 62. We asked our people who were

out here working in the private sector and come under social security to work to age 62 or 65 depending upon what age they are in or 65 and 67 and possible older under some of the other situations and yet should we not ask our state employees to work as long. If I were not down here, I would still be out there teaching and I think I could be very effective in the classroom at 62. In fact, I probably could be very effective at 65, if the good Lord is willing for me to still be around. The idea is that people will stagnate in these jobs. If they stagnate in any job, they should find a new one. These changes that were made to the retirement system do not deprive anybody of retirement benefits. That is a mistaken concept. It does change some of the conditions under which they can retire. It does not reduce their benefits.

The idea that the claim about the New York tort ruling on this being absolutely false is not false. The New York Court of Appeals Appellate Division 35, 117 New York South, Second 553, reads this: "Under this section membership pension system of the state or subdivision thereof, constitutes the contractual relationship authorizing bargaining between the parties for their mutual interest with respect to pension rights." We have a 1952 New York case which is quoted here. It is interesting, there was a June 13, 1995, Maine Attorney General's opinion based on that. If you recall a couple weeks of ago we got a response to that when I mentioned that we had an Attorney General's opinion which said that something had been determined unconstitutional, I got the answer back that it is only an opinion. Again, it is only an opinion.

If 931 is passed, it most certainly would enable different agencies to bargain for their pension rights. We have about 284 school districts out there and I don't know how many different groups there are that negotiate for state employees, but can you imagine the hodgepodge and the helter-skelter type of retirement system if each and every one of those decided that they were going to negotiate for their contract rights or what is presumed to be a contract right under the pension plan. Ladies and gentlemen, if you want to destroy the system, you want to be passing this bill. There is a note here that says that it is irrelevant when referring to raids on the system by the past three Governors that have aggravated the problem. I would say that it is most relevant. Those changes and those borrowings brought about some of the changes that occurred in the retirement system.

With regard to not voting yourself a pension plan or a contract to the pension plan, I would suggest that there are hundreds and hundreds of statutes out there on the books that are challenged by lawyers every single day. I would be willing to wager, given one week, I could find a minimum of 100 lawyers who would take on the case to determine whether I am a state employee or not. ARISA allows changing of pension benefits in private plans if the employee is vested. That took place within our system. The changes that were made there affected those people who were not vested in the system. I will grant you there is a slight differential, in private pension plans, the vesting period is five years. In the Maine State Retirement System it is 10 years. It means you have to be in the system a little bit longer before you are vested, but the court did not uphold changing benefits for those people who are vested.

With regard to L.D. 931, in intending to eliminate discrimination, I think that anytime that you create a benefit for 4 percent of the people that 96 percent of the people cannot have certainly is discrimination and has no place in the Constitution of the State of Maine. With regard to the NEA filing a lawsuit and any responsible advocacy group pursuing this, if this goes through wait and see how many lawsuits they will be willing to initiate because of the impossibility of defining, first of all, benefits and second of all, impair and third of all, diminish. I will address that a little bit further, in just a moment, the attempt to discredit the source of information from attorneys for labor unions. I did not seek out opinions from labor union attorneys, but another member of our caucus did. He requested three interpretations of this. One of these interpretations is listed on the left-hand side of this counterpoint paper. It said the claim is a scare tactic without foundation. I submit to you, ladies and gentlemen, this is not a scare tactic without foundation.

I will read some quotes from the second attorney who has made a response to L.D. 931. The reference that the claim that the Constitutional Amendment will interfere with collective bargaining is not totally false. It says the State vs. MSEA in a 1988 case says that retirement proposals are not subject to collective bargaining. That is very true, but if 931 is passed, then you are making them subject to collective bargaining. I would also like to point out that if you pass 931, there is no longer a vesting period under the Maine State Retirement System. This says that from the day of hire, the time of their contract for a pension will be locked in place. There will be no vesting period under the Maine State Retirement System. The second attorney has many concerns. He listed them under seven headings. A couple of which are explanatory and a couple of which point out some of the very dangerous things that we would be passing if this goes into effect.

Number one, if enacted, the Constitutional Amendment would provide that membership in the retirement system is an enforceable contractual relationship and the benefits of which may not be diminished or impaired. He has restated the intent of 931. He says, "Number one, the provision appears intended to create multiple individual bilateral contracts between the state retirement system and individual employees who participate in the system. To create a set of contractual rights by means of a state constitution is a strange and novel approach. Only six states in the country have it."

Number two, the effects of the creation of such a bundle on contractual rights would be to freeze the system at current benefit levels for existing participants. I assume that this contractual provision would not be given retroactively, but the attorney cannot be assured of this conclusion, even if not retroactive it would freeze as to employees and retirees every benefit that the system now provides. Number three, it is not clear whether changes, such as a change in interest rates or actuarial assumptions applied by the plan administrators which might have a negative effect on any participant would be found to diminish or impair some benefits." Just think of that.

If the Maine State Retirement System had an actuarial experience or an actuarial loss because of

their investment, then this could be found to diminish or impair some person's benefits. In other words, a lawsuit. Number four, it is not clear to me who would have the right to agree to change some aspects of the system in the future, even if they were good public policy reasons or even pressing fiscal reasons for the change. The language appears designed to take away the excuse of fiscal emergency as a reason to make changes in the system, regardless of how expensive it might become in the future to provide the benefits currently provided. Short of obtaining an agreement from each individual participant, the system could make no general changes which diminish even perceptively the benefits enjoyed by existing participants. It could conceivably, therefore, require the creation of multiple tiers in the retirement system if changes were deemed necessary for some good reason in the future, so that the changes would affect only those people who are not yet participants in the time of change.

Number five, it is not clear to me whether labor organizations representing employees for collective bargaining purposes with the state would have authority to act on their behalf to agree to changes in the system which might have a duration longer than the current collective bargaining agreement and indeed longer than the employees' membership in the union or in the bargaining unit. Assuming that a public employee union could represent its members in agreeing to such a change, then the question of whether or not to make such changes is likely to become a mandatory subject of collective bargaining as between the state or the system and the representatives of the employees. Since the system is not the employer and is not otherwise a party to negotiations of labor agreements with public employee unions, a three-way relationship with sets of contract rights running in various directions is created. This leads to one certainty of this proposal, which is that it will generate a substantial amount of litigation in the future over issues such as the meaning of the terms benefits, impaired and diminished.

I would urge you to obtain some legal research on the experience of other states who's retirement systems are contractual in nature. Finally, a summation in general, this provision would take away future flexibility to make even salutary changes in some aspects of the state retirement system, so long as they might arguably impair or diminish benefits under the broadest reading of any of those terms, by comparison to the private sector in which employee benefit plans may be amended or terminated subject to the protection of benefits which have already been vested. This seems a most restrictive approach, the future cost of which is not easy to calculate. Ladies and gentlemen, this attorney's opinion has given my arguments that I have made on this two years in a row.

You will recall, those of you who were here in the last session, that the good Representative, Representative Jalbert from Lisbon, who was the Chair of the Retirement Committee at that time, changed his position and opposed this measure because he realized the problems that were inherent in trying to pass such a system. Ladies and gentlemen, this is highly discriminatory in nature and you are being asked to put it the Maine Constitution. I would remind you of your oath, for which you took to uphold the Constitution of the State of Maine and the country,

and defeat this measure. Mr. Speaker, when the vote is taken, I request a roll call. Thank you.

Representative JOY of Crystal requested a roll call on final passage.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call it must have the expressed desire of more than one-fifth of 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 Sanford, Representative Tuttle.

Representative TUTTLE: Thank you Mr. Speaker, Men and Women of the House: Just to clarify what we are voting on here today for some of you who aren't members of the Labor Committee. This resolution establishes a contractual relationship between the state and public employees for pension benefits. Changing current employee benefits makes a promise with the employees as we saw in previous administrations. These benefits create inequities in workplaces and inhibits recruitment of the work force. We all know that. The courts have disagreed on relationships as you have heard from numerous testimony today from both sides.

I think it is time to clarify this issue once and for all in this bill. Essentially the effect of the amendment would be to require consistent funding to pay the systems unfunded liability. We all received from the Labor Committee on April 27, it says the current cost to benefit this stronger funding requirement would be of great value to the systems long-term health. I would ask that you think about that in voting for this today. The ultimate decision, as we know, will lie in the hands of the people by referendum. I think that is probably the appropriate way to handle this issue once and for all. I would encourage you to support final enactment. Thank you.

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

Representative MITCHELL: Mr. Speaker, Men and Women of the House: After all the points and counterpoints and all the rhetoric about unions and employment and management, I want you to focus on a few things here. This is my bill as well as many of you in this chamber. I do not believe I am ignoring my oath of office by sponsoring such a bill, rather I believe I am living up to my responsibility as part of management for state employees who depend upon us for their pension plans, because we have in our hands the ability to change those retirement plans at will. We didn't know that up until the Supreme Court decision.

Most of us in the State of Maine including the employees, thought that when they had a retirement plan with the state, it was a contractual relationship that would be changed only for new hires. It would not be retroactive and they could plan their lives. Imagine being in the last year of your work life and having the state suddenly, without warning, because the Legislature needed money, to change the plan. What would you do? You have one year left to make new plans as you continue to complete your work career. The Maine State Retirement System is not only the primary pension

plan for many state employees and I repeat it is the only pension plan. If we had a secondary plan or an integrated plan maybe some flexibility would be OK, but as its sole pension efforts, it must be sound, stable and predictable.

This resolution that we are offering to the people of the State of Maine, who will make the final decision, will simply establish in our constitution that contractual relation. Now 90 percent of state and local employees across the country are covered by defined benefit plans such as ours. A large number of them also have social security or some other back-up plan. That is not true here in Maine. At a minimum, this is the sole plan and it is mandatory for most that our employees have to depend upon. The least we can do is to honor commitment, so that we do not retroactively change someone's retirement plan. I urge you to join me in voting for this Constitutional Amendment and giving the voters of the State of Maine an opportunity to have their say. Thank you.

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

Representative CAMERON: Mr. Speaker, May I pose a question through the Chair?

The SPEAKER: The Representative may proceed.

Representative CAMERON: Thank you Mr. Speaker. To the good Representative from Vassalboro that just spoke, can you tell me, I have heard a lot of different opinions, but I would like to know your feeling about this issue of, if the contract is in the Constitution, does that prevent the state from changing the Constitution for the better as well?

The SPEAKER: The Representative from Rumford, Representative Cameron has posed a question through the Chair to the Representative from Vassalboro, Representative Mitchell.

The Chair recognizes that Representative.

Representative MITCHELL: Mr. Speaker, Men and Women of the House: It does not prohibit, in my view, changing it for the better. It would take away, detracting from those benefits. There is another issue that may be implicit in your question. I don't mean to go on too long, but if there is an emergency or some real need for the state to act financially to change benefits that might be detrimental.

I don't want to bore you with the court case, but I think there is a three-part case that the court looks to if certain decisions like that must be made and that is the compliance contract clause. First, the court will assess the degree of substantiality of the impairment of the contract, in other words, how serious were those negations of benefits? Second, if a substantial impairment has occurred the court will inquire whether there is significant and legitimate public purpose. There are certain standards that the court leaves the state in case of an extraordinary hardship financially on the state. Nevertheless, the purpose is not to prohibit increases obviously, but to prohibit decreases in benefits.

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

Representative STONE: Mr. Speaker, Ladies and Gentlemen of the House: In 1974, this legislator changed membership service in the calculation for the retirement system from 1/60th to 1/50th and also changed the minimum benefit from \$80 to \$100 providing that somebody had a service of a minimum of 10 years. In 1974, that change alone accounted for

175 million dollars in unfunded liabilities. Also, in 1972, when we added teachers who were out of service from 1972 through 1983, those changes by adding out of service teachers added an unfunded accrued liability to the Maine State Retirement System net present value back then of 135 million dollars. Those changes alone have added to the system. By the time we pay this out over a period of 25 or 35 years of approximately 1 billion dollars, you have about 500 million dollars of unfunded present value liability and by the time you pay the thing out over time, you have 1 billion dollars.

The problem with the system that we have now is the Legislature keeps adding benefits to people that haven't paid the amount of money that is required by the Maine State Retirement System. What we are trying to do now that we have all the cows in the barn is lock the door to keep them in there. We should have thought of this back in 1970, 1972 and 1974. We have an unfunded liability that is incredible and the primary reason is not because we have been raiding it, it is because we have been trying to be nice to the employees and keep adding benefit after benefit after benefit without paying for the cost as we go along. I can't support this motion. Thank you.

The SPEAKER: The Chair recognizes the Representative from Bethel, Representative Barth.

Representative BARTH: Mr. Speaker, Ladies and Gentlemen of the House: The current system we have is in a sense a dinosaur. I spoke to my son-in-law who is an actuary and explained the unfunded liability and the problems that we were having a year or two ago and he was rather incredulous that we still had this system. The system, in a sense, locks people in for virtually their working lifetime if they wish to gain any benefits from the system as it is currently set up. It is a defined benefits system. It has absolutely no portability. If you leave the system, and most people change jobs three to five times or more during their working career, you take only the money that you have put in and whatever interest it has gained, you do not get anything in terms of the employer's share, meaning the state. It has virtually no portability, as such then, there was a feeling on the Aging, Retirement and Veterans Committee of the 116th Legislature to try to change the system to bring it in line and change it to a defined contributions system, which would mean social security and an employer/employee share put into the system. It would then be completely portable and could be used if you stayed in any form of government service or teacher service covered by the retirement system or any other job within the state or anywhere else in the country.

My other point that I would like to make is that a couple of earlier speakers have mentioned to put it out to the people. Let them make the decision. That is quite appealing, but that in a sense is dodging the bullet, because those people, the people of Maine will hear only one side of the argument. There will be only one side that will have the full-page ads, mailings, phone banks and will have all of the people out working to pass this. The other side, the side that I am exposing and some others, they will never hear that. I think we have to make the decision here and I urge you not to vote for final passage. Thank you.

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

Representative MITCHELL: Mr. Speaker, Ladies and Gentlemen of the House: I simply must make two rebuttal points to the two previous speakers. Although I have the greatest respect for Representative Stone, I believe that the focus on the unfunded liability here misses the point. This does not add nor detract from the unfunded liability. It puts into place and honors the commitments made to the employees in the system. Your concern is about adding new benefits and not paying for them. I concur. We should not do that. I want to make sure you distinguish between the two issues.

For Representative Barth, there is no other way to amend the Constitution other than sending it to the people. I have a lot more confidence in the people of Maine and their decision-making process that even if they hear only one side, which I doubt, they can sort through right and wrong. I do encourage you to join me in supporting this very important Constitutional Amendment.

The SPEAKER: The Chair recognizes the Representative from Crystal, Representative Joy.

Representative JOY: Mr. Speaker, Ladies and Gentlemen of the House: I would like to remind you that not one person who has retired since 1991-1993 nor will any employee who retires from here on will lose one cent of their retirement benefit, provided they meet the requirements of the workload and the number of years. They will not be losing any benefits. I urge you to defeat this pending motion. Thank you.

The SPEAKER: The Chair recognizes the Representative from Paris, Representative Birney.

Representative BIRNEY: Mr. Speaker, Distinguished Members of this House: I am a little bit surprised that this is before us this year. We have gone through this session setting up study after study. Back in the 116th Legislature, we had the Monks Commission, too, and from that study there was supposed to be a task force to look at this retirement system and make the changes needed to protect our state employees and better their retirement. I mean this retirement system that we have is old. They were going to report back to us, I believe, in January of 1996 to the committee.

Basically we had pretty much on the committee taken the point that we would not be doing anything to the retirement system until we heard from the Monks Commission Task Force. I just do not understand why we have this before us before the report comes out in 1996. It is too bad to pass this bill because there are better opportunities out there. Most corporations that have defined benefits plans now are switching to defined contributions through an age weighted system. I know that this is not approved by the IRS yet, but it is not disapproved either. It has been in effect for three years and in a couple more years the IRS is going to make a judgment on that. They want to see how it works and I understand why the state did not want to get into that in the 116th Legislature. We looked long and hard at that.

In another year or so, I think you are going to find that is the way that these retirement systems are going to go and it will have IRS approval because it seems to be working very well. I think it is a shame to do something like this when we can do

something better for our employees and fairer for our employees to get locked into something like this.

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

ROLL CALL NO. 251

YEA - Adams, Ahearne, Ault, Bailey, Benedikt, Berry, Bouffard, Brennan, Bunker, Cameron, Campbell, Chartrand, Chase, Chick, Chizmar, Clark, Cloutier, Clukey, Cross, Daggett, Davidson, Desmond, Dexter, DiPietro, Donnelly, Dore, Driscoll, Etnier, Farnum, Fisher, Fitzpatrick, Gates, Gerry, Gooley, Gould, Green, Greenlaw, Guerrette, Hatch, Heesch, Hichborn, Jacques, Johnson, Jones, K.; Joseph, Kerr, Kil Kelly, Kneeland, Kontos, LaFountain, Layton, Lemaire, Lemke, Lemont, Madore, Martin, McAlevey, Mitchell EH; Mitchell JE; Morrison, Murphy, Nadeau, O'Gara, O'Neal, Paul, Pendleton, Perkins, Pinkham, Pouliot, Povich, Reed, W.; Richardson, Ricker, Rosebush, Rotondi, Rowe, Samson, Saxl, J.; Saxl, M.; Shiah, Sirois, Stevens, Strout, Thompson, Townsend, Treat, Tripp, True, Truman, Tufts, Tuttle, Tyler, Vigue, Volenik, Watson, Wheeler, Winglass, Winn, The Speaker.

NAY - Aikman, Barth, Bigl, Birney, Buck, Carleton, Damren, Dunn, Gamache, Hartnett, Heino, Jones, S.; Joy, Joyce, Joyner, Labrecque, Lane, Libby JD; Libby JL; Lindahl, Look, Lovett, Lumbra, Marshall, Marvin, McElroy, Nass, Nickerson, Peavey, Plowman, Poirier, Reed, G.; Rice, Robichaud, Savage, Simoneau, Spear, Stedman, Stone, Taylor, Underwood, Waterhouse, Winsor.

ABSENT - Gieringer, Keane, Luther, Mayo, Meres, Ott, Poulin, Whitcomb, Yackobitz.

Yes, 99; No, 43; Absent, 9; Excused, 0.

99 having voted in the affirmative and 43 voted in the negative, with 9 being absent, the Bill was finally passed, signed by the Speaker and sent to the Senate.

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

Bill "An Act to Authorize Department of Transportation Bond Issues in the Amount of \$51,900,000 to Match up to \$135,000,000 in Federal Funds for Improvements to Highways, State and Local Bridges, Airports and Ports" (H.P. 1133) (L.D. 1577) (Governor's Bill) which was tabled by Representative STROUT of Corinth pending adoption of Committee Amendment "A" (H-627).

Subsequently, Committee Amendment "A" (H-627) was adopted.

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

Under further suspension of the rules, the Bill was passed to be engrossed as amended by Committee Amendment "A" (H-627) and sent up for concurrence.

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

On motion of Representative REED of Dexter, the House recessed until 1:45 p.m.

(After Recess)

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

SENATE PAPERS

Ought to Pass as Amended

Report of the Committee on Labor reporting "Ought to Pass" as amended by Committee Amendment "A" (S-327) on Bill "An Act Relating to the Retirement Benefits for the Maine Warden Service" (S.P. 473) (L.D. 1269)

Came from the Senate with the Report read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (S-327) as amended by Senate Amendment "A" (S-346) thereto.

Report was read and accepted. The Bill read once. Committee Amendment "A" (S-327) was read by the Clerk. Senate Amendment "A" (S-346) to Committee Amendment "A" (S-327) was read by the Clerk and adopted. Committee Amendment "A" (S-327) as amended by Senate Amendment "A" (S-346) thereto adopted.

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

Under further suspension of the rules, the Bill was passed to be engrossed as amended by Committee Amendment "A" (S-327) as amended by Senate Amendment "A" (S-346) thereto in concurrence.

Non-Concurrent Matter

Bill "An Act to Enhance Recycling by Ensuring Raw Materials for Businesses that Recycle and to Fund Household Hazardous Waste Collection Programs" (H.P. 805) (L.D. 1122) which was passed to be engrossed as amended by Committee Amendment "A" (H-550) in the House on June 22, 1995.

Came from the Senate passed to be engrossed as amended by Committee Amendment "A" (H-550) as amended by Senate Amendment "A" (S-344) thereto in non-concurrence.

The House voted to Recede and Concur.

Non-Concurrent Matter

Bill "An Act to Address a Shortfall in the Maine Ground Water Oil Clean-up Fund and Change the Financial Assistance Program for Owners of Underground Oil Storage Facilities" (EMERGENCY) (H.P. 1119) (L.D. 1563) which was passed to be engrossed as amended by Committee Amendment "A" (H-610) in the House on June 26, 1995.

Came from the Senate passed to be engrossed as amended by Committee Amendment "A" (H-610) as amended by Senate Amendment "A" (S-345) thereto in non-concurrence.

The House voted to Recede and Concur.

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

On motion of Representative GWADOSKY of Fairfield the House recessed until the sound of the Bell.

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

BILL RECALLED FROM LEGISLATIVE FILES

(Pursuant to Joint Order - House Paper 1142)

Bill "An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds, and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 1996 and June 30, 1997" (EMERGENCY) (H.P. 516) (L.D. 706) (Governor's Bill)

Representative KERR of Old Orchard Beach moved that the House reconsider its action whereby the House adhered to passage to be engrossed as amended by Committee Amendment "A" (H-386) as amended by House Amendment "A" (H-402) thereto.

On further motion of the same Representative, the House voted to Recede.

On further motion of the same Representative, House Amendment "A" (H-402) to Committee Amendment "A" (H-386) was indefinitely postponed.

On further motion of the same Representative Committee Amendment "A" (H-386) was indefinitely postponed.

The same Representative presented House Amendment "A" (H-628) which was read by the Clerk.

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

Representative KERR: Mr. Speaker, Men and Women of the House: It has been a long time getting here and I would urge your support for this House Amendment "A" on L.D. 706. When the Appropriations Committee convened back in January we had one goal and one objective to get our fiscal house in order, pay our bills and try to get rid of the gimmicks and the deferrals. We wanted to create a stable budget that this Legislature and the people of the State of Maine could be proud of. I think we have accomplished that.

On June 5, 1995, the committee reached an impasse. We split along party lines. We then sent out two reports. On June 16, 1995, the committee got back together to work out a compromise. One June 19, 1995, we voted and we remained split. I guess what is really significant about this amendment is that it represents a 13 to 0 vote from a committee that has reached a compromise on L.D. 706. What is in this document that I think is very important, not only to the members of the Legislature and the people of the State of Maine, is that this budget provides tax relief. We talk about tax relief, we can look at the circuit breaker program. It is something that I know that many of us walk the streets and campaigned on for property tax relief in some way, shape or form and also tax reductions.

First, I would like you to be aware of some of the issues that are in this budget that pertain to tax relief. We have a circuit breaker and we increased the eligibility for household incomes with two or more members to \$35,000 from \$25,800. We expanded the eligibility by decreasing benefits and increasing the maximum benefit payment to \$700 from \$500. We also in this document provided language for the personal property tax relief on machinery and equipment, which the Appropriations Committee has told the Chief Executive that we will in L.D. 958 work and try to find the 5 million dollars to get the Governor's initiative on board.

We also worked hard and diligently with the Education Committee to provide a fair and equitable school funding formula for the people of the state

that was funded to the tune of almost 39 million dollars. One of the big stumbling blocks that we have been dealing with for the past four months has been the hospital assessment. The assessment will be reduced in 1998 to 3.56 percent and we will repeal the hospital assessment in 6/30/98. Also, it suspends the assessment if federal reimbursement is eliminated. It also applies for waivers for rural hospitals and border hospitals. The general fund appropriation for the hospital sick tax is 34.9 million dollars. The federal fund match to that will be 32.7 million dollars.

We made great strides from the original bill of L.D. 706, which the Governor presented us back in February, which provided no money to the hospitals. That was a large compromise from the members of this House and the other body and the Appropriations Committee. That is what this budget is built on, compromise. We talk about tax reductions. There is a piece in this budget dealing with income tax utilization fund. What this does is it caps individual income tax collections at FY97 amounts, which is 676 million dollars. It establishes a revenue targeting fund to account for excess revenue. It phases in a 20 percent rate reduction of 1994 rates effective in 1998 based on individual income tax collections over and above that 176 million dollar mark.

Income tax reductions will not apply to the following, a single or married family with separate returns with taxable income in excess of \$30,000, unmarried or legally separated individuals who qualify as heads of household with taxable income in excess of \$45,000, individuals filing married or joint returns or surviving spouse with taxable income in excess of \$60,000. When you go home you can say that this budget does provide tax relief and tax deductions. Also, in this budget for tax reductions is commercial forestry excise tax. There was more money put in from the general fund and less money for the landowners. We also put in this budget research and development tax credit, which I think is very important to all because we all talk about creating jobs. We provided that in L.D. 706.

In dealing with the Income Tax Stabilization Fund, I think it is appropriate so that I addressed it in my caucus and I must address it on the floor of this House. I know there has been a full court press to try to torpedo this Income Tax Stabilization Fund and I will make reference to a letter that the State Treasurer put out June 23, 1994. It states, "A cap on revenues would not mean an instant lowering rate, but with all the negatives in our fiscal picture, it could be the final straw." I think what is very clear, that the State Treasurer, Sam Shapiro, has indicated, is that no single policy will lead to a downgrade.

I had our staff call Standard and Poor and Jim Clair spoke with a man by the name of Dan Fisher. He is familiar with our budget and our strengths and weaknesses in the past where we had gimmicks and deferrals. We tried to have one time savings to balance the budget. We don't have this in L.D. 706. What Dan Fisher did tell us is two of the issues that will determine whether or not the credit rating will stay where it is or increase or decrease is number one, the strength of the economy. Number two, the other criteria that is hurting in this state is the lack of reserve funds. We do have a stable budget and I think this committee and this body has provided

that. We did follow the committee process in developing this budget. All of you were included in that process. We took your committee reports and we put them into this document and we worked around them, which I think is something that has been very different than in the past.

This budget, I don't want you to think is a perfect document, because it is not. The committee has been concerned about a number of areas. I believe in January we will be back here to address some of these issues. One of them is dealing with Medicaid spending and the other is the ability for the Productivity Realization Task Force to achieve the savings. Those two areas should be of concern to all of us. Don't be surprised if we are back here in January addressing some of these issues. I think that what is good though is that, through the committee process and members of the Appropriations Committee has been very clear, the commissioners are going to have to live with their budgets. Their budget is their contract. That is a big move from in the past. I think it is a positive one.

I guess I could stand here and praise the members of this House and the members of the Appropriations Committee because you all made it possible. I would just urge your support with the passage of a compromise budget for the fiscal years 96 and 97. I would urge your support for this document. Thank you.

Representative VOLENIK of Sedgwick presented House Amendment "A" (H-630) to House Amendment "A" (H-628) which was read by the Clerk.

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

Representative VOLENIK: Mr. Speaker, Men and Women of the House: What you have heard is a very good budget and I would commend the committee who put this budget together, however, there is one exception. The pending amendment that I have put in removes the Income Tax Stabilization Fund or cap from the budget. The fiscal note says there is no net effect on general fund appropriations and revenue and a balanced budget is maintained for fiscal years 95-96 and 96-97. The income tax cap is dangerous for Maine's bond rating.

I will read to you an excerpt from the same letter from State Treasurer Sam Shapiro that Representative Kerr read to you from. I quote, "I must inform you that I have been in contact with the rating agencies today and they look unfavorably at any legislation that caps revenues. They have pointed out that our very poor tax position, the uncertainty of federal cuts and the continued short-term borrowing make Maine extremely vulnerable." It gets worse.

Let's say your business has a revenue of \$10,000 per month. Your expenses are \$11,000 per month. You fire your manager for incompetence and along comes three applicants for the job. Their names are Tom, Dick and Harriet. Tom tells you that he will increase revenues to \$11,000, balancing your budget. Dick says he will cut expenses to \$10,000, balancing your budget. Harriet says wait a minute, I will cut your budget to \$7,000 then you will have to reduce your expenses even further until your budget is balanced, but I won't explain how these expenses will go down. Which of these would you hire? If you answered Tom or Dick, you are on the right track. If you answered Harriet, you may have a small system's failure in the gray matter department of your company.

Let's look at the state budget. When expenses exceed income, we have the same three choices,

raising revenue or reducing expenses will balance the budget. Reducing revenue with no identification of program cuts will simply bankrupt state government. Wait, you say, we are not going to reduce revenue, we are only going to cap it. Any income tax revenue beyond 1997 figures will be capped and returned to the people in tax cuts. Great, except for one thing, inflation. Inflation causes wages and benefits to rise and it causes increases in the cost of goods and services. Inflation may technically be only 4 or 5 percent per year on average, but Medicaid costs, mental health program costs, wages, salaries, benefits, retirement and others are skyrocketing at much greater rates of inflation. If inflation averages 8 percent, the cost of government doubles every nine years. If inflation is at 12 percent, the cost of government doubles every six years.

Since 1970, the cost of Maine government has increased from 328 million dollars to 3.3 billion dollars or an average of 12 percent annual inflationary cost increases for all goods and services. That means that government expenses have doubled every six years on average. Let's say that in 1970 we had passed an income tax cap law. Do you know how much income tax revenue we would have today? Twenty-seven million dollars per year as opposed to the more than 700 million dollars we actually draw in. That loss of 700 million dollars per year would mean more than 20 percent of the state's budget would be gone or all of the funding for public protection, natural resources, labor, economic development and general government leaving only education, human services and transportation in the budget.

Let's say that in 1970 we had capped all our tax revenue and that same year the federal government had capped all its tax revenue. The State of Maine would be spending only 328 million dollars this year and every year, one-tenth of what we are spending now. That means no welfare system, no mental health spending, no health spending at all, no revenue sharing, no education funding, no university system, no Department of Marine Resources, no agricultural programs, no FAME loans, no public safety or state police.

If the federal government had capped its taxes, not only would Loring Air Force Base be closed, but Brunswick Naval Air Station, Kittery Shipyard, Bath Iron Works would be shut down and there would be no Medicaid or Medicare programs. Social Security would be history. Our defense industry would only survive if foreign governments bought our products because our own government would be financially bankrupt and in my opinion morally bankrupt as well. Twenty-five years from now, if inflationary cost increases follow the same pattern of the last 25 years and if we cap income tax revenue, the value of that revenue will be one-tenth of what it is today.

So I say, chop income tax revenue if you will. Go further, cap sales tax revenue and corporate tax revenue. Encourage the federal government to cap its revenue. Force the towns to cap their revenue. If you like anarchy, you will be very, very happy. In a world of ever growing complexity and ever growing population and of ever decreasing resources, you will be digging graves for yourselves and your children's grandchildren. Live for today and enjoy the limelight of being part of a generation of lawmakers who fiddled with tax cuts while Rome, China and

Poland Springs burned. I urge you to support this amendment and I ask for a division. Thank you.

The same Representative requested a division on adoption of House Amendment "A" (H-630) to House Amendment "A" (H-628).

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

Representative KERR: Mr. Speaker, Men and Women of the House: I urge you to vote against Representative Volenik's amendment. I think it has great intentions and I think his concerns would be valid. The only problem is that in this Income Tax Stabilization Fund we are phasing in a 20 percent rate reduction and once that rate reduction is achieved, then there is no longer a cap. As you all know, it is a great day to stand up here and speak before this body and it is the first time in five years that I can tell you that we are debating issues and not about increasing taxes. I think that is the good feeling here that we should have. In the past the debate towards the end of year is about where we are going to find more money and what taxes are we going to raise and that debate is not taking place today. I think that is a tribute of this Legislature's and your committee's work. I would urge you to vote against the amendment before you. Thank you.

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

Representative TREAT: Mr. Speaker, Men and Women of the House: I will be voting for this amendment for the following three reasons. First, the revenue path is an ultimate gimmick. How can we say we have gotten rid of the past gimmicks and then add in a huge gimmick that goes into effect in future years? Second, the revenue path is fiscally irresponsible. How can we say we put our fiscal house in order, if we enact this cap and threaten our bond rating and add millions of dollars in costs to our bonding costs? Our bond rating has already been downgraded over the past few years because of past gimmicks in our budget. Thirdly and finally, the revenue cap. I am opposed to the revenue cap and the accompanying tax breaks because it is designed to give today's politicians, you and me, a political benefit at the expense of our future. It is politically expedient, but it is fiscally irresponsible and I cannot support it. Therefore, I will be voting green on the pending motion.

Representative ROSEBUSH of Millinocket requested a roll call on adoption of House Amendment "A" (H-630) to House Amendment "A" (H-628).

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 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 Chair recognizes the Representative from Kossuth Township, Representative Bunker.

Representative BUNKER: Mr. Speaker, Men and Women of the House: Just for the record, I will be voting against the pending motion, due to the tying of the education subsidy and tying the dispersement to this budget. Unlike many of the people that have pending amendments to this budget, I don't have any problem

with the budget in essence, other than the dispersement of education funds. With my communities in Washington, rural Penobscot and Hancock counties, I just cannot support a budget that does not address the educational needs. I would highly recommend that we vote against this budget and separate the two so that we can vote the dispersement of education subsidies separately. Thank you.

The SPEAKER: The Chair recognizes the Representative from Windham, Representative Kontos.

Representative KONTOS: Mr. Speaker, Men and Women of the House: I will be supporting the amendment for a variety of reasons. Since we first learned about this provision of the budget, I have done a fair amount of work trying to track down what the impact of a lower bond rating might be on many of the agencies that I have the experience of working with through committee, the Finance Authority of Maine, Maine State Housing Authority, Maine Municipal Bond Bank and others.

You heard reference made to the State Treasurer's letter and in addition to that some of us have sought out information from the Finance Authority of Maine and others to indicate what the impact of a tax cap that threatens our bond rating might be in terms of the state's standing as a fiscal entity. I realize politically that this is a difficult issue in the sense that we have a delicate balance politically on the Appropriations Committee and providing all sorts of unanimous reports. It has not been my experience to obstruct unanimous reports from any committee and I think my record will show that I have supported every budget that I have had the opportunity to vote on.

I am going to give you a specific example of why I thought about this as much as I have. Earlier this session, you heard me and other members of the Utilities Committee speak in strong support of the Electric Rate Stabilization Act, which allowed first CMP and then Bangor Hydro to use Finance Authority of Maine bonds to buy nonutility generators. They sent me information that I just received this morning from the Finance Authority of Maine. If the bond rating, based on action that we take in this budget result in something as small as a .2 percent change, it would cost Bangor Hydro Electric Company an additional 2.5 million dollars over the 10-year term of the bond. Now regrettably, the Appropriations Committee didn't have the opportunity to do the kind of analysis that I think they were able to do on other issues. Many of us only learned of this information yesterday and I am still trying to fully understand the impact of a lot of the other issues in the budget.

This piece in particular affects issues that have come out of the Utilities Committee, and the Business and Economic Development Committee that have a direct impact on your communities ability to issue bonds to the Maine Municipal Bond Bank. It is my belief that the ripple affect of the tax cuts cap provision in this particular budget document has an incalculable negative impact on the state's economic well-being. What my hope is that we can capture some time to refine this piece of the budget and work with a variety of folks who may have a number of ideas that they weren't able to offer them when the committee voted on Friday night and see if there is a way that we can't find some feeling, I hate to use the word cap, on income tax revenues that wouldn't put our bond rating in the jeopardy that I believe it will be in. I would be happy to participate in those

discussions as I believe other members of both caucuses would be. For that reason, I will be supporting the amendment before us.

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

Representative DONNELLY: Mr. Speaker, Ladies and Gentlemen of the House: To expand upon what the good Chairman of the Appropriations Committee had stated earlier when discussing with folks from Standard and Poor what they consider when rating a state. I believe there were four items given. First, management, that's us and that is the Governor. How do we work? What are our goals? What are we pushing for? What kind of interaction do we have? So far we are doing pretty good. You would never be able to tell that by reading some headlines, but we have agreed on a lot and we are moving the state in a positive direction.

The second one is our bonded indebtedness. The State of Maine does not have a very high bonded indebtedness. We are somewhere in the middle and they rate us as not too bad. That will improve with the Governor's package on bonds that you will see coming before you because it is 90 percent of what we are retiring. Now, that is two things that we are doing right out of the four.

Number three is the budget. Are there gimmicks? Are we not paying our bills? Are we pushing and pulling and doing everything we can to hide methods of paying our bills on time? No. From what I understand, they have seen our budget and it is not too bad. We are moving in the right direction and we have taken care of the gimmicks. We have taken care of paid bills. We have not castigated those who have come forward and said we found this in a drawer. We need it in a supplemental budget. We have paid our bills. We have had two supplemental budgets and we have paid our bills.

Fourth, not to quote President Clinton, but it is the economy. The economy is the largest portion of how they rate us. How our state is rebounding from the recession that struck nationwide? Maine is not doing that great. We have an anemic growth. To say that we put an income tax cut or cap in place and more money stays in the economy and will churn in the private sector economy round and round when people have that \$77 or \$168 and go out and purchase sneakers for their kids, clothes, diapers or whatever things people do with their wages, that money will move the economy. We are taking less out of the economy and that will only happen as revenues rise.

If we do not hit the cap of 676 million dollars, we will not be getting a cut. If we slide into recession, as someone had eluded to, we will not be getting an income tax cut. It is capped at 20 percent. It does not go on and on and on forever. Bond ratings were mentioned and I know a little bit about bond ratings. Bond ratings have to do with, as we talked about with the four things we are talking, the bond increases in rates that were mentioned by the good Representative from Windham, Representative Kontos. There are other things outside the State of Maine that have more affect on the base rate that we are dealing with than on the four items we have talked about. Before this budget was ever proposed, before we ever got into talking about income tax cuts, sales tax cuts, snack tax cuts and tax credits for R, C and D, tax credits for airlines, the cost of

money went up. That was because our economy nationally is improving.

The federal reserve increased the cost of money that had nothing to do with what we were here in the State of Maine. The four items that were mentioned before are the four items that Standard and Poor said they thought about are the four items that we need to be concerned about. Maine is improving on those. Thank you.

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

Representative SIMONEAU: Mr. Speaker, Ladies and Gentlemen of the House: I won't repeat what has been said by Representative Donnelly or Representative Kerr. I would like to have you think about just one thing here. We are talking about capping the personal income tax. That is about 609 million dollars a year right now. We are not talking about capping it until it gets to 676 million dollars. That is an 11 percent increase. The total receipts of this state are 1.7 billion dollars. If the same increase was applied to that, you are talking about an increase in state revenues of about 192 million dollars a year. You would reach that level of total receipts and we are talking about looking at the income tax and no excess over 676 million as going into a fund. You just think about that for a minute. Is that going to bring state government to a screeching halt? I don't think so. We are talking about a very small portion of our total receipts and we are talking about sending out a message of yes, we are going to try to do something to eventually cap spending. That is what this is all about. Thank you.

The SPEAKER: A roll call has been ordered. The pending question before the House is the motion to adopt House Amendment "A" (H-630) to House Amendment "A" (H-628). All those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 252

YEA - Adams, Berry, Bunker, Chartrand, Chase, Daggett, Etnier, Fisher, Fitzpatrick, Gates, Gould, Green, Hatch, Heesch, Jones, K.; Kil Kelly, Kontos, Lemaire, Lemke, Richardson, Rotondi, Rowe, Samson, Saxl, J.; Saxl, M.; Shiah, Stevens, Treat, Volenik, Watson.

NAY - Ahearne, Aikman, Ault, Bailey, Barth, Benedikt, Bigl, Birney, Bouffard, Brennan, Buck, Cameron, Campbell, Carleton, Chick, Chizmar, Clark, Cloutier, Clukey, Cross, Damren, Davidson, Desmond, DiPietro, Donnelly, Dore, Driscoll, Dunn, Farnum, Gamache, Gerry, Gooley, Greenlaw, Guerrette, Hartnett, Heino, Hichborn, Jacques, Johnson, Jones, S.; Joseph, Joy, Joyce, Joyner, Kerr, Kneeland, Labrecque, LaFountain, Lane, Layton, Lemont, Libby JD; Libby JL; Lindahl, Look, Lovett, Lumbr, Luther, Madore, Marshall, Martin, Marvin, Mayo, McAlevey, McElroy, Meres, Mitchell EH; Mitchell JE; Murphy, Nadeau, Nass, Nickerson, O'Gara, O'Neal, Ott, Paul, Peavey, Pendleton, Perkins, Pinkham, Plowman, Poirier, Pouliot, Povich, Reed, G.; Reed, W.; Rice, Ricker, Robichaud, Rosebush, Savage, Simoneau, Sirois, Spear, Stedman, Stone, Strout, Taylor, Thompson, Townsend, Tripp, True, Truman, Tufts, Tuttle, Tyler, Underwood, Vigue, Waterhouse, Wheeler, Whitcomb, Winglass, Winn, Winsor, The Speaker.

ABSENT - Dexter, Gieringer, Keane, Morrison, Poulin, Yackobitz.

Yes, 30; No, 115; Absent, 6; Excused, 0.

30 having voted in the affirmative and 115 voted in the negative, with 6 being absent, House Amendment "A" (H-630) to House Amendment "A" (H-628) was not adopted.

On motion of Representative JACQUES of Waterville, tabled pending adoption of House Amendment "A" (H-628) and later today assigned.

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

**ENACTORS
Bond Issue**

An Act to Authorize a General Fund Bond Issue in the Amount of \$4,000,000 for Facilities Serving People with Mental Illness (H.P. 313) (L.D. 417) (C. "A" H-581)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. In accordance with the provisions of Section 14 of Article IX of the Constitution, a two-thirds vote of the House being necessary, a total was taken. 120 voted in favor of the same and 12 against, and accordingly the Bond Issue was passed to be enacted, signed by the Speaker and sent to the Senate.

Bond Issue

An Act to Authorize a General Fund Bond Issue to Connect Libraries and Communities Electronically (S.P. 191) (L.D. 500) (C. "B" S-310)

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

Representative MARTIN of Eagle Lake requested a roll call on passage to be enacted.

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 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 pending question before the House is Enactment. All those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 253

YEA - Adams, Ahearne, Aikman, Bailey, Benedikt, Berry, Bigl, Birney, Bouffard, Brennan, Buck, Bunker, Cameron, Campbell, Carleton, Chartrand, Chase, Chick, Chizmar, Clark, Cloutier, Clukey, Cross, Daggett, Damren, Davidson, Desmond, DiPietro, Donnelly, Dore, Driscoll, Dunn, Etnier, Farnum, Fisher, Fitzpatrick, Gamache, Gates, Gerry, Gooley, Gould, Green, Greenlaw, Guerrette, Hartnett, Hatch, Heeschen, Heino, Hichborn, Jacques, Johnson, Jones, K.; Jones, S.; Joseph, Joy, Joyner, Kerr, Kilkelly, Kneeland, Kontos, Labrecque, LaFountain, Lemke, Lemont, Libby JD; Libby JL; Lindahl, Look, Lovett, Luther, Madore, Martin, Marvin, Mayo, McAlevy, McElroy, Meres, Mitchell EH; Mitchell JE; Morrison, Murphy, Nadeau, Nass, Nickerson, O'Gara, O'Neal, Ott, Paul, Peavey, Pendleton, Perkins, Plowman, Poirier, Pouliot, Povich, Reed, G.; Reed, W.; Rice, Richardson, Ricker, Robichaud, Rosebush, Rotondi, Rowe, Samson, Savage, Saxl, J.; Saxl, M.; Shiah, Simoneau, Sirois, Spear, Stedman, Stevens, Stone, Strout, Taylor, Thompson, Townsend, Treat, Tripp, True, Truman, Tufts, Tuttle,

Tyler, Vigue, Volenik, Waterhouse, Watson, Wheeler, Whitcomb, Winglass, Winn, Winsor, The Speaker.

NAY - Joyce, Lane, Layton, Lumbra, Marshall, Pinkham, Underwood.

ABSENT - Ault, Barth, Dexter, Gieringer, Keane, Lemaire, Poulin, Yackobitz.

Yes, 136; No, 7; Absent, 8; Excused, 0.

136 having voted in the affirmative and 7 voted in the negative with 8 being absent, in accordance with the provisions of Section 14 of Article IX of the Constitution, a two-thirds vote of the House being necessary, and accordingly the Bond Issue was passed to be enacted, signed by the Speaker and sent to the Senate.

Emergency Measure

An Act to Strengthen Maine's Live Harness Racing Industry (H.P. 619) (L.D. 829) (H. "B" H-580)

The SPEAKER: The Chair recognizes the Representative from Saco, Representative Nadeau.

Representative NADEAU: Mr. Speaker, Men and Women of the House: It is with conflicting feelings that I address you actually. House Amendment "B" which was adopted last week is a bad, bad amendment. However, it is bad because it takes out the moratorium provision which was specifically inserted in a previous committee amendment for one simple reason. We had potential liability and we still have potential liability up to our eyeballs. There is also a veto clause that is in House Amendment "B" which, as I understand it, is the only industry that has veto over industry. That has potential legal problems. However, this bill is very, very important to the live harness racing industry in Maine.

Therefore, I think the long and short of this is there are probably more positives to this bill than there are negatives. Having made those comments, I vow to you and the rest of my committee vows to you that the macrovision of the whole harness racing industry, OTBs and everything related to that will be addressed in the second session of this Legislature. Having made those comments, I know my conscience feels a lot better, but I would still urge you to vote for this bill. Thank you.

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 132 voted in favor of the same and 5 against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

Emergency Measure

An Act to Provide for Alternative Dispute Resolution in Domestic Relations Matters and to Provide for the Recodification and Revision of the Maine Revised Statutes, Title 19 (H.P. 1024) (L.D. 1439) (C. "A" H-591)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 114 voted in favor of the same and 0 against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

Emergency Measure

An Act to Amend the Laws Governing Child Support (S.P. 556) (L.D. 1516) (Governor's Bill) (C. "A" S-317)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 124 voted in favor of the same and 0 against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

Emergency Measure

An Act to Modify and Update Certain Laws Pertaining to Inland Fisheries and Wildlife (S.P. 562) (L.D. 1530) (C. "A" S-311)

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

Emergency Measure

An Act to Authorize a Tax Anticipation Note for Fiscal Year 1995-96 (H.P. 1139) (L.D. 1582)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 119 voted in favor of the same and 6 against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

Emergency Mandate

An Act to Amend the Governmental Structure and Budget Approval Process for Cumberland County (H.P. 314) (L.D. 418) (H. "A" H-586 to C. "A" H-530)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. In accordance with the provisions of Section 21 of Article IX of the Constitution, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 126 voted in favor of the same and 3 against, and accordingly the Mandate was passed to be enacted, signed by the Speaker and sent to the Senate.

Emergency Mandate

An Act Concerning the Kennebec Water District (H.P. 937) (L.D. 1326) (S. "A" S-313 to C. "A" H-527)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. In accordance with the provisions of Section 21 of Article IX of the Constitution, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 130 voted in favor of the same and 0 against, and accordingly the Mandate was passed to be enacted, signed by the Speaker and sent to the Senate.

An Act to Exclude Certain Parks from the Definition of Mobile Home Parks (H.P. 372) (L.D. 507) (H. "D" H-560)

An Act to Conform Maine Law Related to Domestic Relations with Federal Law (H.P. 568) (L.D. 769) (C. "A" H-590)

An Act to Ensure a Sustainable Urchin Fishery in the State (S.P. 337) (L.D. 918) (H. "A" H-582 to C. "A" S-293)

An Act Concerning the Termination of Parental Rights (S.P. 508) (L.D. 1367) (C. "A" S-316)

An Act to Protect Traditional Uses in the North Woods (H.P. 1104) (L.D. 1551) (H. "A" H-548 and S. "A" S-320 to C. "A" H-519)

Resolve, to Require the Brookton Elementary School to be Used as a Community Center for Northern Washington County (H.P. 1131) (L.D. 1576) (S. "A" S-321 to H. "A" H-559)

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

An Act Concerning the Jurisdiction of the Tribal Courts of the Passamaquoddy Tribe and the Penobscot Nation (H.P. 944) (L.D. 1333) (C. "A" H-589)

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

On motion of Representative HARTNETT of Freeport was set aside.

The SPEAKER: The Chair recognizes the Representative from Freeport, Representative Hartnett.

Representative HARTNETT: Mr. Speaker, Ladies and Gentlemen of the House: I have no great objection to this item. I have the great pleasure in bringing to your attention that the Judiciary Committee heard this bill, which is L.D. 1333, and its prime sponsor, for the first time in the history of the Maine Legislature and I believe in any state legislature was a representative from a tribe of Native Americans. It was Representative Fred Moore. He presented it to our committee. In recognition of a significant historic event, we all signed two copies of the bill. I am not sure this is the one he will end up having. One will be sent to the Passamaquoddy Tribe and one also is to be sent to the Maine State Museum. I just wanted to bring to your attention this historic moment. Thank you.

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

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

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

SENATE PAPERS

The following Joint Order: (S.P. 598)

ORDERED, the House concurring, that Resolve, to Reduce the Economic Impacts of the Clean Air Act on Maine's Citizens and Businesses (EMERGENCY) (H.P. 459) (L.D. 625), and all its accompanying papers, be recalled from the Engrossing Department to the Senate. Came from the Senate read and passed. Was read and passed in concurrence.

**REPORTS OF COMMITTEES
Ought to Pass as Amended**

Representative O'GARA from the Committee on Transportation on Bill "An Act to Amend Certain Motor Vehicle Laws" (H.P. 771) (L.D. 1045) reporting "Ought to Pass" as amended by Committee Amendment "A" (H-637)

Report was read and accepted. The Bill read once. Committee Amendment "A" (H-637) was read by the Clerk and adopted.

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

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

By unanimous consent the Joint Order (S.P. 598) and L.D. 1045 were ordered sent forthwith.

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

Bill "An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds, and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 1996 and June 30, 1997" (EMERGENCY) (H.P. 516) (L.D. 706) (Governor's Bill) which was tabled by Representative JACQUES of Waterville, pending adoption of House Amendment "A" (H-628).

Representative GATES of Rockport presented House Amendment "F" (H-640) to House Amendment "A" (H-628) which was read by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Rockport, Representative Gates.

Representative GATES: Mr. Speaker, Ladies and Gentlemen of the House: I offer a very small amendment to our budget. As we all know, the income tax cap is perhaps the most controversial element in the budget before us. Thursday or Friday evening, I have lost track, I was shadowing various members of the Appropriations Committee as they were putting this little deal together and I got to take part and listen to some of the negotiations.

The part of the revenue cap that this addresses is how we redistribute that income tax money to. Initially and as it was presented to us at the caucus it was to those with a total income of \$40,000 or less. Those were the people who would receive the tax relief from the fund we are setting aside. It ended up going a little higher for a married couple, as high as \$60,000 and once it was reduced to writing we found that they also had said \$60,000 of taxable income. All this amendment does is it changes taxable income to adjusted gross income. Folks, with a taxable income, a married couple with a taxable income of \$60,000 may have an actual income of \$80,000, \$90,000 or \$100,000. For me and I think many folks, those are not the people that we want to give tax relief to.

I want to target it to those with a lower income. By inserting adjusted gross income instead of taxable income, you are taking out all those deductions that people get for all the itemized deductions and you are targeting the people more accurately at the \$60,000 income level. I considered also amending, to go back to, the original \$40,000 figure, but I thought that would be too big a wrench to throw in the works. I urge your support for this amendment.

It is very small and it makes it much more palatable for many of us. Thank you.

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

Representative KERR: Mr. Speaker, Men and Women of the House: I believe Representative Gates has great intentions on this amendment. As I have said earlier, this budget was built on compromises and this is one of those compromises. I would urge you to vote against the pending motion. Thank you.

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

Representative SIMONEAU: Mr. Speaker, Ladies and Gentlemen of the House: I must take issue with Representative Gates. This is not a small amendment. When negotiations were going on, a subcommittee with Representative DiPietro and myself was asked to get together with the analyst from Taxation and to come up with numbers that we thought would fairly redistribute these monies to the people who pay the tax in. Representative DiPietro discussed adjusted gross income versus taxable income and we recommended to the committee that we go with taxable income. I have heard bantered about this building the last couple of days and I just heard that someone with an adjusted gross income of \$100,000 could go down to a taxable income of \$60,000. I would like to see that happen. I suggest to you that it doesn't happen.

I have a little advantage or maybe a disadvantage over looking at tax returns that most people in this body don't have. I have been doing it for 32 years and I personally review over 650 tax returns every year. I have seen them from the small person getting the earned income credit to people who have incomes in the high six figures. Let's talk about what the concern here is. Let me point something out. My personal view toward taxes. I consider them to be our dues. They are what we pay for living here. I subscribe to a quote from Oliver Wendall Holmes that you will find on the Treasury Building in Washington. "Taxes are what we pay for civilization." I don't mind paying them. Many people I know don't mind paying them providing they are one thing and that is fair. That is what we are talking about here and that is fairness.

There will be people here, I'm sure, that will stand up and tell us that Maine isn't high in taxes and so forth. It may not be, but the perception is there that we are high on our income tax. Be that right or wrong, there is a perception. I have seen a lot of people who have lived in Maine all of their lives suddenly become Florida residents. They are there 185 days. When that happens because of the perception of high taxes, they no longer pay a single penny in income taxes to the State of Maine. You had a similar problem a number of years ago with the Maine inheritance tax. There was a large drain of money going out of the State of Maine to Florida. People were changing their residences and they died in Florida because Florida had a very simple estate tax, which is much lower than our inheritance tax. This body was wise enough to repeal that inheritance tax and go to the estate tax.

If any of you have on your desk the May 1995 report on the revenues collected by the State of Maine, take a look at the inheritance tax line. It is 6 million dollars above projections. I doubt very

seriously that that would be there had we not changed that law to reflect that drain out. By the way, total projections are only 3.8 million dollars. We would be in somewhat of a pickle if we didn't have those inheritance taxes. This is a question of fairness.

To understand where I am coming from and to understand where we go from the adjusted gross income to taxable income, you have to look to the evolution of how you got there over the years. To go from adjusted gross income, keep in mind the personal tax returns that you file, that is that bottom line on the front page of the tax return. You have wages, business income, interest, dividends and less your IRA, those types of thing are your adjusted gross income. Now to get to the taxable income, you deduct your exemptions for yourself and your children and you also deduct itemized deductions. The facts of this, let's forget the myths of everyone writing off all sorts of things, the itemized deductions over the years have evolved to the point that essentially all you are going to get for deductions are medical, property taxes, income taxes and interest on a home mortgage. That is about it for the average person. That means somebody making \$100,000 and most of them are not going to drop down to \$60,000.

You also have to factor into that this little formula. If the income is over \$114,000, those people start to lose their exemptions. They start to lose their itemized deductions, which makes it even harder to get down to this so-called lower figure. When you look at the tax returns and you see the real estate taxes that they are paying, they don't qualify for the circuit breaker. You see the income taxes that they are paying. They are contributing money in and they are contributing over half of the money in this state. It goes to pay for people to get the circuit breaker. The fairness comes into my mind in this respect, here we have people who are paying in more than half of the taxes and yet we are going to say to them, if we exceed a certain level and cap the income taxes, we are not going to pass on to you that savings. It is like saying write a check to your neighbor who doesn't make as much as you do. That just doesn't seem to be fair, at least to my way of thinking.

If anyone deserves a break on income taxes, it is anyone who has paid in income taxes, not just a select few. This covers roughly 85 percent of the taxpayers in Maine. The real high income taxpayers will not benefit. I ask you to think about this from the point of view of fairness. It is as simple as that. Thank you.

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

Representative DORE: Mr. Speaker, Ladies and Gentlemen of the House: It isn't easy for me to get up and speak on this amendment and I want you to know that I am a vote for the budget. I have looked at shutdowns and I don't want to look at any more. While I tell you I am going to vote for this amendment, it will come as no surprise to you that if this amendment fails, I am still going to vote for this budget. I will speak about that at another time when we finally have a budget before us.

I don't want to belabor why I want to vote for this budget at this time. I do want to disagree with the good Representative from Thomaston, Representative Simoneau about the difference between the adjusted gross income and taxable income,

sometimes called net income. I know from personal experience that you can easily have an income of close to \$100,000 and even over \$100,000 and have a taxable income of \$60,000. I know many people who signed those returns. I have seen a few myself. I am familiar with those returns. It is not 85 percent of the taxpayers in Maine, I think, I think you are really talking about maybe only 5 percent of the taxpayers in Maine. If I am wrong about that, I will be happy to apologize on the floor later.

I think when you talk about people with incomes around \$100,000 in Maine, as I recall from looking at this in the past, we were always dealing with less than 5 percent and in some years we were dealing with less than 3 percent of the earners in the State of Maine. Why is it possible to have a taxable income of \$60,000 and an adjusted gross income of around \$100,000 or more? Mortgage interests, I don't know if many of you are familiar with the facts, but there is no cap on the amount of mortgage interest. If you are willing to carry a mortgage payment of \$2,000 or \$3,000 a month and maybe you don't carry that kind of mortgage, but I know many people who do carry that kind of mortgage payment. They are the professionals in our community. They live in the homes that cost between \$200,000 and \$800,000. They don't pay cash for those homes. They take out mortgages. They are smart about how they utilize their money.

Real estate taxes, I have a real estate tax bill that is about \$3,600. That is fine for me and I shouldn't get the circuit breaker. My husband is an attorney and has a comfortable income. My neighbor has a real estate tax bill also of \$3,600. They are living on social security. They have owned that home for 35 years. It is as nice a home as mine is, but the difference between the two of us and our ability to pay for our real estate taxes is considerable. We are in our prime earning years, but my neighbors are living on social security. Their earning years have gone by. I don't think they should have to leave their home and that is why I fight so hard for the circuit breaker. I am happy with what this committee has done with the circuit breaker. I truly believe there is a significant difference between the adjusted gross income and taxable income.

If Representative Simoneau needs to see a few returns, other than my own name, which I am happy not to white out, I will provide him with some from some of my friends with their names whited out. So he can see that there are many people who earn \$100,000 and in excess of \$100,000 and have a taxable income of \$60,000 or less. My concern is that when we were talking adjusted gross income, \$30,000 single and \$60,000 married, we were talking about 80 percent of the taxpayers in Maine. Once we go to a taxable income of \$30,000 single and \$60,000 married, I think we are talking about 95 percent of the taxpayers in Maine. There is a big difference there. You really have to be in that other few percentage points among the super affluent in this state in order to not get part of this benefit. You can easily be among the most comfortable residents of this state with the least financial worries and find yourself getting an enormous tax benefit from using taxable rather than adjusted gross.

In the Taxation Committee over the years, Representative Simoneau and I have often discussed taxes. We have always discussed them in terms of the adjusted gross income and not the taxable income. It was sort of a sharp response for me to find out that

on the Appropriations Committee, a committee I respect very much, that the conversation had turned from adjusted growth to taxable. It is one of the reasons I believe the tax policy ought to be set in the tax committee and not the Appropriations Committee. Having said all that, I want you to understand again that I am going to vote for this amendment. If this amendment fails, I am going to vote for this budget and later I will tell you why. I think it is a grave mistake on Tuesday the 27th day of June for us to not have a two-thirds budget. I respect what Representative Simoneau said and I respect what Representative Kerr has said. We need a two-thirds vote on the budget. If I thought this was a budget breaker, I wouldn't vote for it.

I don't think it is and I think that the intention in the negotiations was to return the income tax to the 80 percent of Maine taxpayers who are at \$60,000 adjusted gross and not the 95 percent who would fit under taxable income of \$60,000. There really is a difference between taxable and adjusted gross. It is a tremendous difference. It is the difference of being able to have the luxury of having many deductible items. You can afford the mortgage payments and the tax payments on those many deductible items.

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

Representative OTT: Mr. Speaker, Ladies and Gentlemen of the House: In my profession when two parties walk out of the courthouse grumbling it means that either the judge or the jury made a good and fair decision. To me this budget represents a fair decision. As Representative Kerr has indicated, it is a compromise. It was worked out in the committee process through the push and pull and the give and take of a fair and just hearing. Each of us in the committee or each of us in this body could probably make a compelling argument for either increasing or decreasing the amount of money that we want to allocate or take away from some program or to eliminate or extend or expand a program or in this case change taxable to adjusted gross.

I suppose if we were going to take this budget document and turn it page by page probably we could find 107 other changes. I don't think it is the time to do it. It is not the time to be parochial. This is the time, I think, to look for the greater good of the state. I think this budget package that is now before us, we have a document that eliminates the gimmicks and addresses the needs of Maine as it moves forward. I ask you not to support the pending motion. Don't let this budget unravel because of amendments. Thank you.

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

Representative VOLENIK: Mr. Speaker, Men and Women of the House: I would concur with Representative Dore and I would question Representative Simoneau's statistics. I am looking here at 1992 income tax statistics and it looks to me like 95 percent of the returns would be eligible under the current plan and only 90 percent if we adopted this amendment. If my figures are correct and Representative Simoneau's figures are correct, because there is a three year difference here in figures, then it would indicate that the vast amount of wealth is beginning to accumulate very quickly at the top and, in fact, we probably don't even need an income tax at all. Thank you.

The Chair ordered a division of adoption of House Amendment "F" (H-640) to House Amendment "A" (H-628).

Representative SIMONEAU of Thomaston requested a roll call on adoption of House Amendment "F" (H-640) to House Amendment "A" (H-628).

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 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 pending question before the House is adoption of House Amendment "F" (H-640) to House Amendment "A" (H-628). All those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 254

YEA - Adams, Benedikt, Berry, Bunker, Chartrand, Chase, Daggett, Desmond, Dore, Etnier, Fitzpatrick, Gates, Gerry, Gould, Green, Heeschen, Johnson, Jones, K.; Kontos, LaFountain, Lemaire, Lemke, Luther, Mitchell JE; Richardson, Rosebush, Rowe, Samson, Saxl, J.; Saxl, M.; Shiah, Stevens, Treat, Tripp, Volenik, Watson.

NAY - Ahearne, Aikman, Ault, Bailey, Barth, Bigl, Birney, Bouffard, Brennan, Buck, Cameron, Campbell, Carleton, Chick, Chizmar, Clark, Cloutier, Clukey, Cross, Damren, Davidson, DiPietro, Donnelly, Driscoll, Dunn, Farnum, Fisher, Gamache, Gieringer, Goolley, Greenlaw, Guerrette, Hartnett, Hatch, Heino, Hichborn, Jacques, Jones, S.; Joseph, Joy, Joyce, Joyner, Kerr, Kneeland, Lane, Layton, Lemont, Libby JD; Libby JL; Lindahl, Look, Lovett, Lumbr, Madore, Marshall, Martin, Marvin, Mayo, McAlevey, McElroy, Meres, Mitchell EH; Murphy, Nadeau, Nass, Nickerson, O'Gara, O'Neal, Ott, Paul, Peavey, Pendleton, Perkins, Pinkham, Plowman, Poirier, Pouliot, Povich, Reed, G.; Reed, W.; Rice, Ricker, Robichaud, Rotondi, Savage, Simoneau, Sirois, Spear, Stedman, Stone, Strout, Taylor, Thompson, Townsend, True, Truman, Tufts, Tuttle, Tyler, Underwood, Vigue, Waterhouse, Wheeler, Whitcomb, Winglass, Winn, Winsor, The Speaker.

ABSENT - Dexter, Keane, Kilkelly, Labrecque, Morrison, Poulin, Yackobitz.

Yes, 36; No, 108; Absent, 7; Excused, 0.

36 having voted in the affirmative and 108 voted in the negative, with 7 being absent, House Amendment "F" (H-640) to House Amendment "A" (H-628) was not adopted.

Subsequently, House Amendment "A" (H-628) was adopted.

Representative GWADOSKY of Fairfield requested a roll call on passage to be engrossed as amended by House Amendment "A" (H-628).

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 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 pending question before the House is Engrossment. All those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 255

YEA - Ahearne, Aikman, Ault, Barth, Benedikt, Berry, Birney, Bouffard, Brennan, Buck, Cameron, Campbell, Carleton, Chick, Chizmar, Clark, Cloutier, Clukey, Cross, Damren, Davidson, Desmond, DiPietro, Donnelly, Dore, Driscoll, Dunn, Etnier, Farnum, Fisher, Fitzpatrick, Gamache, Gates, Gerry, Gieringer, Gooley, Greenlaw, Guerrette, Hartnett, Hatch, Hichborn, Jacques, Johnson, Jones, K.; Jones, S.; Joseph, Joy, Joyce, Joyner, Kerr, Kneeland, LaFountain, Lane, Layton, Lemaire, Lemke, Lemont, Libby JD; Libby JL; Lindahl, Look, Lovett, Lumbr, Luther, Madore, Marshall, Martin, Marvin, Mayo, McAlevey, McElroy, Meres, Mitchell EH; Mitchell JE; Morrison, Murphy, Nadeau, Nass, Nickerson, O'Gara, O'Neal, Ott, Paul, Peavey, Pendleton, Perkins, Pinkham, Plowman, Poirier, Pouliot, Povich, Reed, G.; Reed, W.; Richardson, Ricker, Rotondi, Samson, Savage, Saxl, M.; Simoneau, Sirois, Spear, Stedman, Stone, Taylor, Thompson, Townsend, Tripp, True, Truman, Tufts, Tuttle, Tyler, Vigue, Waterhouse, Wheeler, Whitcomb, Winglass, Winsor, The Speaker.

NAY - Adams, Bailey, Bigl, Bunker, Chartrand, Chase, Daggett, Gould, Green, Heeschen, Heino, Kontos, Rice, Robichaud, Rosebush, Rowe, Saxl, J.; Shiah, Stevens, Strout, Treat, Underwood, Volenik, Watson, Winn.

ABSENT - Dexter, Keane, Kilkelly, Labrecque, Poulin, Yackobitz.

Yes, 120; No, 25; Absent, 6; Excused, 0.

120 having voted in the affirmative and 25 voted in the negative, with 6 being absent, the Bill was passed to be engrossed as amended by House Amendment "A" (H-628) and sent up for concurrence. Ordered sent forthwith.

Reference is made to Bill "An Act to Require Notification to the Landowner When Land Is Being Considered for Placement in a Resource Protection Zone" (H.P. 609) (L.D. 819)

In reference to the action of the House on June 27, 1995, whereby it Insisted and Joined in a Committee of Conference, the Chair appoints the following members on the part of the House as Conferees:

Representative GOULD of Greenville
Representative BUNKER of Kossuth Township
Representative MARSHALL of Eliot

On motion of Representative TREAT of Gardiner the House reconsidered its action whereby Bill "An Act to Correct Errors and Inconsistencies in the Laws of Maine" (S.P. 251) (L.D. 648) (C. "A" S-332) (EMERGENCY) was passed to be engrossed.

On further motion of the same Representative, the House reconsidered its action whereby Committee Amendment "A" (S-332) was adopted.

By unanimous consent, Joint Rule 21 was suspended to introduce an amendment.

The same Representative presented House Amendment "A" (H-638) to Committee Amendment "A" (S-332) which was read by the Clerk and adopted.

Committee Amendment "A" (S-332) as amended by House Amendment "A" (H-638) thereto was adopted.

The Bill was passed to be engrossed as amended by Committee Amendment "A" (S-332) as amended by House

Amendment "A" (H-638) thereto in non-concurrence and sent up for concurrence. Ordered sent forthwith.

BILL HELD

Bill "An Act to Prohibit Retrofits of Nuclear Power Plants without Permission of the Public Utilities Commission" (H.P. 676) (L.D. 927)

- In House, Minority "Ought to Pass" as amended Report of the Committee on Utilities and Energy read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (H-435) on June 21, 1995.

- In Senate, Majority "Ought Not to Pass" Report of the Committee on Utilities and Energy read and accepted in non-concurrence.

- In House, House Adhered.

HELD at the Request of Representative ADAMS of Portland.

On motion of Representative ADAMS of Portland, the House reconsidered its action whereby the House Adhered.

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

TABLED AND TODAY ASSIGNED

The Chair laid before the House the following item which was Tabled and Today Assigned:

Resolve, Establishing the Task Force on Alcoholic Beverage Sales (EMERGENCY) (H.P. 1075) (L.D. 1514) (Governor's Bill) (H. "A" H-614 to C. "A" H-477)

TABLED - June 26, 1995 by Representative MITCHELL of Vassalboro.

PENDING - Passage to be Engrossed.

Subsequently, the Resolve was passed to be engrossed as amended and sent up for concurrence. Ordered sent forthwith.

On motion of Representative LEMKE of Portland, the House recessed until 6:45 p.m.

(After Recess)

The House was called to order by the Speaker.

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

ENACTORS

Bond Issue

An Act Authorizing a General Fund Bond Issue in the Amount of \$15,000,000 to Expand Telecommunications Capabilities and Student Learning Opportunities in Maine Schools (S.P. 171) (L.D. 432) (C. "A" S-308)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. In accordance with the provisions of Section 14 of Article IX of the Constitution, a two-thirds vote of the House being necessary, a total was taken. 108 voted in favor of the same and 11 against, and accordingly the Bond Issue was passed to be enacted, signed by the Speaker and sent to the Senate.

Emergency Measure

An Act to Preserve Fishing Stocks (H.P. 1045) (L.D. 1464) (H. "A" H-576)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 107 voted in favor of the same and 0 against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

Emergency Mandate

Resolve, for Laying of the County Taxes and Authorizing Expenditures of Androscoggin County for the Year 1995 (H.P. 1135) (L.D. 1579) (S. "A" S-314)

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

On motion of Representative MITCHELL of Vassalboro, tabled pending final passage and later today assigned.

An Act Regarding Unredeemed Deposits on Beverage Containers (H.P. 506) (L.D. 687) (C. "A" H-498)

An Act to Provide Greater Access to Health Care (S.P. 343) (L.D. 948) (S. "A" S-304 to C. "A" S-279)

An Act to Expand Access to Medical Care by Encouraging Involvement of Retired Physicians, Podiatrists and Dentists (H.P. 839) (L.D. 1170) (H. "A" H-493 and S. "A" S-319 to C. "A" H-319)

An Act to Establish Reciprocity in Determining the Lowest Responsible Bidder (S.P. 432) (L.D. 1200) (C. "A" S-213)

An Act to Reform the Process of Periodic Review of Programs and Agencies (H.P. 959) (L.D. 1348) (H. "A" H-598 to C. "A" H-516)

An Act to Amend the Laws Regarding Child Placing Agency Disclosure of a Child's Background for the Purpose of Adoption (H.P. 1080) (L.D. 1522) (C. "A" H-596)

An Act to Require Annual Reporting by the Board of Governors of the Maine Workers' Compensation Residual Market Pool (S.P. 597) (L.D. 1584) (Governor's Bill)

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

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

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

Senate Divided Report - Committee on Banking and Insurance - (8) Members "Ought Not to Pass" - (4) Members "Ought to Pass" as amended by Committee Amendment "A" (S-329) on Bill "An Act to Provide for the Creation of a Health Insurance Purchasing Cooperative" (S.P. 539) (L.D. 1477) which was tabled by Representative VIGUE of Winslow pending his motion to accept the Majority "Ought Not to Pass" Report.

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

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

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

UNFINISHED BUSINESS

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

HOUSE DIVIDED REPORT - Majority (6) "Ought to Pass" as amended by Committee Amendment "A" (H-523) - Minority (5) "Ought Not to Pass" - Committee on Legal and Veterans Affairs on Resolve, to Allow Jose Gonzales to Bring an Action Against the State (H.P. 1077) (L.D. 1519)

TABLED - June 20, 1995 (Till Later Today) by Representative JACQUES of Waterville.

PENDING - Acceptance of either Report.

At this point, the Speaker appointed Representative MITCHELL of Vassalboro to serve as Speaker Pro Tem.

The House was called to order by the Speaker Pro Tem.

On motion of Representative NADEAU of Saco, the Majority "Ought to Pass" as amended Report was accepted.

The Bill was read once. Committee Amendment "A" (H-523) was read by the Clerk and adopted.

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

Under further suspension of the rules, the Bill was passed to be engrossed as amended by Committee Amendment "A" (H-523) and sent up for concurrence. Ordered sent forthwith.

The Speaker resumed the Chair.

The House was called to order by the Speaker.

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

Resolve, for Laying of the County Taxes and Authorizing Expenditures of Androscoggin County for the Year 1995 (EMERGENCY) (MANDATE) (H.P. 1135) (L.D. 1579) (S. "A" S-314) which was tabled by Representative MITCHELL of Vassalboro pending final passage.

On motion of Representative KERR of Old Orchard Beach, rules were suspended for the purpose of reconsideration.

On further motion of the same Representative, under suspension of the rules, the House reconsidered its action whereby L.D. 1579 was passed to be engrossed.

On further motion of the same Representative, under suspension of the rules, the House reconsidered its action whereby Senate Amendment "A" (S-314) was adopted.

The same Representative presented House Amendment "A" (H-641) to Senate Amendment "A" (S-314) which was read by the Clerk.

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

Representative KERR: Mr. Speaker, Ladies and Gentlemen of the House: This amendment only corrects the fiscal note. Thank you.

House Amendment "A" (H-641) to Senate Amendment "A" (S-314) was adopted.

Senate Amendment "A" (S-314) as amended by House Amendment "A" (H-641) thereto was adopted.

The Resolve was passed to be engrossed as amended by Senate Amendment "A" (S-314) as amended by House Amendment "A" (H-641) thereto in non-concurrence and sent up for concurrence. Ordered sent forthwith.

BILL HELD

An Act Regarding Unredeemed Deposits on Beverage Containers (H.P. 506) (L.D. 687) (C. "A" H-498) - In House passed to be enacted.

HELD at the Request of Representative KERR of Old Orchard Beach.

On motion of Representative KERR of Old Orchard Beach, the House reconsidered its action whereby the Bill was passed to be enacted.

On further motion of the same Representative, under suspension of the rules, the House reconsidered its action whereby the Bill was passed to be engrossed.

On further motion of the same Representative, under suspension of the rules, the House reconsidered its action whereby Committee Amendment "A" (H-498) was adopted.

The same Representative presented House Amendment "A" (H-639) to Committee Amendment "A" (H-498) which was read by the Clerk.

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

Representative KERR: Mr. Speaker, Men and Women of the House: This amendment replaces the fiscal note. Thank you.

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

Representative CAMERON: Mr. Speaker, May I pose a question through the Chair?

The SPEAKER: The Representative may pose his question.

Representative CAMERON: Thank you. To the Representative from Old Orchard Beach, could you elaborate on what you mean by replaces the fiscal note? I am not sure I understand what this is about.

The SPEAKER: The Representative from Rumford, Representative Cameron has posed a question through the Chair to the Representative from Old Orchard Beach, Representative Kerr. The Chair recognizes that Representative.

Representative KERR: Mr. Speaker, Men and Women of the House: I believe this amendment replaces the fiscal note because it was not correct the first time around.

House Amendment "A" (H-639) to Committee Amendment "A" (H-498) was adopted.

Committee Amendment "A" (H-498) as amended by House Amendment "A" (H-639) thereto was adopted.

The Bill was passed to be engrossed as amended by Committee Amendment "A" (H-498) as amended by House Amendment "A" (H-639) thereto in non-concurrence and sent up for concurrence. Ordered sent forthwith.

TABLED AND TODAY ASSIGNED

The Chair laid before the House the following item which was Tabled and Today Assigned:

HOUSE DIVIDED REPORT - Majority (7) "Ought to Pass" as amended by Committee Amendment "A" (H-616) - Minority (6) "Ought Not to Pass" - Committee on Judiciary on Bill "An Act to Establish a Statute of Limitations for Claims against the Dalkon Shield Claimants Trust" (H.P. 983) (L.D. 1391)

TABLED - June 26, 1995 by Representative TREAT of Gardiner.

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

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

Representative TREAT: Mr. Speaker, Men and Women of the House: This is the final divided report out of the Judiciary Committee of which we are very glad and you may be too. The Majority Report of the committee asks that you pass this bill. The bill grants Maine women injured by the Dalkon Shield the same rights as women in California, Kansas and New York. It allows 28 women to pursue their claims in court if they feel the settlement offers that they get from the A.H. Robbins Trust Fund was not fair.

This bill in the Majority "Ought to Pass" Report addresses a situation under that current law that may deprive a few women from having a jury trial on their claims against A.H. Robbins. Some of you may remember the Dalkon Shield controversy. This contraceptive device was found early on to be both defective and to cause terrible injuries. The information about its defectiveness was covered up by the A.H. Robbins Company.

I personally have a friend who was made sterile by this device and can never have children because of it. Other injuries include pelvic inflammatory disease, spontaneous abortions and death and injury to women and children that were conceived with the shield in place. After a large number of these women sued the company, it went through a bankruptcy procedure in 1985 in order to avoid paying the full cost of paying out these claims. It set up a trust fund and required anyone with any claim to file first with the trust fund in order to recover.

A few women in Maine still have claims pending in the trust fund. Because of Maine's statute of limitations they may be prevented from filing a lawsuit if they believe the settlement they got from the trust fund is unfair. Maine statute of limitations runs for six years from the date of injury, in the product liability case which this would be, not when the injured person discovers the injury, but when they were injured. As a result of this statute of limitations, someone could have been injured back in 1973, when they had the Dalkon Shield implanted, but did not discover their injuries until they found out they were unable to have children in 1985. Even if they were injured within the right time period they would still have had to file first with the trust fund.

This bill just ensures that the fact of the trust fund, which was set up to protect A.H. Robbins from legal claims, does not preclude a small number of women from exercising their right to a jury trial if they choose. The only objection to this bill that we had came from the trust fund. The grounds they objected to were as follows, they said this bill would delay the disbursement of windfall payments to

people who have already been paid by the trust. This objection was not found by the majority on this report to really hold water since the enactment of similar laws in California have basically ensured that there will be no closure of the trust fund until after thousands of California claims are resolved. In summary, please vote for the Majority Report. It gives Maine women who have suffered terrible injury from the Dalkon Shield the same opportunities to be fairly compensated as women in other states. Thank you.

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

Representative PLOWMAN: Mr. Speaker, Ladies and Gentlemen of the House: I would ask you to turn down the Majority "Ought to Pass" Report. I would like to give you a little bit of background and I hate to do this to you because it is late, but this is quite a technical bill. Dalkon Shield was removed from the market in the early 70s. The last Dalkon Shield was implanted in the early 70s. As people became aware of the problems, it was not even on the market at all anymore after the early 70s. In 1995, the maker of the Dalkon Shield, A.H. Robbins, went into bankruptcy under the weight of 6,000 filings against them. In the bankruptcy action a trust fund of 2.32 billion dollars was established. There is only two ways that this money can be spent. It can be spent on giving money to the women on the claims they make regarding their injuries or it can be paid to the attorneys who would have to defend the trust in court. Those are the only two ways the money can be spent. A.H. Robbins does not exist anymore. The balance of the fund does not revert back to A.H. Robbins. Every single penny must be dispersed to the women who made claims.

In 1990, there were 197,000 claims received by the trust. The deadline has been extended and 20,000 more claims were received after the trust was extended. The only thing you have to do to make a claim was to send in a postcard with your name and address on it. It was not a difficult process. It was highly advertised worldwide. It was an incredible effort to notify women. There was a three-tier system if you, filed an affidavit saying you had been injured and these were your injuries, you received a settlement. If you filed an affidavit alleging greater injuries and you provided medical information, there was another level of settlement. If you had incurred great injuries, you had to undergo an examination and provide your medical.

Women who opted to sue rather than to take the offers from the trust went ahead and did it. With 18 jury trials, plaintiffs were offered \$855,405 by the trust. After jury trials, they were awarded \$675,000 for their injuries. My math isn't great but they got about \$200,000 less than they were offered by the trust. The trust was not low balling claims. If you don't agree with what you were offered, there is an alternative dispute resolution board you can go before, so it is not your last option when your offer is made. Ninety-six percent of the claims have been already resolved. In Maine, 745 women made claims and 717 women have already been paid. There are 28 women left. Out of the 28, 14 have been made offers, but they have not accepted yet and they still continue through the alternative dispute resolution process and 14 filed late claims so their claims have not been processed through the trust yet.

You have heard that there was special legislation passed in California, Kansas and New York. In California the statute of limitations for chronic liability is one year. In Maine it is six years. In Kansas the statute of limitations for chronic liability is two years. In Maine it is six years. In New York the statute of limitations is three years. In Maine it is six years. You have heard that A.H. Robbins acted to try to conceal what the damages were. Let me tell you that, first of all, if I found out today that I was injured by a Dalkon Shield, I would have six years from today to file my claim. My statute of limitations would not have run out. The statute of limitations starts to run effective on the day you discover and put together the connection between the product and your injuries. There is no other way to determine it. These women have six years from the time that they put together their injuries and the fact that they were caused by a Dalkon Shield.

There has been alleged fraud in Kansas, California and New York. New York passed some law to allow for recovery with another separate statute of limitations that says if the company tried to cover it up, you have a certain number of years from the time you found that out. Maine already has that. It is six years. If you discovered that A.H. Robbins had tried to cover it up, you would have six years from that date to file your claim. You cannot live under a rock in this system. If you find you have injuries, you must find out what your recourse is.

We will tell you that this has been very successful in Kansas. One of the attorneys who is specialized in handling these cases, his share that he takes from his clients is the usual contingency fee has amounted to over 25 million dollars. That is money that did not go to the women that were injured. That was the one-third they paid in order to have their cases go through court rather than the trust. The trust has been very fair. The trust is only to pay the claims of women. If you want to involve more lawyers in it and extend the time to go into court, then there will be less money for the women and more money for the attorneys that have to be hired by the trust to defend these actions. These women already have recourse to a settlement. They have the same recourse that 197,000 other women have and 96.6 percent of them accepted the offers that were made to them. That is a pretty good track record.

Please remember that in the final analysis, the money is supposed to be for the women that were injured. The women that were left out in Maine may not be left out, they may not go to court, but the fact that there is a jury trial does not always mean that you are going to have a greater settlement. You may have a lesser settlement than what the trust already offered you. When it comes back around again, it is expected that women who have already reached a settlement with A.H. Robbins Trust could receive as much as 75 percent of what they have already been awarded. A \$100,000 award would result in \$75,000 coming to the women when this trust is finally settled, when every single case is finally settled. That money can be spent on the women or that money can be spent on the lawyers. Personally, I vote for the women. I hope you will defeat the Majority "Ought to Pass" Report and go with the Minority "Ought Not to Pass." Thank you.

The SPEAKER: The Chair recognizes the Representative from Acton, Representative Nass.

Representative NASS: Mr. Speaker, Men and Women of the House: I would like to tell you what happened at the hearing on this bill. My notes indicate that the sponsor was not able to be with us and none of the cosponsors were there. Representing this proposal there was an attorney from the State of Maine who at least at one time or another had represented a claimant or plaintiff, however you want to refer to it, the person who, in fact, was entitled to collect under the Dalkon Shield Trust. He was not able to share with us whether or not he currently represented somebody.

During the work session, that same attorney was back and he was accompanied by a representative from the Maine Trial Lawyers Association. On the other side, we had two people representing the Dalkon Shield Trust, an attorney from Maine and another representative and that was pretty much it. To me, more than anything else I have ever seen, this took on the flavor as a piece of private legislation. I don't know how better to describe it.

The other thing that sticks in my mind is a trust that at least to me is very difficult to defend. The more you know about the Dalkon Shield Trust the more strange it looks. However, this piece of legislation is not about the trust or how they have been organized or how they have paid out. It is about how they are going to pay out what is left. What is left, ladies and gentlemen, is 1.4 billion dollars. Most of the cases have been settled. It appears that the people who are entitled to collect this 1.4 billion dollars are those people who have already collected. They are apparently entitled to about 75 percent of what they already collected. On the margins we have the attorneys who also seek a part of that 1.4 billion dollars. I urge you to defeat the "Ought to Pass" motion and join the Minority in defeating this proposal. Thank you.

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

Representative DAGGETT: Mr. Speaker, Men and Women of the House: There was reference made in the previous speech about a sponsor who wasn't there. I will apologize. I was that sponsor and I asked for someone to present the bill for me. I was in the middle of work in my own committee and it was very difficult for me to leave.

I hope you will give this bill some serious consideration. There has been a lot of discussion about the trust and about bankruptcy and numbers of claims and how it has been paid. Admittedly, it is a small number of women, percentage wise, Maine women, who would be affected by this bill. It doesn't allow any additional claims. There is no additional costs to anyone, but it means that they can have their day in court. What has happened is, if a woman has a claim against the trust, the trust then makes her an offer. If she is not comfortable with that offer, she has the right to go to court. What this bill does, it allows her that opportunity.

I would submit to you that far too many of those women accepted a small offer, some were as low as \$750. The result of this device, for some women, was sterility. I ask you to put a price on that. Please don't deny these women the opportunity for their day in court. There is no additional cost to anyone. The date for claims to be finished is over. No

additional claims can be added. Please allow this bill to go forward.

The SPEAKER: The Chair recognizes the Representative from Freeport, Representative Hartnett.

Representative HARTNETT: Mr. Speaker, Men and Women of the House: Before I jump into this fray, I would like to thank the good Chairwomen of the Judiciary Committee, Representative Treat. I know at times it may seem like a divided committee, but, in fact, it really isn't. We have agreed on so many things this year. Like all committees, we occasionally split and in this case very closely, 7 to 6. We take our arguments to you and lay them out before you. Throughout the last five or six months and what to me was an enormous education, I have witnessed a committee that was professionally run and where all points of view were respected.

Now I jump into the fray. Several things have been said on the floor here that I think really need to be rebutted. One of which is that somehow A.H. Robbins used the trust fund to shield and protect itself from the claims of women who had been injured by their product. A.H. Robbins no longer exists. It was a family owned company and they filed for bankruptcy under the weight of an enormous number of lawsuits, which is what is now happening with the Corning Company and has happened to some asbestos manufacturers. It is simply a point where a potential liability outweighs your assets and as anyone in business knows the game is over and you are out of business. This is what happened to the A.H. Robbins Company. They marketed for several years, I am assuming most members know this but we will make sure the record is clear, a product known as the Dalkon Shield, which was an interuterine device, contraceptive device, began marketing it in 1971 and in 1974 withdrew the product from the market and then began an international campaign of alerting women who had this product inserted that, in fact, they may wish to think about having it removed. The trust fund was created at the closure of the A.H. Robbins bankruptcy proceedings. The company was simply dissolved and the assets of the A.H. Robbins were thrown into this trust along with a settlement product liability settlement from the Aetna Insurance Company. Other products that were marketed by the company were bought mostly by American Home Products. The purchase price for those items also helped to create this trust fund of more than 2 billion dollars. The sole purpose of the trust, which is completely independent of A.H. Robbins, is to settle claims from women who believe they have been injured by the product.

Representative Daggett has claimed that some of these settlements were as little as \$750. What you should know is that the trust fund set up three-tiers of settlements. The number one option, the woman simply had to make application. She did not have to prove her claim, she simply has to say she was injured by the product and deserves a settlement. That was all and they got a settlement. For those women who then pursued the case, sometimes these settlements were as low as \$750. Option two set up a range of payments and these were for claimants who were asserting more serious damage. In this case you were required medical causation. In option three, involved individualize evaluation by the trust. The claim is supported by medical records and evidence that Dalkon Shield actually caused the claimants injuries. Beyond that, if the claimants didn't like

the settlement, they could sue. The statute of limitations has already been extended once on this. It is interesting to note that those people who opted for one of those three options in settling it, the trust never ever looked as to whether the claimants' statute of limitations had already expired.

In other words, you could come in and say I have been injured and they didn't care what the date of injury was and whether in your state the statute of limitations had expired. It seems to me a model of settling product liability loss suits in this country. It allows the claimants to sort of pursue their own cases, often without needing the expense of legal services. More than 200,000 women have filed claims and almost all of these have been settled. We have heard before that something in excess of 1 billion dollars remains in this trust fund. By the terms of the trust fund it must eventually conclude its business with all claimants and disperse the remaining money to all successful claimants. Right now it is estimated that if the threat of litigation ceased today this 1.2 billion dollars would amount to, as you have heard, a 75 percent extra award to every woman who filed a claim. You must know there are tens and tens and tens of thousand of settled women claimants waiting for this subsequent money to come to them.

The only thing that stands in their way is those who have pushed the statute of limitations in other states and are now trying to do so here in Maine. The argument we hear for doing it in Maine was that three states have done it already. I think tonight we can make an enormous step to stopping that madness. In Maine if you pass this bill, you will benefit only a few women. There are only 28 claims that remain outstanding. Given the success rate of the trust for settling claims and remember something like 97 percent of the claims in Maine have been settled without going to court, given that past history, we can assume that if you extend the statute of limitations, you may be benefiting, in fact, only one person. In the meantime, hundreds of Maine women and eventually tens of thousands of women around the world must sit and wait for this new statute to exhaust itself. This is a women's bill.

The way you can support the women who have settled the cases and are awaiting this extra award is to reject the Majority "Ought to Pass" Report and go with the six votes of "Ought Not to Pass." Thank you.

The SPEAKER: The Chair recognizes the Representative from Farmingdale, Representative Watson.

Representative WATSON: Mr. Speaker, Men and Women of the House: I rise as one of the Majority Report people from the Judiciary Committee on this issue. As a nonlawyer, I have been sitting here listening to the accusations made against our system of justice. I am afraid I have been taking umbrage that it has been portrayed that the reason that this bill has been put before us is to only benefit the lawyers. I voted for the Majority "Ought to Pass" Report for the women, even though only 28 in the State of Maine have been affected by the Dalkon Shield. It is true that maybe none of those women will ever lay claim and use the legislation that we are hopefully going to pass for their benefit. I want you to know that it is a fairness issue for me and yes, Representative Hartnett it is a woman's issue. It is not a lawyer's bill.

I just want to tell you that the L.D. 1391 would place women and their families injured by the Dalkon Shield, if they so choose to use this legislation, on an even footing with those in California, New York and Kansas who are already holding up the final settlement. I don't want anybody to think that Maine would be holding up anybody getting final payment. It has already been done in three other states. We will not be holding up anyone's getting their just reward or their just compensation. All I am asking is that we do not harm the interest of women here in Maine. Not enacting L.D. 1391 will cause Maine claimants to sit idly by while the claims of those in other states with similar legislation are resolved free of the burden of statutes of limitations. It would be unfair to discriminate against Maine citizens by denying them the protection of this L.D. I ask you please to support the Majority "Ought to Pass" Report. Mr. Speaker, I would ask for a roll call.

Representative WATSON of Farmingdale requested a roll call on the motion to accept the Majority "Ought to Pass" as amended Report.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call it must have the expressed desire of more than one-fifth of 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 Hampden, Representative Plowman.

Representative PLOWMAN: Mr. Speaker, Men and Women of the House: Just to point out to you that Maine already has three to four times the length of statute of limitations of the other states that have passed this legislation, the claimants have six years from the time they discovered the injury and discovered the fraud, some of them have 12 years to file. The statute of limitations defense only comes up in the trust when the women file in court.

There has been one case tried in Maine where the women turned down an offer from the trust. She did not have to show medical causation. She just had to file. When it went to court it was found that the cause of all of her injuries were endometriosis. The woman received nothing because she had to prove medical causation in court. The trust doesn't ask that. The trust doesn't look at the statute of limitations. The trust says you were injured and it is our job to make sure that you were compensated. These states have now finally caught up with what Maine has given these women all along, anywhere from 6 to 12 years to file a claim. At some point the responsibility is on the plaintiff to bring a timely claim. These women have been let into the trust system without even considering whether it is a timely claim. They are considered timely by the trust. The opportunity for a day in court has passed and it passed some years ago.

I would just like to point out again that California has a one year product liability statute. Maine is one of the last few states that has six. Kansas is two and New York is three. These women in other states have very short timetables compared with the women in the State of Maine. The women who are asking for this, 14 of them have not even received an offer, they do not even know if they have been low

balled. If they consider it low balled, they may still go through alternative dispute resolution.

The trustees of this fund are not members of A.H. Robbins or Dalkon Shield. The chairman of the trust is a dean at a law school. These trusts are being administered by people whose reputations are solid in the law regarding what has to be done for these claims. I would ask you to recognize the fact that Maine already extends six year limitations on chronic liability and six year limitations on the discovery of fraud. From the day that it was discovered by the woman that A.H. Robbins attempted to hide her damages, she had six years from that time. That is way more than these states have given. The time is up. The trust is still there and there is still plenty of money and it is time for us to move the trust along. I can see it snowballing into 50 states extending the statute of limitations for 15 years. The money will not be going to the women.

I dare say that if there is a woman sitting out there with \$100,000 waiting for \$75,000 more who filed timely and did everything that she was supposed to do, she is being penalized because someone else didn't file timely. It is time to say 12 years is plenty of time. Thank you.

The SPEAKER: The Chair recognizes the Representative from Biddeford, Representative LaFountain.

Representative LaFountain: Mr. Speaker, Men and Women of the House: I urge you to support the Majority "Ought to Pass" Report. I want to remind you of what we learned at our public hearing and from the testimony here this evening. If we do not pass L.D. 1391, there are four groups of women who will benefit. The first group is the women in Kansas who missed the original statute of limitations and because of the foresight of their legislature can now make a claim to the court system. The second group is the women in California who missed their original statute of limitations and now can lay claim to the court system. Third is the women from New York. Finally, there are 717 women in the State of Maine, who according to the trust, have already received adequate and fair compensation through this trust. What this L.D. will do in the Majority Report is let those 28 who haven't been successful in claiming to do so. Thank you.

The SPEAKER: The Chair recognizes the Representative from Bar Harbor, Representative Jones.

Representative JONES: Mr. Speaker, Ladies and Gentlemen of the House: My profession takes quite a beating in this hall. I was thinking about it the other day, lawyers lose cases and there are plaintiffs and defendants in cases, which means that 50 percent of the people who come out of court lose. I can only assume that adds to the dislike and disdain of attorneys. Maybe that is why labeling a bill, "attorney's legislation," is so successful here. It is in vogue. I am not quite sure really why lawyers are held in such disdain. I grew up respecting attorneys as people who have gone the distance working hard through seven years of school and getting a huge debt and then doing things called a contingency agreement, which has been railed upon here as attorneys stealing from this trust.

What they are doing is representing these people for nothing. They only get paid if they prevail. These people wouldn't have an attorney otherwise unless someone would take that chance and represent them and hope that they were compensated in the end.

There are many times that they aren't. We heard that people were receiving less if they went to court. One guy in Kansas has made 25 million dollars. He must be pretty good. He is probably on the O.J. Simpson case at the moment. What it does is allow access to the courts. The playing field is level in this litigation prior to the three states enacting this legislation.

What we are asking you to do is to extend that same courtesy to the 28 individuals in the State of Maine. It is the least we can do for them. This trust isn't a Maine based organization. We are not stealing money from Maine. This is money that is rightfully going to go to these people. I don't know why we are standing here defending A.H. Robbins. They were deceitful in the beginning and they must have had lawyers working on this to create the bankruptcy. The bankruptcy wouldn't have come about unless diligent lawyers had said A.H. Robbins has messed up and they should pay just like John Mansfield did in the asbestos case. They brought that company to its knees for its deceitful practices. What I want you to do is level this playing field for the 28 women so those terrible attorneys in California, Kansas and New York won't steal all the money from the trust, stick a whole bunch in their pocket, that was the American dream I thought was to make money, and they are making money for the women too.

Let's level the playing field for those 28 women and say, yes, to this legislation. They need us and it is time to stand up and say yes to these 28 women. Thank you.

The SPEAKER: The Chair recognizes the Representative from Acton, Representative Nass.

Representative NASS: Mr. Speaker, Men and Women of the House: I would just like to add one more bit of information. This will not level the playing field, because of the different statute of limitations. This will, in fact, create another imbalance. The six year statute of limitations in Maine versus one, two and three years in the other three states that have passed. You are not going to correct an imbalance, you are going to create another imbalance. Thank you.

The SPEAKER: A roll call has been ordered. The pending question before the House is Majority "Ought to Pass" Report. All those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 256

YEA - Adams, Ahearne, Benedikt, Berry, Brennan, Bunker, Chartrand, Chase, Chizmar, Clark, Cloutier, Daggett, Davidson, Driscoll, Etnier, Fisher, Fitzpatrick, Gerry, Gould, Green, Hatch, Heeschen, Heino, Hichborn, Jacques, Johnson, Jones, K.; Joseph, Kil Kelly, Kontos, LaFountain, Lemaire, Lemke, Madore, Martin, Mitchell EH; Mitchell JE; Morrison, Nadeau, O'Gara, O'Neal, Paul, Rosebush, Rotondi, Rowe, Samson, Saxl, J.; Saxl, M.; Shiah, Sirois, Stevens, Townsend, Treat, Tripp, Truman, Tuttle, Tyler, Volenik, Watson, The Speaker.

NAY - Aikman, Ault, Bailey, Barth, Bigl, Birney, Bouffard, Buck, Cameron, Campbell, Carleton, Chick, Clukey, Cross, Damren, Desmond, Donnelly, Dore, Dunn, Farnum, Gamache, Gates, Gooley, Greenlaw, Guerrette, Hartnett, Jones, S.; Joy, Joyce, Joyner, Kerr, Kneeland, Lane, Layton, Lemont, Libby JD; Libby JL; Lindahl, Look, Lovett, Lumbra, Luther, Marshall, Marvin, Mayo, McAlevey, McElroy, Meres, Murphy, Nass, Nickerson, Ott, Peavey, Pendleton, Perkins, Pinkham,

Plowman, Poirier, Pouliot, Povich, Reed, G.; Reed, W.; Rice, Ricker, Robichaud, Savage, Simoneau, Spear, Stedman, Stone, Strout, Taylor, Thompson, True, Tufts, Underwood, Vigue, Waterhouse, Wheeler, Whitcomb, Winglass, Winsor.

ABSENT - Dexter, DiPietro, Gieringer, Keane, Labrecque, Poulin, Richardson, Winn, Yackobitz.
Yes, 60; No, 82; Absent, 9; Excused, 0.

60 having voted in the affirmative and 82 having voted in the negative, with 9 being absent, the Majority "Ought to Pass" as amended Report was not accepted.

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

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

SENATE PAPERS
Non-Concurrent Matter

Resolve, to Reduce the Economic Impacts of the Clean Air Act on Maine's Citizens and Businesses (EMERGENCY) (H.P. 459) (L.D. 625)

- In House, passed to be engrossed as amended by Committee Amendment "A" (H-608) in the House on June 26, 1995.

- In Senate, passed to be engrossed as amended by Committee Amendment "A" (H-608) on June 27, 1995.

- Recalled from Engrossing pursuant to Joint Order S.P. 598.

Came from the Senate passed to be engrossed as amended by Committee Amendment "A" (H-608) and Senate Amendment "A" (S-351) in non-concurrence.

The House voted to Recede and Concur.

Non-Concurrent Matter

Bill "An Act to Amend Laws Pertaining to On-premises Signs by Allowing for Changeable Signs" (H.P. 946) (L.D. 1335) which was passed to be engrossed as amended by Committee Amendment "A" (H-456) in the House on June 14, 1995.

Came from the Senate passed to be engrossed as amended by Committee Amendment "A" (H-456) as amended by Senate Amendment "A" (S-349) thereto in non-concurrence.

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

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

A vote of the House was taken. 68 voted in favor of the same and 15 against, subsequently, the House extended until 10:00 p.m.

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

UNFINISHED BUSINESS

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

HOUSE DIVIDED REPORT - Majority (6) "Ought Not to Pass" - Minority (5) "Ought to Pass" as amended by Committee Amendment "A" (H-551) - Committee on State and Local Government on Bill "An Act to Increase the Efficiency of Cumberland County Government Operations" (H.P. 975) (L.D. 1384)

TABLED - June 21, 1995 (Till Later Today) by Representative DAGGETT of Augusta.

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

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

Representative BRENNAN: Mr. Speaker, Men and Women of the House: I was anxiously awaiting the good Representative from Augusta to stand so that we would be able to have a little bit of debate about this. However, I do want to urge you to vote against the pending motion and I want to tell you why.

In this bill it does essentially two things. It increases the current representation on the Cumberland County Commissioners from three commissioners to five. Secondly, it eliminates the elected positions of Registrar of Deeds and County Treasurer. I want to tell you where those recommendations are coming from. In 1990, there was a commission that was established by the county commissioners called the Commission to Evaluate County and Regional Government in Cumberland County. I had the pleasure of serving on that commission along with Representative Greenlaw. One of the two key elements or themes that came out of that commission was how do we make county government more responsive and more efficient and more effective. In terms of being more responsive, currently the three commissioners in Cumberland County represent 80,000 people.

Under the plan that is being proposed by going to five commissioners, they would represent approximately 45,00 to 50,000 people, having one commissioner represent 80,000 people and many people believe there is a serious detriment to county commissioners being able to be both responsive and to fairly represent the needs of that many people, by increasing the representation, the hope would be that the commissioners would be more responsive and better able to articulate the needs of other regions of Cumberland County.

The second issue, in terms of the elected officials, is in the report it says that the current structure of county government so divides responsibility from authority that efficient and effective government is made difficult, if possible at all. The commission went on to talk about how difficult it is to run county government if you have the department heads that are elected in popular vote and at the same time have the county commissioners who are elected and have the responsibility of overseeing the county budgeting process.

Why are only these two elected positions being offered for elimination is very practical. One, is that with these two positions there is the opportunity for those departments to be managed by other persons within those departments. Secondly, the Registrar of Probate, Probate Judge and the Sheriff are constitutional offices that cannot be eliminated unless there is a statewide referendum calling for their elimination. At this particular point, this bill is before you because it would be an opportunity for Cumberland County, in county government, to become more responsive and more

efficient by having more elected officials and secondly, by eliminating those elected department heads that currently their function is being carried out by people that are already within the county structure. I urge you to oppose the current motion so that we can go forward and adopt the Minority Report. Thank you.

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

Representative DAGGETT: Mr. Speaker, Men and Women of the House: Part of what Representative Brennan has spoken to is a report that is entitled The Commission to Evaluate County and Regional Government. One of those recommendations is that there be established a charter commission. I would like to pose a question.

The SPEAKER: The Representative may pose her question.

Representative DAGGETT: Has there been a charter commission established and if so what were the recommendations of that charter commission relative to the proposals in front of us?

The SPEAKER: The Representative from Augusta, Representative Daggett has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Portland, Representative Brennan.

Representative BRENNAN: Mr. Speaker, Men and Women of the House: There was a charter commission that was established in 1980 in Cumberland County. That charter commission for two years reviewed the procedures and the operation of Cumberland County Commissioners and made a number of recommendations that went to the voters in 1982. The recommendations that were made for what, at that time, was a comprehensive change to county government was narrowly defeated in an election in 1982. In 1990, when this commission was established to review the operation of county government, the decision not to establish a charter commission was largely due to the fact that there had already been a commission established and for two years looked at and evaluated the operation in Cumberland County. People believed it was unnecessary to establish a second charter commission to do the work that the commission had already done.

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

Representative DAGGETT: Mr. Speaker, Men and Women of the House: The reason I am opposing this legislation, largely, is because I believe it should be up to the residents of Cumberland County to take a look at their county government and that is done through the establishment of a charter commission where members of that commission are elected to serve on the commission. There is not an opportunity for loading the commission with the people that you want or moving it in the direction that you want. The people elect the members of the charter commission.

I am reading to you from the statutes and this is one of the duties of a charter commission, "The establishment of county departments, agencies, boards or commissions and their descriptions, powers and duties, the powers and authority of county officers or officials to direct, regulate and control these agencies, departments, board and commissions and the election of the county legislative body and the method of selecting officers, officials and employees." I would suggest to you that this is inappropriate for consideration by the Legislature.

This is an issue for a charter commission. Perhaps the commission was defeated 15 years ago, but this is the way we determine our mechanism of government, is at that level, and that is truly where this belongs right in Cumberland County and let them develop their own charter commission and develop their own plan.

The SPEAKER: The Chair recognizes the Representative from Cumberland, Representative Taylor.

Representative TAYLOR: Mr. Speaker, Men and Women of the House: I urge you to support the Minority Report and please reject the motion before you and give us an opportunity to present to you House Amendment "A" and other options that I intend to propose. I think the charter commission is represented, at this time, by elected members of the Legislature. All of this planning has been done to try to improve Cumberland County government and we would like the opportunity that you can afford us by rejecting the Majority "Ought Not to Pass." Thank you.

The Chair ordered a division on the motion to accept the Majority "Ought Not to Pass" Report.

A vote of the House was taken. 61 voted in favor of the same and 73 voted against, the motion to accept the Majority "Ought Not to Pass" Report was not accepted.

Subsequently, the Minority "Ought to Pass" as amended Report was accepted. The Bill was read once. Committee Amendment "A" (H-551) was read by the Clerk.

Representative TAYLOR of Cumberland presented House Amendment "A" (H-629) to Committee Amendment "A" (H-551) which was read by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Cumberland, Representative Taylor.

Representative TAYLOR: Mr. Speaker, Men and Women of the House: There are several items of particular concern to the legislative delegation from Cumberland County. First is the desire to establish the job of county manager and better organize the budget process for Cumberland County. The manager should bring professional handling of county business under the guidance of elected county commissioners. This change was accomplished by your enactment of a previous L.D.

The second objective is to change the manner of staffing Cumberland County government. Two positions out of the Treasurer and the Registrar of Deeds are filled by popular election with little or no regard for professional qualifications. It is now proposed to make these jobs appointed by the commissioners and supervised by the manager. For the manager to effectively control the results of Cumberland County government, he needs to be in charge of these two individuals.

The third item and the reason for my proposed amendment to Committee Amendment "A" is to the proposed increase in the number of county commissioners from three to five. The question of increased representation is a valid one, but I believe we are moving in the wrong direction by expanding the number of commissioners. House Amendment "A" will retain the present three commissioners, which, in effect, will give you the new appointed positions, but retain the present number of commissioners. Thank you.

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

Representative DAGGETT: Mr. Speaker, Men and Women of the House: It really is a concern to me when this Legislature feels comfortable eliminating elected positions without having an opportunity to hear from the people that those elected officials represent and that is exactly what this bill would do if this is passed. I would still submit that the appropriate way to deal with county government is to establish a charter commission and not bypass those people who have a right to decide how they wish to be represented. I move indefinite postponement of this amendment.

Representative DAGGETT of Augusta moved that House Amendment "A" (H-629) be indefinitely postponed.

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

Representative DiPIETRO: Mr. Speaker, Ladies and Gentlemen of the House: I feel the same way as the previous speaker who just got through speaking. I don't think this body has the right to tell people that they no longer can vote for whomever they want. They voted for us and the people in Cumberland County have the right to vote for whomever they want to represent them. If that person, he or she, does not have the experience, they will get the experience on the job. None of us were experienced legislators when we came here, but it is amazing, we all learned and today we all think we are perfect. I don't think we should start telling the citizens of the State of Maine or Cumberland County how they should appoint their people. If they want to elect them, they should have that opportunity. We here in Augusta should keep our nose out of it. Thank you.

The SPEAKER: The Chair recognizes the Representative from Naples, Representative Thompson.

Representative THOMPSON: Mr. Speaker, Men and Women of the House: I, along with a number of the other rural members of the Cumberland County Delegation support the indefinite postponement of this amendment. The purpose of expanding from three to five tied into the other issues is the fact that the rural towns in Cumberland County have been unable to elect a commissioner in many years. It is because the population is centered around the greater Portland area and we don't get any representation. The reason to expand it so far is to give the rural people a voice in the running of the Cumberland County government. I would ask that you support the indefinite postponement of this amendment.

The SPEAKER: The Chair recognizes the Representative from Freeport, Representative Hartnett.

Representative HARTNETT: Mr. Speaker, Men and Women of the House: As a member of the Cumberland County Delegation, I am going to ask that you vote against the current motion. I have worked in county government on the budget advisory committee and I came away with one conclusion. We don't need it. No one knows who the county commissioners are. Right now there are only three people we don't know. I don't think we should move it to five people we don't know.

The Chair ordered a division on the motion to indefinitely postpone House Amendment "A" (H-629).

A vote of the House was taken. 79 voted in favor of the same and 38 against, House Amendment "A" (H-629) was indefinitely postponed.

The SPEAKER: The Chair recognizes the Representative from Windham, Representative Kontos.

Representative KONTOS: Mr. Speaker, Men and Women of the House: I think you can tell from the debate that there is not unanimous support among the Cumberland County Delegation for the initiative proposed in L.D. 1384. I happen to agree with the Chair of the committee who was diligent in working these issues and sought the opinions of a number of members of the delegation who did not present a unified position before State and Local Government on this matter. In fact, numbers of meetings that we had included a variety of opinions on the proposals in L.D. 1384. For that reason, I move that we indefinitely postpone the bill and all its accompanying papers.

The SPEAKER: The Chair would inform the Representative from Windham, Representative Kontos that we cannot accept that motion at this time. We can move to indefinitely postpone Committee Amendment "A." If we adopt Committee Amendment "A," and get to engrossment, the Representative could move for indefinite postponement at engrossment.

Committee Amendment "A" (H-551) was adopted.

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

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

Representative MARTIN: Mr. Speaker, Men and Women of the House: The last thing I want to get involved in is Cumberland County politics. It has always been the practice of this House to take whatever position the delegation has voted, whether it be slim of one vote or unanimous. I would inquire if the Cumberland County Delegation has taken a position on this issue and if it has, what is that position? It would be my desire that the rest of us vote whatever way the delegation voted.

The SPEAKER: The Representative from Eagle Lake, Representative Martin has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Portland, Representative Brennan.

Representative BRENNAN: Mr. Speaker, Men and Women of the House: In fact, there was a poll of the Cumberland County Delegation. There are generally speaking 41 members of the Cumberland County Delegation. The reason I say generally speaking is we have some people who maybe represent one town in Cumberland County. Of the 41 people that were polled, 27 responded to that survey. I don't have the numbers right off the top of my head. I do have them here, but I just can't put my finger on it. In terms of the majority of the people that responded, of that 27, supported the increase from three to five. A majority also supported the elimination of those elected positions.

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

Representative MARTIN: Mr. Speaker, Ladies and Gentlemen of the House: From what I can gather that is less than 21 of the 41. I would now move indefinite postponement of this bill and all accompanying papers.

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

Representative JACQUES of Waterville requested a roll call on the motion to indefinitely postpone the Bill and all accompanying papers.

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 members present and voting. All those in favor will vote yes; those opposed will vote no.

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

The SPEAKER: A roll call has been ordered. The pending question before the House is to indefinitely postpone. All those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 257

YEA - Adams, Ahearne, Aikman, Ault, Bailey, Barth, Berry, Bigl, Bouffard, Buck, Bunker, Cameron, Campbell, Carleton, Chartrand, Chase, Chick, Chizmar, Clark, Cloutier, Clukey, Daggett, Damren, Davidson, Desmond, DiPietro, Donnelly, Dore, Driscoll, Dunn, Etnier, Farnum, Fisher, Fitzpatrick, Gamache, Gates, Gerry, Gooley, Gould, Green, Greenlaw, Guerrette, Hartnett, Hatch, Hichborn, Jacques, Johnson, Jones, K.; Jones, S.; Joseph, Joy, Joyce, Joyner, Kerr, Kilkelly, Kneeland, Kontos, LaFountain, Layton, Lemaire, Lemke, Lemont, Libby JD; Libby JL; Lindahl, Look, Lovett, Luther, Madore, Martin, Marvin, Mayo, McAlevey, Mitchell EH; Mitchell JE; Morrison, Murphy, Nadeau, Nass, Nickerson, O'Gara, O'Neal, Ott, Paul, Peavey, Perkins, Pinkham, Poirier, Pouliot, Povich, Reed, G.; Reed, W.; Rice, Richardson, Ricker, Robichaud, Rosebush, Rotondi, Rowe, Samson, Savage, Saxl, J.; Saxl, M.; Shiah, Simoneau, Sirois, Spear, Stedman, Stevens, Stone, Strout, Taylor, Townsend, Treat, Tripp, True, Tufts, Tuttle, Underwood, Vigue, Volenik, Watson, Wheeler, Whitcomb, Winglass, Winn.

NAY - Benedikt, Brennan, Cross, Heeschen, Lane, Lumbr, McElroy, Meres, Thompson, Tyler, Waterhouse, Winsor.

ABSENT - Birney, Dexter, Gieringer, Heino, Keane, Labrecque, Marshall, Pendleton, Plowman, Poulin, Truman, Yackobitz, The Speaker.

Yes, 126; No, 12; Absent, 13; Excused, 0.

126 having voted in the affirmative and 12 voted in the negative, with 13 being absent, the Bill and all accompanying papers were indefinitely postponed and sent up for concurrence. Ordered sent forthwith.

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

SENATE PAPERS Divided Report

Majority Report of the Committee on Appropriations and Financial Affairs reporting "Ought to Pass" as amended by Committee Amendment "A" (S-306) on Bill "An Act to Authorize a General Fund Bond Issue in the Amount of \$20,000,000 for Landfill Closure and Remediation" (S.P. 147) (L.D. 333)

Signed:

Senators:

Representatives:

BEGLEY of Lincoln
HANLEY of Oxford
DONNELLY of Presque Isle
AIKMAN of Poland
MORRISON of Bangor
DIPIETRO of S. Portland
POULIOT of Lewiston
SIMONEAU of Thomaston
OTT of York

Minority Report of the same Committee reporting "Ought to Pass" as amended by Committee Amendment "B" (S-307) on same Bill.

Signed:

Senator:

Representatives:

BERUBE of Androscoggin
JOSEPH of Waterville
TOWNSEND of Portland
KERR of Old Orchard Beach

Came from the Senate with the Majority "Ought to Pass" as amended Report read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (S-306) as amended by Senate Amendment "B" (S-342) thereto.

Was read.

On motion of Representative KERR of Old Orchard Beach, the Majority "Ought to Pass" as amended Report was accepted.

The Bill was read once. Committee Amendment "A" (S-306) was read by the Clerk. Senate Amendment "B" (S-342) to Committee Amendment "A" (S-306) was read by the Clerk.

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

Representative TUTTLE: Mr. Speaker, May I pose a question through the Chair?

The SPEAKER: The Representative may pose his question.

Representative TUTTLE: Can you explain what we are killing here?

The SPEAKER: The Representative from Sanford, Representative Tuttle has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Old Orchard Beach, Representative Kerr.

Representative KERR: Mr. Speaker, Ladies and Gentlemen of the House: I am going to kill Senate Amendment "B" so I can then put on House Amendment "A," which will give us a bond issue of 14 million dollars. It is 10 million dollars to go to protect state drinking water, 3 million dollars for the removal of state owned underground storage tanks and 1 million dollars for small community programming.

The SPEAKER: The Chair recognizes the Representative from Crystal, Representative Joy.

Representative JOY: Mr. Speaker, Men and Women of the House: Could I have a point of clarification? With the acceptance of the Majority Report, which does not include Amendment "B," we would only have Amendment "A" to contend with. Is that correct?

The SPEAKER: The Chair would answer in the affirmative, however, the Senate has adopted Senate Amendment "B" to Committee Amendment "A."

On motion of Representative KERR of Old Orchard Beach, Senate Amendment "B" (S-342) to Committee Amendment "A" (S-306) was indefinitely postponed.

The same Representative presented House Amendment "A" (H-635) to Committee Amendment "A" (S-306) which was read by the Clerk.

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

Representative KERR: Mr. Speaker, Men and Women of the House: The Senate Amendment "B" was in conflict with both the previous amendments, so that is why we had to strip Senate Amendment "B." What we have done and what this bond issue will entail is a 14 million dollar bond issue which will be broken up with 10 million dollars to protect the state's drinking water resources by granting funds to cities and towns for the proper capping of their solid waste

landfills. Also, 1 million dollars for the small community programs and 3 million dollars for the removal of state owned underground storage tanks. I urge your support of this amendment.

House Amendment "A" (H-635) to Committee Amendment "A" (S-306) was adopted.

Committee Amendment "A" (S-306) as amended by House Amendment "A" (H-635) thereto was adopted.

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

Under further suspension of the rules, the Bill was passed to be engrossed as amended by Committee Amendment "A" (S-306) as amended by House Amendment "A" (H-635) thereto in non-concurrence and sent up for concurrence. Ordered sent forthwith.

ENACTORS

An Act to Reduce Theft in the Forest Products Industry (H.P. 1065) (L.D. 1500) (C. "A" H-612)

An Act to Amend the Emergency Planning and Community Right to Know Laws (H.P. 1107) (L.D. 1555) (C. "A" H-603)

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

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

BILL HELD

Bill "An Act Regarding the Functioning of the Department of Mental Health and Mental Retardation and Several Professional Regulatory Boards" (EMERGENCY) (H.P. 483) (L.D. 664) (C. "A" H-626) -In House passed to be engrossed as amended. HELD at the Request of Representative DAGGETT of Augusta.

On motion of Representative DAGGETT of Augusta, the House reconsidered its action whereby L.D. 664 was passed to be engrossed.

On further motion of the same Representative, the House reconsidered its action whereby Committee Amendment "A" (H-626) was adopted.

The same Representative presented House Amendment "A" (H-648) to Committee Amendment "A" (H-626) which was read by the Clerk and adopted.

The SPEAKER: The Chair recognizes the Representative from Wells, Representative Carleton.

Representative CARLETON: Mr. Speaker, Men and Women of the House: Could somebody please explain this amendment?

The SPEAKER: The Representative from Wells, Representative Carleton has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Augusta, Representative Daggett.

Representative DAGGETT: Mr. Speaker, Men and Women of the House: This amendment incorporates some compromise language that had been talked about and had not been included in an amendment to L.D. 664. I had not realized that that is where the amendment was going to be.

I had had conversations with the Department of Human Services regarding this. It is quite a lengthy section which repeals the Maine Auditing and Accounting Practices Act and replaces it with another

section. There is a paragraph that just indicates that departments that have not been a part of that agreement, departments other than the Department of Human Services, Mental Health and Retardation and the Office of Substance Abuse, could not impose any additional audit requirements than those that were included in the compromise language.

There is another small section that talks about the consolidation of audit services, which follows up on a bill that had been under consideration in the Committee on State and Local Government. I had discussed this amendment with my committee as well as several other interested people. It is my understanding that it is supported by a variety of others.

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

Representative DUNN: Mr. Speaker, Ladies and Gentlemen of the House: I, too, support this amendment. It is an attempt to consolidate and make more efficient some of the audit functions. I would urge your support.

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

Representative FITZPATRICK: Mr. Speaker, Ladies and Gentlemen of the House: This amendment is consistent with an amendment to L.D. 654 that the Human Resources Committee considered at the very end of the session. It is also consistent with the discussions that went on with the Audit and Program Review Committee last summer with talks about consolidating audit functions. I would ask your support for this amendment.

House Amendment "A" (H-648) to Committee Amendment "A" (H-626) was adopted.

Committee Amendment "A" (H-626) as amended by House Amendment "A" (H-648) thereto was adopted.

The Bill was passed to be engrossed as amended by Committee Amendment "A" (H-626) as amended by House Amendment "A" (H-648) thereto and sent up for concurrence. Ordered sent forthwith.

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

Bill "An Act to Prohibit Retrofits of Nuclear Power Plants without Permission of the Public Utilities Commission" (H.P. 676) (L.D. 927) which was tabled by Representative ADAMS of Portland pending further consideration.

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

Representative ADAMS: Mr. Speaker, Men and Women of the House: I move that the House insist and ask for a committee of conference. We are this far from an agreement and I think a little bit of talking might help. End of my talking. Thank you.

On motion of Representative ADAMS of Portland, the House voted to Insist and ask for a Committee of Conference.

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

UNFINISHED BUSINESS

The following matter, in the consideration of which the House was engaged at the time of adjournment yesterday, has preference in the Orders

of the Day and continues with such preference until disposed of as provided by Rule 24.

An Act to Require That Additions to the Endangered Species List Be Approved by the Legislature (S.P. 167) (L.D. 428) (C. "A" S-248; S. "B" S-274) TABLED - June 26, 1995 (Till Later Today) by Representative MITCHELL of Vassalboro.
PENDING - Passage to be Enacted.

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

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

On motion of Representative LUMBRA of Bangor, the House adjourned at 10:00 p.m., until 9:00 a.m., Wednesday, June 28, 1995.